OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 19 March 2025

Session 6

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CRIMINAL JUSTICE COMMITTEE
10th 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)
Pam Gosal (West Scotland) (Con)
Jamie Greene (West Scotland) (Con)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 19 March 2025

[The Convener opened the meeting at 09:32]

Victims, Witnesses, and Justice Reform (Scotland) Bill: Stage 2

The Convener (Audrey Nicoll): Good morning, and welcome to the 10th meeting of the Criminal Justice Committee in 2025. We have no apologies.

Item 1 is continued consideration of the Victims, Witnesses, and Justice Reform (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill and to the marshalled list of amendments and groupings.

I welcome Angela Constance, Cabinet Secretary for Justice and Home Affairs, and her officials to the meeting. I remind the officials that they are here to assist the cabinet secretary during the stage 2 debate and are not permitted to participate in it. For that reason, members should not direct questions to them.

I also welcome to the meeting Jamie Greene MSP, Pam Gosal MSP and Maggie Chapman MSP, who are here to speak to their amendments.

Members will be glad to hear that I will stop at various points to allow short breaks in the proceedings.

After section 29

The Convener: Amendment 85, in the name of Pam Gosal, is grouped with amendments 241 and 242.

Pam Gosal (West Scotland) (Con): Good morning, committee, cabinet secretary and officials.

Amendment 85 would introduce a mandatory requirement for the making of non-harassment orders in the sentencing of sexual offenders. Having spoken to survivors of sexual crimes and domestic abuse, it is clear to me that non-harassment orders are vital to their safety. Survivors might feel safe when their abusers are in prison, but what happens when they are released?

Amelia Price, who I understand has contacted the Cabinet Secretary for Justice and Home Affairs and the Minister for Victims and Community Safety, was raped and assaulted by her ex-partner. He is currently serving time in prison but is due to be released later this year. The judge in the case was required under law to consider imposing a non-harassment order. However, Amelia was told that he did not impose one because her abuser had not contacted her since she reported him and she no longer lived in Scotland. My amendment 85 would ensure that such orders are issued automatically.

Amendment 241, in the name of my colleague Sharon Dowey, would extend those protections to cases of domestic abuse. The amendment is extremely important, as there has been an epidemic of domestic abuse in Scotland, with the number of cases rising. A freedom of information request showed that, in the financial year 2023-24, non-harassment orders were granted at sentencing in only 38 per cent of domestic abuse cases, so almost two-thirds of survivors live in fear that their abusers could contact them. That is why I urge members to support amendment 241.

Amendment 242, in the name of Maggie Chapman, would also extend the criteria for making non-harassment orders in sexual crimes, and I urge colleagues to support it.

I move amendment 85.

Sharon Dowey (South Scotland) (Con): My amendment 241 would protect victims of domestic abuse by requiring anyone who is convicted of a domestic abuse offence to be subject to a non-harassment order. That would protect and safeguard victims of domestic abuse.

I know that the Government has concerns about the impact that that would have on the discretion of the courts to make sentencing decisions in individual cases. I am grateful to the cabinet secretary for offering to meet me to discuss how we can improve protections for victims in that regard ahead of stage 3. As a result, I will not move amendment 241.

Maggie Chapman (North East Scotland) (Green): I thank the committee for its work on the matter and the cabinet secretary for the many conversations that we have had about the bill over several months.

I am grateful to all the organisations and individuals that have taken the time to speak to me about non-harassment orders. I am particularly grateful to Amelia Price for her dedication to bringing about change.

I refer colleagues to my entry in the register of members' interests and remind them that, prior to being elected, I worked for a rape crisis centre.

I will briefly address the two other amendments in the group before I come to my amendment 242.

Amendment 85, in the name of Pam Gosal, does not cover all offences in schedule 3, whereas my amendment does. Her amendment relates only

to offences where the perpetrator is known to the survivor. I appreciate that most sexual offences are perpetrated by a family member or someone who is known to the survivor. However, it seems to me a little problematic that her amendment does not cover situations where the perpetrator is a stranger to the survivor. My amendment seeks to address that.

Sharon Dowey's amendment 241 relates to domestic abuse cases only, as she and Pam Gosal outlined. Her amendment and mine are complementary, and I encourage members to support Sharon Dowey's amendment.

The need for my amendment has been recognised for a long time. In 2017, at stage 2 of the Domestic Abuse (Scotland) Bill, the Justice Committee heard from Linda Fabiani, who proposed an amendment that called for mandatory non-harassment orders—her amendment was supported by John Finnie and Scottish Women's Aid. Linda Fabiani had heard what she described as compelling evidence and quoted a survivor, who said:

"A criminal conviction … was of absolutely no use to me as a victim since that conviction on its own contained no provision to … protect me from further abuse".—[*Official Report*, *Justice Committee*, 21 November 2017; c 22.]

Pam Gosal has already outlined the case of Amelia Price, who has been campaigning on the issue for a long time. It is stark that, in Amelia's case, a non-harassment order was not granted on the grounds that her perpetrator had not tried to contact her. However, that was when he had conditions that restricted his contact. Once those come to an end, there will be no restrictions on whether he can contact her. Therefore, it seems utterly perverse to use that as evidence for not granting a non-harassment order.

We also know from Amelia that there are other risk factors that were not taken into account in the assessment of whether a non-harassment order should have been granted.

We must ensure that we listen to survivors—they understand the risks that they face. Currently, there is no provision for a survivor to challenge a decision not to grant a non-harassment order, other than to take civil action—and we all know the cost, time and trauma that that would entail. We should not put survivors through that.

We also need to recognise that survivors can evaluate the risks of harassment that they face, and we should be doing what we can to ensure that they feel protected and supported. People are much more likely to come forward and report offences in the first place if they know that they will be protected after the fact. That is why I urge colleagues to support my amendment.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I will be brief. I, too, take the opportunity to offer my thanks to Amelia Price. She has been in touch with me, and we have corresponded. I thank her for her bravery in talking about her situation.

I believe that the three amendments in the group have merit. However, as Maggie Chapman outlined, Pam Gosal's amendment does not cover cases in which the perpetrator is a stranger. That issue would need to be ironed out.

As Sharon Dowey said, I know that the Government will cite concerns about the amendments' potential impact on court decision making. We need to be fully aware of that.

I have not had a chance to speak with the members who lodged the amendments about this, but I wonder whether they and the cabinet secretary have any plans to meet ahead of stage 3 to iron out the difficulties and to try to agree to something that meets their aims and objectives. If they do, they need not move or press their amendments today. Perhaps the cabinet secretary and Pam Gosal could address that.

Pauline McNeill (Glasgow) (Lab): My quick contribution is to say that, similarly, I am very sympathetic to the subject matter that Pam Gosal, Sharon Dowey and Maggie Chapman have brought to the committee, and I am very grateful to them for doing so.

I think that I am right in saying that the Parliament—in fact, a former Justice Committee—addressed the question of how costly it is to obtain a non-harassment order in the civil courts and said that we need to do more to ensure that, where necessary, the courts could impose them of their own volition. However, we have not made the progress that we should have made. Many women do not even qualify for legal aid—because some benefits are taken into account in that consideration, they lose out.

The principle is definitely right that the court can impose non-harassment orders in cases where things are clear, such as in domestic abuse or sexual offence cases.

I will listen to what the cabinet secretary has to say before deciding on how to vote. I just wanted those members to know that I really appreciate their lodging their amendments and that I am very sympathetic to the subject matter.

Katy Clark (West Scotland) (Lab): I, too, am very grateful to the members for their work and for bringing these issues to the committee. It would be helpful to have a better understanding of the differences between the approaches. Under Maggie Chapman's proposal, making a non-harassment order is not mandatory, including in

situations in which the victim does not want a non-harassment order for some reason—there are reasons why some victims would not want a non-harassment order. I am more sympathetic towards that approach.

However, I noticed that Maggie Chapman supports Sharon Dowey's amendment 241. It would be helpful to know whether Sharon Dowey's amendment would also mean that there would be situations in which a court would not make a non-harassment order because of the specific circumstances of a case. We would always want the court to have discretion, given that it would be fully aware of all the facts.

The point that was made about the low usage of non-harassment orders is powerful.

The point that was made about the low usage of non-harassment orders is powerful. This is an attempt to shift the onus so that there is a presumption that, in most situations, it is appropriate that the offender should not approach the victim, particularly when there have been bail conditions. It would seem to be appropriate in those situations to continue an order of the court so that there is no contact, as long as there is the provision that representations can be made when that is not appropriate.

I am sympathetic to what the members are trying to do, but we need to get the detail right. I look forward to hearing what the cabinet secretary has to say.

09:45

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): I add my thanks to members for their diligence in this area and put on the record my thanks to the many survivors whom I have met on this and other matters.

The amendments seek to achieve something that we are all committed to. They seek to ensure that victims are fully supported by the justice system and that appropriate sentencing options are available and used by the independent court to protect victims. I cannot support the amendments as drafted, but I have written to Pam Gosal, Maggie Chapman and Sharon Dowey to indicate that I am sympathetic to their clearly well-intentioned amendments and to suggest that we work together ahead of stage 3 to deliver the underlying policy aim of improving protection for victims.

The role of our independent courts in considering the need for protective measures for victims is a critical part of the criminal justice system. That role is especially relevant in cases that involve sexual offending. Mandatory non-harassment orders, or NHOs, were debated during the passage of the Domestic Abuse (Scotland) Act 2018. It was argued at that time that mandatory NHOs in all domestic abuse cases were not appropriate because the Crown prosecutes a broad range of domestic abuse cases, and removing all discretion from the court might result in NHOs being made when, in the circumstances of individual cases, they were not appropriate.

During those debates, concern was expressed that mandating the use of NHOs in all cases might risk undermining the credibility of NHOs if the court was required to make them in cases in which there was no reason to consider it necessary to do so. However, I acknowledge that the protection of an NHO will be required in a great number of cases, and the court has the power to impose an order under the existing law, but not all cases will require imposition. The court makes that judgment as part of its independent sentencing duty.

I can give the committee information on the application of non-harassment orders in DASA convictions under the 2018 act. The figures for 2024-25 thus far show that an NHO was made in 82 per cent of cases. The 38 per cent figure that Ms Gosal quoted is for offences with a domestic abuse aggravation, which has increased from 11 per cent in 2019-20.

On Ms Gosal's amendment 85 in its current form, it is unclear how a court would go about deciding what conditions should be included in an NHO in cases in which the court's view was that an NHO was not required to protect the victim, but the law nonetheless obliged it to make one. It is also worth noting that a court can make other protective orders in respect of some of the offences that are listed in the amendment, such as a human trafficking prevention order, a sexual harm prevention order or a female genital mutilation prevention order. One of those orders might be a better way for the courts to deal with the risk that is posed by the offender, rather than there being mandatory imposition of an NHO.

I also want to touch on a significant risk that might arise through requiring a victim to give consent for an NHO to be imposed, as there might be unintended consequences. Scottish Women's Aid and Rape Crisis Scotland have raised that during our engagement. Although I understand why the provision is there in the context of a mandatory requirement to make an NHO, that would mean that there would be a risk that an offender might seek to pressure the victim not to agree to the making of a non-harassment order, especially in cases involving coercive control. That is not something that any of us would want to see.

Although I do not, for those reasons, support amendment 85 in its present form, I consider that there is a strong case for affording victims of offences of the kind covered by the amendment

the same protections that exist for victims of domestic abuse offences. Therefore, I urge Ms Gosal to work with me on a suitable amendment ahead of stage 3.

The same arguments apply to amendment 241, in the name of Sharon Dowey, which seeks to make it mandatory for the court to impose an NHO in all domestic abuse cases. As I have said, the court is already required to make an NHO in any domestic abuse case unless it concludes that there is no need for the victim to be protected in that way. Amendment 241 would require the court to make an NHO notwithstanding its conclusion that it would not be required to protect a victim; however, in such cases, it is not clear what restrictions it would or could make in an order. There are no standard conditions that must be included in an NHO. Typically, an order could include conditions such as not contacting or approaching the person protected by the order or not coming within a certain distance of where they live or work, but it is not clear that such conditions would be applicable in cases where the court did not consider that protective measures were needed, yet an NHO had to be imposed.

Amendment 242, in the name of Maggie Chapman, seeks to make the imposition of an NHO mandatory in any sexual offence case where the victim does not take steps to indicate that it should not be made. In other words, if the victim does not offer a view, the NHO has to be made. In circumstances where the victim indicates that an NHO should not be made, the court can still make an NHO if it concludes that the degree of risk posed by the perpetrator to the victim is such that the making of the order is necessary. That second element is exactly how the current law operates, with the court having the discretion to make an NHO, even where the victim does not wish them to do so.

I acknowledge that such an approach seeks to address the concern that I highlighted with regard to amendment 85, in respect of which perpetrators could be encouraged to pressure a victim into not agreeing to make an NHO. However, in light of the removal of discretion from the courts in individual cases, I have the same concern about how the court goes about making an NHO in a case where it does not consider that it is necessary to do so, either because it does not consider that the perpetrator poses a risk of harm to the victim or because it considers that an alternative protective order might be more appropriate to manage risks posed by the offender. Perhaps I can highlight some examples of when a court may decide that an NHO is not applicable, particularly in relation to sexual offences. We might be talking about, say, an online offence where the victim was not known to the perpetrator, but the making of an order would result in their becoming known to the perpetrator.

Amendment 242 also provides the victim with a right to apply to the court to vary or revoke a non-harassment order. Under the current law, only the prosecutor and the person against whom the order has been made, as the parties to the original criminal proceedings, have that right. Again, although I do not support amendment 242 in its current form, I have sympathy for what part of it seeks to achieve, and I am confident that Ms Chapman and I can work together ahead of stage 3 and consider further whether it would be appropriate to provide victims with a right to make an application to the court to vary or revoke an NHO without having to go via the prosecutor.

I therefore urge Ms Gosal to withdraw amendment 85 and Ms Dowey and Ms Chapman to not move amendments 241 and 242 in favour of our working together on amendments on which we can seek agreement at stage 3.

The Convener: I call Pam Gosal to wind up and indicate whether she wishes to press or withdraw amendment 85.

Pam Gosal: In light of what the cabinet secretary has said, I am happy to work with her before stage 3. Therefore, I will not press amendment 85.

Amendment 85, by agreement, withdrawn.

Amendment 88 not moved.

The Convener: The next group is on special measures: criminal cases. Amendment 89, in the name of Sharon Dowey, is grouped with amendments 216 and 217.

Sharon Dowey: Amendment 89 seeks to ensure that witnesses are given information on the special measures that are available to them in all cases. It also means that, where victims of certain sexual offences request to give their evidence in a particular way, that must be how they give their evidence. For all other vulnerable witnesses, the approach will remain as it is at present. That will ensure that victims and witnesses are listened to and it will improve their experience of the justice system at what is a deeply distressing and traumatising time for them.

Moreover, Victim Support Scotland has pointed out to the committee the need to ensure that victims have a choice in how they provide evidence. I hope that the Government will reflect on the need to do more to ensure that victims do not feel like witnesses in their own cases.

I move amendment 89.

The Convener: I call the cabinet secretary to speak to amendment 216 and other amendments in the group.

Angela Constance: I will start with amendment 89, in the name of Sharon Dowey. At stage 1, the committee heard very moving testimony from victims and survivors on their experiences of the criminal justice system, sharing that they felt that they did not have enough choice in how they gave their evidence. However, although I totally support the principle of addressing those concerns, I cannot support the amendment, due to its approach and the impact of how it would work in practice within the existing complex legislative framework that provides for special measures.

The amendment would give all deemed vulnerable witnesses across summary and solemn courts an entitlement to non-standard special measures. Such a significant change would create significant extra costs, have huge implications for resourcing and, crucially, strip the courts of an important function in balancing rights.

I can illustrate that with an example of non-standard special measures. Evidence by commissioner allows a witness to pre-record their evidence in advance of a trial in a more trauma-informed environment. Work is already under way through existing legislation to carefully manage the roll-out of access to pre-recorded evidence, partly to avoid overwhelming the system but also to ensure that we are appropriately prioritising pre-recorded evidence for children in the most serious cases, and amendment 89 would massively disrupt that work and place significant additional demands on the criminal justice system.

The amendment would also remove the ability of courts, when considering special measures, to balance the rights of all parties and ensure fairness for the accused, in accordance with article 6 of the European convention on human rights. In addition, the amendment places an obligation on a party citing a vulnerable witness to provide them with unspecified information about special measures. As most vulnerable witnesses are cited by the Crown Office and Procurator Fiscal Service, they already have a number of existing rights to information, including in relation to special measures, and I do not think that another statutory obligation is necessary or meaningful.

The amendment also puts the same obligation on courts, requiring them to provide vulnerable witnesses with information after a vulnerable witness notice or application has been lodged. However, courts do not routinely have contact with witnesses at that stage, so, again, the amendment would be potentially far reaching, resource intensive and significant, causing duplication, inefficiencies and delay across cases.

The amendment also duplicates existing obligations to seek the views of vulnerable witnesses on special measures. The party citing a vulnerable witness is already under an obligation to seek the views of a witness on what special measure or measures they would like to use when giving evidence.

For those reasons, I do not support amendment 89, but I understand what the member is trying to achieve, and I hope that she, and the rest of the committee, will be reassured by and supportive of the amendments in my name in group 27, which address the committee's view in the stage 1 report that the way in which the bill provides for pre-recorded evidence in the sexual offences court fails to recognise the importance of choice for complainers. My amendments will provide more control to complainers in a targeted manner by removing the discretion of the court to require them to use pre-recorded evidence where that is not what they want. I believe that that is the right way of addressing the concerns that were raised at stage 1, which were not about a perceived lack of entitlement to special measures but about making sure that, where a complainer has such an entitlement, they are not required to use those measures, if that is not what they want to do.

10:00

My amendment 216 creates a new non-standard special measure of admitting the record of a prior examination as a vulnerable witness's entire evidence. Currently, although some witnesses can pre-record their evidence ahead of trial, that evidence cannot be reused as that witness's whole evidence in any subsequent separate criminal proceedings. An example of that would be when a complainer, having given evidence in one trial, was subsequently cited to give evidence against the same accused in another trial, where that evidence was being led, under the Moorov doctrine, to establish corroboration and a sufficiency of evidence for other offending.

Currently, previous recorded evidence can constitute the witness's evidence in chief under the special measure of admitting a prior statement as the evidence in chief of the witness, but that would mean that the witness would remain subject to fresh cross-examination. Amendment 216 therefore allows for previously recorded evidence to be reused at a future separate criminal trial. That recorded evidence should be taken as the witness's entire evidence, so that the witness does not necessarily have to be cross-examined again about their experience.

However, it is still important for the rights of the accused and for the interests of justice that an accused person can apply for the witness to be questioned further about their evidence. That questioning can be granted by the court in certain circumstances: where there are questions relevant to the proceedings that were not previously put to

the witness and could not reasonably have been expected to have been put to them in their prior examination; where refusing the further questioning would give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice; and where that risk would significantly outweigh any risk of prejudice to the interests of the witness if the further questioning is allowed.

Any additional cross-examination must take place at an evidence by commissioner hearing, which is a form of pre-recording of evidence that is held in a less formal environment, with the benefit of a more focused questioning, unless the court considers that an exception to that is justified in the individual case. That will ensure that the accused's right to a fair trial is protected, while minimising the risk of retraumatisation to the witness.

Turning to my amendment 217, the Criminal Procedure (Scotland) Act 1995 provides that in situations where a presumption in favour of pre-recording of evidence applies, the court can permit a child aged 12 or over and under 18 to give evidence at their trial, rather than pre-recording it, if the child expresses a desire to do so, and if the court considers that that would be in the best interests of a child witness.

Amendment 217 would permit the court to also do that for children aged under 12, in order to further implement children's rights under article 12 of the United Nations Convention on the Rights of the Child. Article 12 of the UNCRC requirements puts an obligation on public authorities to give all children aged under 18 the right to express their opinions on matters that affect them, and for their views to be given due weight in line with their age and maturity. If the court is unable to grant an exception for children under the age of 12 based on their wish to give evidence at a trial, it is unable to give due weight to those children's views.

Permitting the court to grant an exception for a child under 12 does not mean that the court will be required to grant an exception, even if a child expresses a preference to give his or her evidence live. The court will still need to consider whether giving evidence would be in the child's best interests, in line with the 1995 act and with article 3 of the UNCRC requirements, which states that

"the best interests of the child shall be a primary consideration".

I urge the committee to support my amendments and to oppose amendment 89.

The Convener: As no other member wishes to come in, I call Sharon Dowey to wind up and to press or withdraw amendment 89.

Sharon Dowey: I have taken on board the cabinet secretary's points. She has amendments that should address my concerns. I have also taken on board the point that my amendment might overwhelm the system, which is entirely not the intention. I seek to withdraw amendment 89.

Amendment 89, by agreement, withdrawn.

Amendment 90 not moved.

The Convener: I call amendment 237, in the name of Jamie Greene.

Jamie Greene (West Scotland) (Con): Bear with me; it has been a long week. I will not move it.

Amendments 237 and 238 not moved.

Amendment 239 moved—[Jamie Greene].

The Convener: The question is, that amendment 239 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Abstentions

Clark, Katy (West Scotland) (Lab)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 2.

Amendment 239 disagreed to.

The Convener: The next group is on victim statements. Amendment 240, in the name of Jamie Greene, is the only amendment in the group.

Jamie Greene: Thank you, convener. Good morning to committee members, the cabinet secretary and officials.

Amendment 240 seeks to remove restrictions that limit the types of crimes for which victims are allowed to make victim impact statements to a court. At the moment, only victims of certain offences may make a statement to a court during solemn proceedings. Essentially, my amendment seeks to extend the franchise by allowing more victims the opportunity to provide a victim impact statement to court if they so choose. Those last few words are important; I do not think that any of us believes that a victim should be forced to make such a statement.

On a technical level, for the benefit of those who are new to it, amendment 240 would repeal sections 14(1) and 14(16) of the Criminal Justice (Scotland) Act 2003 and remove the word "prescribed" from the term "prescribed offence" in section 14(2). That is the means to the end.

The reason for my amendment is that the prescribed list of offences that allows victims to make statements was originally drawn up in 2009 and excludes many new and quite serious offences that have been created since by legislators and Governments, such as new offences around stalking, domestic abuse and aggravation. I am sure that the committee is familiar with the many wide-ranging changes that have been made over the past decade or so. Of course, any new offences that have been or that still could be created in law are not covered in the list of prescribed offences. That feels to me like a bit of a loophole, and it also means that the provision is by no means future proof.

There is also a more important argument to allow victims to make statements to a much wider range of crimes—that the seriousness of a crime does not necessarily correlate to how the victim has been impacted by it. I will explain what I mean. Three years ago, when I first consulted on the measure in my proposed victims bill—the victims, criminal justice and fatal accident inquiries (Scotland) bill—Victim Support Scotland summed up perfectly why an amendment of this nature is needed. It said:

"The supposed 'seriousness' of an offence often has little to no bearing on how the individual has been impacted. Therefore, anyone who has been impacted by a crime should be able to make a victim impact statement, should they wish to, regardless of the nature of the offence, or the court in which it is to be heard."

That was the view of VSS at the time, and I agree with it.

I realise that the Government might respond by arguing that it is too big a jump to go from the current situation to an all-encompassing scenario in which any victim in any court is able to make a statement. Therefore, I am, of course, willing to work with the Government and its officials. However, in essence, I want to expand the eligibility criteria and give more victims the right to make an impact statement in court proceedings. I cannot see why we would not want to do that.

I move amendment 240.

Angela Constance: I support the intention behind amendment 240, which seeks to expand victims' ability to have their voices heard by the court by making an impact statement about how a crime has affected them physically, emotionally and financially. A previous consultation was carried out on the issue, the findings of which made it clear that there is an appetite for change, such as widening the list of eligible offences and piloting new ways for victim statements to be made. There was also support for moving to a position in which all victims should be able to make a statement in all cases.

Currently, as Mr Greene said, the right to make a statement, which the judge must take into account in considering sentencing, is limited to certain offences in solemn procedure. I am very supportive of moving beyond that position, but there are significant operational and resource considerations, particularly for the Crown Office and Procurator Fiscal Service, which co-ordinates the process of contacting victims and ensuring that the statement is available to the court, and is responsible for ensuring that statements do not contain any inappropriate material. There are also considerations for victim support organisations, as composing a statement can be difficult for victims because it involves asking them to revisit the most traumatic aspects of the crime.

Those considerations were behind the introduction of a new power in March 2021 to enable the piloting of changes to both the range of cases in which statements can be made and the way in which they can be made. Piloting enables those aspects to be tested and resource and operational implications to be better understood. I assure members that an expansion of the victim statement regime is currently under consideration.

I support the ambition of amendment 240 and I agree that we want to move to giving victims the right to make a statement in all cases. However, I do not support making that move in one step at this time, due to the need to ensure that the resource and operational aspects are properly considered. That is particularly the case in relation to summary cases, as the volume of cases and therefore statements would be significantly greater, with associated resource implications.

There are also particular operational issues. For example, in summary cases, it is more likely that an accused can plead guilty and be sentenced at the same hearing. A statement would be sought from the victim only following the guilty plea. To do so beforehand would raise false expectations for the victim and put them through the experience of revisiting the impact of a crime, potentially for no benefit, if there is no plea or the accused is found not guilty. That would also be an inefficient use of resources and would potentially lead to significant delay in such cases, as a statement would be sought and the plea and sentencing could then not happen on the same day.

Those types of issues underlie the necessity of taking a stepped approach to widening the scope of the victim statement regime and considering at each point the variety of issues relating to

introducing the measure in practice. Those issues include the resource implications for justice agencies and victim support organisations; the impact on court programming; and, importantly, the impact on victims.

10:15

However, I recognise that there is a compelling case for ensuring that the voices of victims are heard and that victims are given the opportunity to advise the court on the impact that an offence has had on them.

I am particularly keen that we take the first step of expanding this right to all solemn cases, where there is an established process in place and where there will therefore be fewer additional operational considerations. There will be some resource implications. However, this is an area that I would be keen to discuss further with Mr Greene with a view to lodging an amendment at stage 3 to make that initial change to the legislation.

I am also happy to commit to the committee that we will carry out further engagement with the Crown Office and victims organisations to inform the use of the piloting powers, which would test further expansion.

The Convener: I call Jamie Greene to wind up and to press or withdraw amendment 240.

Jamie Greene: Thank you, cabinet secretary—that is probably the best birthday present that I have ever had. You have just provided an acknowledgement of a process and a practice that is not delivering for everyone in the justice system, an understanding of the issues and the implications of the changes and a promise to seek to do something about that. I could not have asked for more.

On that note, I am happy to work with the Government ahead of stage 3 on a suitable amendment that expands the franchise for solemn cases, perhaps with a view at some point to looking at the knock-on effects of expanding that to summary cases. I understand the implications for resources and the volume of cases. Nobody wants trials to be delayed and no one wants to unnecessarily re-traumatise victims, but that step change is the right direction of travel.

I believe that there is a constructive consensus around the table and among political parties in the Parliament to make that work. I look forward to working with the cabinet secretary and her officials to lodge such an amendment at stage 3. For that reason, I seek to withdraw amendment 240.

Amendment 240, by agreement, withdrawn.

Amendments 241 to 245 not moved.

The Convener: The next group is on victims' rights in relation to the parole process. Amendment 246, in the name of Jamie Greene, is grouped with amendments 247, 248, 252 to 255 and 262.

Jamie Greene: Please bear with me, convener—there are 11 amendments in group 13 and they are all pretty chunky in their own right. Group 14 will, similarly, address issues around the wider parole process.

Essentially, all the amendments in the group—I will break them down in logical order—seek to improve victims' experiences of the parole process in a number of ways. Let me explain what I hope to achieve from the amendments. All the amendments in the group have been drafted in consultation with many victims, victim support organisations and victims campaign groups, some of which helped to form the wording of the amendments.

Katy Clark: One of the considerations is the view of the Parole Board of Scotland, as it will have a great deal of knowledge of the operational aspects of the amendments. Have you been able to ascertain views beyond those of the organisations and individuals that you mentioned?

Jamie Greene: I thank Katy Clark for raising that point. That is probably a good place to start, before I go into the detail of the amendments.

I will say a few things. My proposals, which form the amendments today, have been in the public domain since 2021. They were published as part of the consultation on my proposed victims, criminal justice and fatal accident inquiries (Scotland) bill, and a wide range of stakeholders responded to them, which is a matter of public record. I will not bore the committee with the individual responses but, essentially, support for the reform of many parole practices was around the 70 or 80 per cent mark in each of the questions that I proposed in that consultation. I do not believe that the Parole Board responded to that consultation, although it had every right to do so, had it wanted to. Perhaps it is disappointing that it did not.

The issues that I am raising are not new. While I speak to the amendments, I am sure that anyone who has been a member of the Criminal Justice Committee for some time or pays close attention to the justice system in Scotland will hear that they are not by any means new issues, and should not come as a surprise to anyone.

I am no longer a member of the committee, and my locus in seeking the Parole Board's views and evidence is limited. Perhaps the committee has done that, or could do more, but I am happy to work with the board between now and stage 3, for example, if it has a view on the proposals that are

now in the public domain. I am sure that, as a result of reading the *Official Report* of this meeting, it will be keen to hear our debate, because Katy Clark is right that some of the amendments directly relate to the board.

I will refer to some of the amendments with comments from the Parole Board, which has expressed an optimistic willingness for reform. There are some quotes from it on the record that I hope will alleviate any concerns that the amendments are, somehow, news to the Parole Board. I think that there is an appetite for change, and I will elicit some of that as I speak to the amendments. I hope that that is helpful.

I will now power on through the amendments, if the committee will permit me. Amendment 246 asserts that a victim, or a victim's family member, if the victim is deceased, must be given the opportunity to observe parole hearings in relation to the offender's case. It would do so by adding a new sub-section to section 17 of the Criminal Justice (Scotland) Act 2003, which states that a victim or their family member

"must be afforded the opportunity to attend, for the purpose of observing proceedings",

oral parole hearings.

Let me be clear on what amendment 246 would not do. It would not force the victim to participate in proceedings or hearings—I believe that that choice should always be reserved to them. It would not give the victims or their families the right to speak at hearings, and it would not give them the right to interrogate the panel, the offender or the offender's legal representatives. It is important to put that on the record.

It would also give the Scottish Government the additional powers that it needs to set out how the reform might work in practice. For example, during the Covid pandemic a number of hearings took place electronically or remotely, and the ability to observe those hearings was established. When that single-path videolink was made available to some victims, the technology made the process much simpler, more cost-effective and perhaps less traumatising for them. That is an example of a practice could be part of the regulations and guidance that are developed around hearings.

I appreciate that the Scottish Government might wish to further consult the Parole Board on the specific proposal, but I think that it is abundantly clear that many victims feel excluded by the current practice. I say that they want, but also deserve, the right to observe hearings, at the very least.

I also understand that it might not always be appropriate for the victim to observe all or some of a hearing. Amendment 246 takes account of that scenario. In its proposed new section 17ZB(2) of the 2003 act, amendment 246 makes it clear that the chairing member of the parole hearing would retain the power to exclude a victim or a family member from the hearing if they considered it appropriate to do so. If the chairperson did that, however, they would have to notify the victim or family member in advance and—which is more important—inform them of the reasons for their exclusion. That is a fair and balanced caveat to my proposal, and it is perhaps a much-needed power for the parole chair to retain.

Amendment 246 has the backing of many campaigners and support organisations, who simply believe that what happens in parole hearings too often takes place behind closed doors. Although some victims can observe hearings, they have no absolute legal right to do so. Anything that we can do to improve transparency is key.

I will give an example. I spoke the other week with Ellie Wilson, who will be well known to the committee. She was excluded from her attacker's parole hearing because her attacker's lawyers objected to her attendance at the hearing. I understand that Ms Wilson raised that issue directly with the First Minister. It is well documented. It was reported at the time—I stress that it was reported—that his response was that that decision was

"odd, strange and not very transparent."

I agree and I hope that the committee does, too.

Amendments 247 and 248 relate to the Parole Board's consideration of written statements by victims. That is another issue that came up in my conversations with Victim Support Scotland. When the Parole Board asks a victim for a written statement, the victim is left with a choice: they can choose to relive the trauma and make a written statement to the board—often a statement that has been written time and again—or not to have their voice heard in that hearing and thereby risk the Parole Board making a decision without their input. That is exactly the opposite of trauma-informed practice.

My amendments 247 and 248 seek to make that process more flexible for victims by maximising choice and minimising the chance of retraumatisation. Amendment 247 would do that by ensuring that the Parole Board has access to all statements made by the victim throughout the entirety of criminal proceedings, including the victim impact statement and the statement of crime from the initial trial, for example. It would do that by inserting a new subsection into—this is a technical bit—section 20 of the Prisoner and Criminal Proceedings (Scotland) Act 1993, which would require that, when they refer a case to the

Parole Board, the Scottish ministers must send to the board any and all victim statements made by the victim throughout the proceedings. If that has not made sense, I am happy to answer questions on it.

Amendment 248 would allow for a victim statement—a previous written statement, representations that were made to the Parole Board, police statements, victim impact statements or any other formally recognised statement that was given during the process—to remain valid for as long as a victim wishes that statement to remain valid. I could go into detail about how it would do that, but I will not.

The point is that amendments 247 and 248 together would allow the Parole Board to receive and consider, at the point of sentencing or earlier in parole hearings, every and any statement that a victim has made to a criminal justice partner throughout the process, from the initial police statement, through to other previous submissions during the case.

The reason for that should be self-explanatory. Far too many victims are forced to be retraumatised and to relive their experiences every time a parole hearing takes place. In many parole hearings, the offender knows fine well that their chances of parole are slim, but nonetheless instructs their lawyers to push for it. In my conversations with victims, they have told me that, at that point, often within a few short months, they are required to submit to parole hearings repeat statements. At the moment, the law does not seem to account for historical statements that have been made, and that needs to be fixed, which is the purpose of amendments 247 and 248.

In essence, amendments 252 to 255 all relate to delays in parole proceedings. One of the biggest issues that came up in my discussions with victim support organisations is how damaging the delays to parole proceedings can be to victims and their recovery journeys. Unfortunately, there is a lack of statistical evidence on the number or length of delays to parole proceedings. We have tried, but it is very hard to unearth that information. Despite that lack of statistical evidence, I know anecdotally through my discussions with victims that delays to parole proceedings are exceedingly common. I am sure that the committee has taken evidence of that nature.

I understand that parole proceedings can be delayed for a number of reasons, and it is not always any one organisation's fault. However, amendments 252 and 253 seek to place a reasonable but statutory duty on both the Scottish Prison Service and the Parole Board for Scotland to ensure that delays to hearings are minimised and are avoided as far as possible.

10:30

Amendment 252 would place a duty on the Parole Board to

"take reasonable steps to prevent any delay in"

scheduled oral hearings by ensuring

"that the documentation required for the hearing is prepared in advance of the hearing."

That might sound as though it is stating the obvious, but it is clear that that does not always happen, which is one of the reasons why hearings are delayed.

Amendment 253 would place a similar duty on the Scottish Prison Service to

"provide the documentation required for the hearing ... to the Parole Board no later than 7 days before the hearing."

Anecdotally, the rationale that is given for delays to parole hearings is sometimes that the information that is required to allow the Parole Board to make a decision was not given in a timeous fashion by the Scottish Prison Service, for a number of reasons. The reason that is most often given—again, this is anecdotal—is workload and the SPS's focus on its core duties, in respect of looking after the current prison estate and those who are contained therein.

We know that delays happen, and we know some of the reasons why they happen. I would like to put both those statutory duties into section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Victims also tell me that when those delays happen, they receive little or no notice. Unfortunately, victims often find out after they have already arrived at the prison where the hearing is taking place. That is simply unacceptable and is absolutely not a trauma-informed way to manage parole.

Amendments 254 and 255 offer the committee two options that would require the Parole Board to notify a victim as soon as is reasonably practical of any delay to proceedings and the reasons for such a delay. That would not have to be anything onerous or to be done in writing—it could simply be a phone call. What is important is that the victim is, at the earliest opportunity, informed that there will be a delay to the hearing.

Amendment 255 would do that by giving the Scottish Government the power to require the Parole Board "to notify victims" if the hearing is being delayed. Amendment 254 would do the same thing as amendment 255, but in a slightly different way: it would instead require that the Parole Board inform a victim of any delays to proceedings and provide a reason for the delay.

The amendments go about the same thing in slightly different ways. I believe that amendment 254 does so in a slightly clearer way, but I would be interested in hearing what the Government has to say. Again, I offer the committee both options as a means to the end.

I want to talk about my experience last week, when I met Linda McDonald, who was attacked in 2017. I am sure that many members, and the cabinet secretary, will know her story. That meeting was certainly a very emotional experience for me, as I went about lodging what are quite technical amendments.

In the long conversation that we had, one story really struck me, and it underpins the amendments. When Linda's attacker was up for parole early last year, she travelled from Dundee to Perth to observe the parole hearing, only to be told, on her arrival in Perth, that the hearing had been delayed. Fine—she complained to the Parole Board, which told her that she should instead complain to the Scottish Prison Service. She then complained to the SPS, which told her that, actually, she should complain to the Scottish Government's victims and witnesses unit.

It is an endless loop and, in my view, it is unacceptable that people in that situation are being passed from pillar to post. Linda had not been informed of the parole hearing delay until after she had travelled to the prison. That should not be the case. Parole hearings can be distressing and traumatic for victims. They can necessitate time off work, and they might require the organising of support networks for the victim if the victim chooses to physically travel to and from the parole hearing. That underpins the rationale behind amendments 254 and 255.

Finally, amendment 262 is slightly different; I am not sure why it sits in this group. It is about reporting requirements—I am sure that we are all used to seeing those pop up in legislation. It suggests a very simple reporting requirement that would ensure that the Scottish Government will, within one year of the bill coming into force, "undertake a review" on the wider parole process and how it can become more trauma informed.

I would like to ask the Government to conduct an end-to-end review of the parole process, taking into account, for example, the information that is provided to victims, the ability of victims to attend or participate in hearings, the level of participation that is afforded to victims, and how we can make the whole process more trauma informed.

In the light of my contribution this morning and other amendments by other members, it is clear that the current parole process does not always work for all victims. It often leaves them feeling excluded and retraumatised. We need to fully understand what we are getting wrong in order that we can get it right. My amendments in the group will kick off that much-needed and long-overdue conversation.

I move amendment 246.

The Convener: Thank you. Does any other member want to come in?

Rona Mackay (Strathkelvin and Bearsden) (SNP): I would just like to go back to the decisions to release prisoners and, specifically, amendment 251.

Jamie Greene: We have not spoken to that amendment yet.

Rona Mackay: You have not spoken to it?

Jamie Greene: It is coming up.

Rona Mackay: I thought that I had missed it. There is an important point that I want to make about it. I apologise.

Pauline McNeill (Glasgow) (Lab): I was not able to attend it, but committee members attended a private meeting at which the issue was raised. Given its importance and the detail that Jamie Greene has gone through, it strikes me that it exposes the need for something to have been included in the bill in the first place. Jamie Greene is speaking to a theme that is similar to one that the committee has been dealing with, which is the trauma that victims experience in the criminal justice system.

There seems to be an omission in the bill. Jamie Greene will not be surprised that I am going to say that it would be difficult to make a judgment on whether this is the right thing to do without having heard from the Parole Board for Scotland, which the committee has had no contact with on this. Maybe, in summing up, Jamie could say whether he has had any discussions with the Parole Board. I am not familiar with the full processes of what the Parole Board does or does not do.

In my opinion, it exposes the failures of the stage 2 process as a whole that we are so bound by the Scotland Act 1998, and I believe that some committees in the Parliament are giving thought to how to change that. However, this is a good example of a really big issue that is not included in the bill, and we cannot easily take evidence before stage 3 on something that has now proved to be really important.

Finally, since we started dealing with the bill, it has been my opinion that it is far too big. Regardless of our positions on the issues, the committee members will probably testify that there are huge issues contained in this single bill. If we wanted to focus on victims and trauma, I would have thought that there was a case for having a

bill on that issue alone and leaving some of the other issues to be dealt with separately.

Jamie Greene: I do not sit on the committee week in and week out any more, but I hear what the member says. We should bear in mind the fact that this is a victims bill. The point of changing from criminal justice reform to a victims bill was that the Government understood that there was a need to refocus on some technical changes to the judicial system, some of which are substantial. Equally, there was an opportunity to improve practices within the justice system, including the parole process, which seems to be a major and common theme that comes from victims. I therefore do not think that any of this is new.

I do not know the reasons why the committee did not take evidence on parole, and I do not know why the Parole Board for Scotland has not engaged with the committee on the bill. That is for the committee to understand.

At the end of the day, this is the only bill that is on the table at the moment. I could come back in the next year with a bill that is focused solely on reforming parole, but I do not think that the committee or the Parliament would have the time for it. This is the only bill in town at the moment, and that is why I am trying to use this bill to do what I want to do.

Pauline McNeill: This is a long intervention.

Jamie Greene: I know—I am sorry. I hope that, if the committee agrees that this is an important issue, it could take further evidence ahead of stage 3. That would be useful and important.

Pauline McNeill: We can come to that. The member will certainly not contradict me on the fact that the issue is not in the bill at the moment. That is why we did not take evidence on it.

Just to be clear, I support pretty much all that Jamie Greene has just said. However, as somebody who is here to scrutinise, I would like to have heard evidence from, or even had the chance to talk to, the Parole Board. That is my only issue here.

I did not design the bill—the Government designed the bill—so this is where we are. The bill is too big, which makes stage 2 more difficult. The committee has successfully argued for more time—you will see that—and I am very supportive of the amendments and will not vote against them today. I will hear what the cabinet secretary has to say, because there is an awful lot of merit in what Jamie Greene is saying.

Has he had any discussions with the Parole Board? Is there anything that he could help the committee with? The matter will be out of the committee's hands after today, and it will be for the full Parliament to scrutinise it. If we are going to make a decision at stage 3, getting as much information as possible would be helpful.

Katy Clark: I, too, am sympathetic to Jamie Greene's amendments and what he has been trying to do. I appreciate that he has already put a huge amount of work into these matters in his member's bill, whereas the committee has had no opportunity whatever to scrutinise them in any detail. As Pauline McNeill said, these matters were not in the bill as it was introduced by the Government; therefore, they were not considered by the committee as part of our stage 1 proceedings.

Campaigners are doing a huge amount of work and have met the cabinet secretary and the First Minister, and it may be some time before we have another opportunity to consider these matters. It is unlikely that there will be another bill in this session of Parliament that could take these issues forward; therefore, I urge the cabinet secretary to engage constructively with the issue to see whether it is possible to lodge amendments to this bill.

We need to have appropriate scrutiny mechanisms—that is something that the committee must consider. I want to ensure that the committee has the full opportunity to properly scrutinise any amendments that are lodged, whether they are from Jamie Greene or from the Scottish Government, because these are important matters that we need to get right. Many other countries give victims rights of this nature. However, we have a specific legal system in Scotland and we need to ensure that the bill works, which is difficult to do without the information that has been highlighted this morning.

I appreciate the work that Jamie Greene is doing, and I hope that it is possible, at the end of the day, for us to come up with amendments that can be supported by the Parliament.

Angela Constance: Happy birthday, Mr Greene. You caused me some anxiety when you said that there were 11 amendments in the group. I put on the record that there are eight.

Jamie Greene: Oh, right—that is the next group of amendments.

Angela Constance: I acknowledge Mr Greene's long-standing interest in these issues and, indeed, his commitment to securing improvements for victims and the families of victims, particularly in their interactions with the Parole Board for Scotland. I absolutely share Mr Greene's ambition for a victim-centred, trauma-informed approach. Although there is much to commend in current practice, I absolutely accept that there is much more that we can do.

However, in embarking on reform, we must do so holistically and in a way that reflects and maximises all the levers that we have for effecting change. That is why I can confirm to the committee that I will be publishing a consultation in August, with work being carried out over the summer, on parole reform in Scotland, building on the changes to the Parole Board rules that were made in 2022. I hope that my committing at the outset to consult on some of the wider issues makes it clear that I am not only open to, but willing to make, the necessary changes to the parole process that will command the confidence of victims and their families.

That is not to say that I do not see a role for the bill in bringing about such change. I have looked constructively across the suite of amendments in the group to identify where I think we can commit to legislative reform that will make a meaningful difference. However, there are some intricacies that I would want to work with Mr Greene on before I could support the amendments. I cannot support them today as drafted, but there are many that I am keen to work with him on ahead of stage 3.

10:45

Turning to the specific amendments in order, I absolutely accept the principle of amendment 246, which seeks to ensure that victims or their families are given the opportunity to attend oral hearings. As Mr Greene has mentioned, I recently met survivors, who talked compellingly about the importance of having that opportunity. Some victims are already afforded such an opportunity in the current system, and what is proposed can be achieved through reform of the Parole Board rules. I fully intend the upcoming consultation to include consideration of whether that aspect of the system is working as it should or whether we need to revise those rules. I therefore ask Mr Greene not to press amendment 246 and to allow the consultation to run, so that we can gather the widest possible range of views on the matter.

I also agree with the principle of the provision of victim statements and written representations as it is set out in amendments 247 and 248. Victims should have their voices heard and should not have to repeat their presentations unnecessarily. I agree that there is more that we ought to do to ensure that processes are effective, and it might be that primary legislation has a role to play in that respect. However, we need to ensure that the amendments have the intended effect. Therefore, I ask Mr Greene not to move them now but, instead, to discuss them with me in advance of stage 3, to see whether we can come to an agreed position.

Katy Clark: Can we have an indication from the cabinet secretary of her thinking with regard to the timescales for any proposals being brought forward by the Scottish Government? Is that likely to happen before the 2026 elections?

Angela Constance: I hope that, as I go through the group, I can indicate the areas on which we can work ahead of stage 3—that is the progress that we could make in the context of the bill. I think that I am correct in saying that, if we have the consultation in August, any revision of the Parole Board rules would require only a Scottish statutory instrument, which would be less onerous than primary legislation. However, that will obviously depend on the consultation responses.

At the risk of giving a “Mibbes aye, mibbes naw” answer, which I appreciate might be less than desirable, it could be possible, depending on the nature of the responses, for a further revision of the Parole Board rules to take place prior to the 2026 election. However, I do not want to be hard and fast about that until we proceed with the consultation, because some of this should be considered holistically and in the round.

I have considered amendments 252 and 253 very carefully, and, although we have no difficulty with the underlying objective of seeking to reduce delays in oral hearings, these are, ultimately, operational matters that would be most effectively addressed through improvement work rather than through being mandated in legislation. I know that, where possible, the Parole Board already takes steps to prevent delays in hearings taking place, but, to be fair, there will always be circumstances that are outwith the Parole Board’s control and that are difficult to foresee or plan for.

I am also satisfied that every attempt is being made to ensure that all parties have access to the appropriate documentation in advance of parole hearings when that is possible. I find the endless loop that Mr Greene outlined in his opening remarks utterly unacceptable. What victims need from all parties in the justice system is people working together in a spirit of collaboration, and I find it deeply unhelpful when different parts of the system point the finger at other parts. We need to embed a different culture of collaboration, and I am committed to supporting all parties to do that.

All parties in the justice system are working under tremendous stress—I do not want to be interpreted as chastising in my remarks—but it is fair to say that all parts need to do better. We cannot have people passed from pillar to post. We need to clearly articulate the different roles and responsibilities of different agencies and partners in the justice system, and the endless loop of passing folk from pillar to post is just not acceptable.

Mr Greene is right that no statistics on delays are available, and I would be willing to explore

whether performance management-type data would give us better information on the matter. Again, I do not see that as an issue for legislation. For those reasons, I ask Jamie Greene not to move amendments 252 and 253. If he does, I ask members to oppose them.

Amendments 254 and 255 seek to ensure that, when a hearing to consider a prisoner's release is delayed, or when cases are delayed, victims are informed

"of that delay and the reasons for it".

Again, I broadly support the intention behind those amendments and would like to discuss further with Mr Greene whether anything could and should be done through primary legislation ahead of stage 3 or whether his intention could be achieved though reform of the Parole Board rules. Therefore, I ask Jamie Greene not to move those amendments and to work with me ahead of stage 3.

I acknowledge the on-going need to review and improve the parole system and to help to ensure that it is more trauma informed and inclusive of victims. However, I do not consider a statutory review, which amendment 262 would dictate, to be the most effective way of supporting that, and I think that it could delay existing improvements. In addition, I remind members that part 2 of the bill makes important changes to the reporting requirements for the Parole Board for Scotland. The board already has to report annually on how, and to what extent, the standards of service for victims and witnesses have been met, and the bill will now include reporting in relation to its standard for trauma-informed practice.

To conclude, convener, I ask Mr Greene not to press or move the amendments in this group and to work with me as I have indicated in advance of stage 3. I also ask him to note the upcoming consultation and the on-going improvement work.

The Convener: I call Jamie Greene to wind up and to press or withdraw amendment 246.

Jamie Greene: I thank committee colleagues for their helpful feedback and for that discussion on scrutiny, which is really important. As you will know from my time on committees, I am always calling for more time for bills, to ensure that the widest range of people sit at the table and feed back. I invite any justice partners who are following proceedings to do so—the amendments are a matter of public record, so, if they have a view on them or on the comments that have been made today, I encourage justice partners to engage with and feed back to the committee. I would like to know—as would the committee—what the Parole Board thinks of my proposed changes. If they are achievable in a relatively short space of time, that is great; if they require legislative change, so be it.

The reason why we are doing this now is that we are almost in April 2025 and, in my view, the window of opportunity to do anything in this parliamentary session is now. I certainly do not want to kick the can down the road, into the next session of Parliament, and end up debating the same things in another five years' time. I think that victims deserve better.

To recap—so that I am correct when it comes to not moving amendments—the cabinet secretary has indicated that the aims of amendments 246 and 247 could be achieved without primary legislation but through changes to the Parole Board rules. The next stage would be a consultation process. I suspect that that process would happen after the bill was passed, however, so I guess that we would need some confidence that the consultation would not be just a consultation but would lead to meaningful changes in the Parole Board rules. If we are not going to make those changes in the bill, they must happen somewhere down the line. There would be some comfort in that.

Angela Constance: For clarity, I will summarise, if that would be helpful. On amendment 246, we accept in principle that that is an important issue for the consultation that will take place in August. We have the vehicle of a statutory instrument, and I hope that I have demonstrated that, without prejudging the consultation, there is a willingness to proceed thereafter. We should look at amendments 247 and 248 ahead of stage 3. The provisions in amendments 252 and 253 are not appropriate for primary legislation. I accept in principle that we should discuss amendments 254 and 255 at stage 3. Finally, I am resistant to amendment 262, on the statutory review.

Jamie Greene: Thank you very much. That was exactly the summary that I was hoping for, and it all makes complete sense. I am very grateful for the opportunity to revisit some of those amendments ahead of stage 3—I will, of course, do so—and I hope that we can make some of those changes to the bill.

On the point that the Labour members have made, there should be an opportunity to scrutinise any amendments that are lodged either by me or by the Government ahead of stage 3, so that everyone has a chance to feed in to them and consider the effect that they might have. When they come back to the Parliament as a whole, that information will be available to all MSPs.

I am sure that the Government and I can work on those amendments together, to ensure that members are informed and that due consultation, if needed, takes place ahead of stage 3. I appreciate that it is a tight window of opportunity, but we need to know what effect those changes

would have on justice partners. That willingness to work with me will be warmly received by many of the people who, I know, are watching the session this morning, and I am very grateful for it.

Amendment 246, by agreement, withdrawn.

Amendments 247 and 248 not moved.

The Convener: It is just coming up to 11 o'clock. I suggest to members that we have a 10-minute break.

10:58

Meeting suspended.

11:08

On resuming—

The Convener: The next group is entitled "Decisions to release prisoners". Amendment 249, in the name of Jamie Greene, is grouped with amendments 250, 251 and 256 to 261.

Jamie Greene: I will also try to rattle through this group, which has quite a lot of amendments. I am just checking how many amendments there are so that the cabinet secretary does not get me into trouble again. There are nine amendments in this group, of which seven are mine—I think that that is correct.

I have grouped the amendments in a particular order, so that I can speak to them en bloc, based on what they are about. The group is entitled "Decisions to release prisoners", which is ultimately one of the end results of a parole hearing: a decision to release or not to release.

There is quite a lot in here. First, I will talk to amendments 249, 251 and 260, which all relate to the central factors that I believe the Parole Board must take into account when it considers a decision to release a prisoner. There is good reason for that. I and, I believe, many victims feel that there is a lack of transparency in and, on occasion, logic behind many of the decisions that are made about releasing a prisoner. Of course, it will never be the case that everyone is happy with all the decisions, but an overarching theme that has come through during my discussions with victims in the past couple years is that the safety of victims and their families must be the principal driver of the decision on whether to release an offender.

With that in mind, committee members will note that all three of the amendments start in the same way, by amending the Prisoners and Criminal Proceedings (Scotland) Act 1993. The 1993 act already states that the Scottish Government can set out which factors

"may be taken into account by"

the Parole Board. That is fine, but I want to go a step further. I would like to see on the statute book the factors that the Parole Board "must" take into account—the things that "must" be central to that decision-making process.

Amendment 249 is, in my view, the most important of the three amendments. It states that one of the matters that the Parole Board must take into account is what the impact of a decision to release a prisoner could have on the safety and security of a victim and/or their family members. The amendment is a key part of Michelle's law, which was a component of my proposed member's bill on victims. It was named after the well-known case of Michelle Stewart, who was tragically murdered in 2008. Her killer was released in January this year. Michelle's family, to their great credit and through very difficult circumstances and times, have spent many years campaigning for the welfare of victims and their families' views and feelings to be taken into account in parole decisions. That idea underpinned much of that section of my original consultation.

We hear of many laws that are named after people, such as Michelle's law and Suzanne's law, which I will come on to talk about, and many others. The common theme, as I have said before, is that they are all named after women who were the victims of horrific crimes, some of whom were tragically murdered. They underpin the sense that the whole parole process should be aimed at the board deciding whether it believes that the victim of a crime and their family will be safe upon a prisoner's release.

For my proposed bill, I consulted on the specific proposal that has been translated directly into amendment 249, and it received an 82 per cent positive response from respondents. I will mention one organisation—this is on the public record, so I am sure that the group will not mind—called Support after Murder and Manslaughter. In its response to my consultation, it said:

"Bereaved families are usually terrified of coming face to face with offenders after they are released. This is a very real fear that families live with every day and they can be deeply traumatised by the possibility of seeing the offender".

The Government may argue that the Parole Board already takes into account the safety of victims and their families, as due consideration as part of the parole process. If that is the case, why do so many prisoners who leave prison then go on to harass, abuse, assault and even murder within weeks, or even days, of their release? I believe that, by putting it in the bill that the safety of victims is the principal decision marker, we can offer victims and their families a much-needed cast-iron assurance that their safety and security

are taken into account at all times by the Parole Board.

11:15

Amendment 251 is on another matter that I consider that the Parole Board "must" take account of. It states that the board

"must take into account any remorse shown by the prisoner in relation to the impact of the prisoner's offence on any victim of that offence."

Rona Mackay: Will the member give way?

Jamie Greene: Let me explain the amendment first, and then I will happily hear what you have to say.

Victims who are calling for such an amendment want any remorse that a prisoner shows to be part of the consideration of their release. Contrary to what some media headlines have suggested, we are not proposing that we force an offender to admit guilt in order for parole to be granted, because that would be wrong and probably illegal. Also, we are not saying that, if someone who has been sentenced to a crime and their sentence is spent, they will be denied release in perpetuity if they do not admit guilt.

Some people argue that, on moral grounds, if someone does not admit guilt or express explicit remorse, they are not truly rehabilitated and should not be released. That is a school of thought, and I have some sympathy with that, but I also understand that there would be large numbers of defence solicitors and human rights lawyers lining up to counter such a proposal.

I must be clear that that is not what I am proposing. Instead, I propose that, if an offender refuses to demonstrate remorse or to acknowledge the hurt and pain that they have caused the victim, that should be a major factor in the Parole Board's consideration. Is the person truly fit to be released if they express no remorse?

I think that that was best put by another victim of crime, Hannah McLaughlan, whom the committee has also heard from on the matter. She said that she needs that "validation" that the offender is "taking responsibility" for what they did. I agree.

That is the difference between what has been mooted that the amendment seeks to do and what it does in black and white. I wanted to make that absolutely clear.

I am happy to take the intervention at this point, if that would be helpful.

Rona Mackay: I have huge sympathy for and agree with the intention behind the amendments, particularly with regard to witnesses' safety and that of their families. However, my concern on the remorse element is whether you have taken into consideration people with communication difficulties or those who might be neurodivergent and struggle to show remorse. Their behaviour in prison might have been exemplary, but they just cannot get that remorse over to the Parole Board. The converse is true for some prisoners who can articulate remorse but who maybe have not shown a great deal of progress in prison. A high number of prisoners will be in that category, so it is important that that is taken into consideration.

Jamie Greene: That is a very good point. There are ways and means to do this. We have to put faith in some of the pre-hearing reports that are considered. We know that justice partners will be engaging with the prisoner in advance of a hearing, whether that be SPS staff, clinical psychologists or a third party. I am sure that everyone will be aware—perhaps off the back of the recent television show "Adolescence"—of the key role that is played by someone assessing an individual who has committed a very grave crime and that there are ways and means to elicit an understanding of what underpins that person's attitude towards the crime that they have committed.

I still believe that it is possible for someone who has communication difficulties or additional needs, for example, to demonstrate remorse. More important, I believe that there should be a moral obligation to do so. However, if they are unable to do so, the proposed amendment would not prohibit their release, nor would it ensure that they are kept in prison; it would simply be one of the factors that must be taken into account during a hearing. That is what campaigners are asking for. Some campaigners are asking to go a lot further than that, and I accept that doing so might be difficult. I am interested to hear what the cabinet secretary has to say on that.

I do not sit in those hearings and I do not know all the information that the Parole Board has in front of it, but I am pretty sure—I have some faith—that the members at a hearing should and will request access to all information that they deem necessary. That might involve extra support being provided in those very particular scenarios.

Liam Kerr (North East Scotland) (Con): I thank Jamie Greene for his comments so far, and I am particularly enjoying listening to him explain both sides of the case. That is helpful to the committee in deciding how to vote.

Rona Mackay's challenge is a reasonable one. However, I have been looking at your amendment 251, Mr Greene, and I see that subsection (2)(b) simply says that

"the Board must take into account any remorse shown".

In other words, in coming to a decision, the board would have to weigh up "any remorse shown". By

extension, does that not mean that it would also have to take into account any of the challenges that Rona Mackay has put to you and that, as a result, it is not fatal to the amendment that someone might have such difficulties?

Jamie Greene: Rona Mackay is right to raise the issue. We all know the nature of the demographic of our prison population and some of the challenges presented in many offenders groups and sub-categories—those are common themes that run through all of this. Some people in prison might struggle to demonstrate remorse verbally, even if they want to. I just think that that is part of that process.

However, we also have to put some faith in the parole process and those involved making an informed decision, based on their experience of listening to offenders in those scenarios and using their gut feelings—a huge amount of that is probably involved in such decisions. My amendment is quite simple in that respect; it simply says that any provision must include

"provision that the Board must take into account any remorse shown by the prisoner in relation to the impact of the prisoner's offence on any victim of that offence."

Remorse, therefore, is taken into account; it is not the deciding factor. I just want to make that clear.

Rona Mackay: I understand that, but I think that your amendment runs the risk of having a bearing on a decision. Because it is there, it might sway a decision when it comes to someone who cannot articulate this sort of thing for themselves. That is my concern.

Jamie Greene: On that, I am unapologetic. The premise of the amendment is my belief that the issue of remorse should have a bearing on the decision—if that answers your question.

Pauline McNeill: The amendments in this group are giving me a bit more cause for concern. It is not that I disagree that remorse should be taken into account, but the amendments are as much to do with the release of prisoners as they are about victims. Again, we have not had much opportunity to understand the whole basis on which prisoners are released, other than that they have the opportunity, once they have served either 50 per cent or two thirds of their sentence, to go to the Parole Board.

Do you happen to know whether remorse is a consideration at the moment? I presume that orders for lifelong restriction do not go through the same process, so they will not be included. I just do not know the answer to that question. I would be surprised if there were no passing discussion, at least, with the Parole Board as to whether remorse was a factor. I know that, in relation to orders for lifelong restriction, psychological reports will be drawn up in which remorse is a factor, because what is being considered is not only the risk to victims but the wider risk to communities. There could be a risk of harm to a victim, to more than one victim or to communities. That is, I imagine, a different consideration, although it is still a question of safety, risk and all the rest of it.

I think that you can see where I am going with this. There is a lot of complexity to the debate. If the Government is going to come back on this at stage 3, as I think it will be doing on the other amendments, I will be content with that. However, I feel that there is much more to the issue than the impact on victims; it is about the whole mechanism and process of release for prisoners. To be honest, it surprises me that the amendment was allowed, because it is about the release of prisoners. However, it would be helpful to know if that is already a consideration by the Parole Board.

Jamie Greene: I am sure that we will find out shortly, in the cabinet secretary's response to my amendments, whether that is a consideration. I suspect that the answer will be yes, which is good news, and therefore this debate is important.

Amendment 249 is the simpler of the amendments, as it is all about the effect of a prisoner's release on victims and their safety and security. We will probably all agree that that should not be up for debate, but the point that I am making with this amendment is that it should be a principal factor in the decision-making process, because many victims tell us that it is not.

I have a lot of amendments to get through in this group, so I will rattle through them, and perhaps members can contribute as I go along.

Amendment 260 is in a sort of mini-group on its own. It requires the Parole Board, when considering the release of someone convicted of murder or culpable homicide who has not disclosed the location of their victim's remains, to take that into account before making a decision on release or otherwise.

This amendment is better known as Suzanne's law and was another key aspect of my original victims bill consultation, attracting 84 per cent support from respondents. Suzanne's law, as I have previously rehearsed in Parliament, was named after Suzanne Pilley, who was tragically killed in 2010. Unfortunately, her body's location has never been disclosed by her killer, and the wider expectation is that that individual might be up for parole in a couple of years.

Suzanne's family have campaigned vociferously and valiantly on the issue. Regrettably, Suzanne's father passed away in 2019 without ever knowing where his daughter was buried. However, what Suzanne's sister told the BBC thereafter—and what underpins the amendment—was this:

"For the past decade we have lived in a state of limbo, waiting for the news that Suzanne's body had been found, but we've never been able to get that closure. We accept that Suzanne was murdered and believe that the person responsible is in prison, but we feel we cannot say a proper goodbye until her body is found."

When I first mooted an amendment of this type, we looked at numerous versions spanning quite a wide spectrum of legislative change; after all, there is a spectrum of views on this matter. At one end of that spectrum, people believe that a murderer's release should be automatically denied if they have failed to reveal the location of their victim's remains; others argue that that breaches a whole heap of international laws and human rights and sits outside the competency of this Parliament; and there is a wide range of views in the middle.

I probably sit in the middle, and I have sought to come up with a middle ground for the bill. I have tried to find a pragmatic and realistic compromise that does not automatically block the release of a prisoner but which also does not agree that the status quo is fair to the relatives of victims, such as Suzanne Pilley's family. I believe that we can meaningfully implement Suzanne's law, and I believe that we can do so through amendment 260. I therefore hope that we get the support of the Government and the committee for the amendment.

There are a few other, perhaps less substantive amendments, covering some of the issues that I have already raised—for example, the release of prisoners on licence. I have also tried to cover the issue of temporary release, because we know, anecdotally, of instances in which offenders have been given temporary release for various reasons and then have committed crimes.

11:30

Amendment 250 would require the governor of a prison, prior to deciding whether to grant temporary release, to consider what impact that decision could have on the safety and security of a victim or their family member. I believe that that often happens in prisons and that governors are aware of their obligations in that regard, but it is essential that we put it in legislation, due to some well-publicised failings.

In fact, going back to the example of Michelle's law that I quoted earlier, I have since discovered that Michelle Stewart's parents knew that their daughter's killer had been granted temporary licence only by reading about it on social media. That is just not acceptable. I refer also to my conversation with Linda McDonald, about whom I spoke in another group.

Many victims say that, in any scenario in which someone is released from prison, be it temporarily or otherwise, the safety and security of the victim and their family should be a key consideration. Given that those decisions are made by governors, I would argue that, off the back of amendment 260, amendment 261 would provide that, when considering the granting of temporary release to someone convicted of murder or culpable homicide, the governor must take into account whether that prisoner has disclosed the whereabouts of their victim's remains. That is linked to Suzanne's law, and I hope that the Government will consider both amendments in that light.

Amendments 256 and 257 are about transparency and openness in the parole process. Amendment 256 states that the Parole Board must provide a victim with a summary of the reasons behind a decision whether or not to release someone or a decision whether to impose conditions. The amendment would do that by inserting such a requirement into section 17 of the Criminal Justice (Scotland) Act 2003.

When I originally consulted on the issue, I asked respondents whether they supported the idea that the victims of crime should have access to the full reasons why the Parole Board had come to its decision. The responses were 86 per cent positive, which tells me that there is an appetite for victims to be given more reasons for the decisions that are made. Indeed, in response to that particular question—which, by the way, goes much further than the amendment that I am pursuing—Victim Support Scotland, said that the offender

"being released can cause significant anxiety and distress. Where the parole board does decide to release someone, the least victims deserve is—where they wish it—an explanation of the reasons behind this".

It goes without saying that improving transparency of decision making is fundamental to restoring full trust and confidence in parole hearings, which often take place behind closed doors. The victims might not be content with the outcome of a parole decision, but there is a greater desire for them to be offered the rationale for how and why those decisions were taken.

I believe that there is an appetite within the Parole Board for Scotland for that, too. I am happy to circulate this after the meeting, but there was a very interesting interview last August between the board and *The Courier* newspaper, in which the chief executive was quoted as saying:

"Our position, I think, is that we were quite happy to publish all of them—every single decision—but there"

may be

"quite a resource implication."

That is fair.

The Parole Board chairman, John Watt, was also quoted on the record as saying:

> "I think that would be important to generate an understanding … I wouldn't be beyond going a bit further and giving some broad context for the decision. If we were able to, we would be quite happy to extend the categories of case where we give summaries."

He went on to talk about the anonymisation of published decisions, which I will look at in the next amendment. I should also say that, when asked about such changes seven or eight months ago, the Parole Board gave positive feedback on the record. There is an openness and a willingness to publish the reasons for decisions, which is a good starting point.

The last two of my amendments in this group—amendments 256 and 257—in essence try to ensure that there is more transparency in the public domain. Amendment 257 is about the publication of decisions. Some decisions are already published online, and the public can go and look at them, but many are not. In many cases, decisions are anonymised for good reason; the identity of victims or witnesses might be required to be protected, or the chairing member might consider anonymisation appropriate.

The key point is that, at the moment, the only decisions that are published are those made on releasing people who are on a lifelong restriction order. There is an appetite, and an opportunity, for more decisions to be published by the Parole Board for Scotland, and for more decisions to be in the public domain.

Katy Clark: Will the member take an intervention?

Jamie Greene: Yes.

Katy Clark: It is similar to the intervention that I made earlier. Have you had discussions with the Risk Management Authority about how orders for lifelong restriction are dealt with?

Jamie Greene: I have not.

That is all the amendments that I have in this group. I move amendment 249.

The Convener: At least one member wants to come in on amendment 249, but I will bring in Sharon Dowey to speak to her amendment 258 first, then I will open the discussion to other members.

Sharon Dowey: Amendments 258 and 259 seek to safeguard victims by ensuring that, when the Parole Board decides to release a discretionary life prisoner and there is a victim of their crimes, the board must provide a summary explaining why it has chosen to release them. That summary would then have to be provided to the victim, or to a family member if the victim is deceased.

Those who are given life sentences will have committed very serious crimes, and we must ensure that, when they are released, victims or their families are notified and given a full account of the reasons behind their release. Victims deserve transparency, but unfortunately, as we have seen in recent years, not all victims get informed when their offender is released from prison. The amendments will safeguard victims and ensure that they and their families have transparency when it comes to the release of dangerous offenders.

The Convener: Thank you very much. Do other members wish to come in?

Fulton MacGregor: Convener, I must apologise to you and to colleagues on the committee—I probably should have come in on this as an intervention during the discussion on amendment 251, which was the amendment on remorse being shown by prisoners. I know that we have had a good discussion on that, but, as a previous criminal justice social worker, I just want to say to Jamie Greene that it is my understanding that remorse is definitely taken into account in the probation system—and in the criminal justice system generally—from the early stages of report writing right through to when somebody is in custody and waiting for release. I just wanted to note that.

I agree with other members—I do not think that we can support amendment 251 at this time. It raises a lot more questions than answers when we take into account Rona Mackay's point about the impact when people cannot display remorse and, of course, the opposite of that—that is, when people feign it.

From what I have said, members might think that people who work in the justice system grapple with this issue every day, but I agree with Rona Mackay—I think that it was her, although it might have been Pauline McNeill—that, by bringing it into the bill, we run the risk that it will become a crucial deciding factor, one way or another. As other members have said, the committee has not had the opportunity to scrutinise the full implications of that.

I have a lot of respect for the member. He has brought a lot to this stage of the bill, as he did when he was on the committee, but I encourage him not to move the amendment at this stage.

I must apologise again, convener. With hindsight, I think that it would have been better to have come in when the debate was going on, but I felt that the member was getting a lot of interventions at that point.

The Convener: Thank you very much.

Katy Clark: I have listened carefully to what Jamie Greene said, but I think that we would want to know the position of the Parole Board and the Risk Management Authority, and get a lot more information before we enacted any of his amendments.

On Sharon Dowey's amendments, it would be interesting to hear what she thinks the status would be of the summary of reasons that she is proposing. For example, could it be challenged? It would also bring another document and another set of reasons into the process. It would be useful to get more information on how that would be treated and its status, given the complex nature of the decisions made by the Risk Management Authority on risk. I do not know whether that is something that Sharon Dowey could come back on now or whether she could do so before stage 3.

Sharon Dowey: I lodged the amendments to ensure more transparency for victims and their families when people are released from prison. As Jamie Greene has said, there can be a cost implication in producing reports. As the cabinet secretary said in relation to the earlier amendments lodged by Jamie Greene, there are times when we do not need primary legislation to do something; it could be done by a change in procedure or policy. If we do not need legislation, I am happy for more of that information to be given to victims on a person's release. It would be interesting to hear the cabinet secretary's views on whether we need legislation to get more information out to victims, or whether that is something that we can work on and bring back at stage 3.

As Pauline McNeill mentioned earlier, we did no work with the Parole Board in the course of our scrutiny of the bill. This is the avenue that my colleague has managed to find to bring in all the amendments on the Parole Board. It is not something that we looked at in great detail, although maybe we should have done.

Angela Constance: I understand how difficult and emotional it can be for victims and their families when the prisoner who is linked to their case comes up for parole and potential release. I have met with a number of victims who have shared their experiences with me and told me how they feel the system can be improved to better support them though that part of the justice process.

We all want to ensure that victims and their families are informed about how and why decisions are made and to have an effective system in place for the release of prisoners that keeps victims and their families informed and supported while maintaining the confidentiality and integrity of decisions and the safety of all involved.

The issues raised in this group are deeply sensitive and so I will take time to state my reasonings on my positions.

I start with Jamie Greene's amendments 249 and 250. I accept that there is a strength in the sentiment that has been expressed. However, I urge Mr Greene not to press amendment 249 or move amendment 250 and to instead work with me in advance of stage 3 to develop alternative drafting to ensure that the legal and operational aspects are fully considered.

The intention behind amendment 249 is that the Parole Board for Scotland

"must take into account the ... impact of its decision on the safety and security of ... any victim"

and any of their family members. The decision on whether to release a person on parole licence is a matter for the Parole Board for Scotland, which is independent of ministers. The safety of the victim and of their family members is already taken into account in existing rules regarding the consideration of public safety, which means that the Parole Board must assess when a prisoner may be released without posing a risk to the community, including a risk to victims. Amendment 249 would pose an operational challenge for the Parole Board when it comes to identifying victims who are not signed up to the victim notification scheme.

Amendment 250 would require that prison governors, when considering whether to grant a prisoner temporary release, must take the safety of the victim or victim's family into account. There are already clear directions in the prison rules that instruct prison governors to assess the risk that the prisoner may pose a danger or cause harm to the public.

The Scottish ministers' directions on the operation of temporary release reinforce the requirement that the governor must assess whether the prisoner might cause harm to the public. The governor must also consider the views of victims where those views are known to them.

As I said, there is a strength in the sentiment, but we should consider the effect of the amendments—legally and otherwise—in advance of stage 3. I am happy to do that.

11:45

I acknowledge the important concerns that motivated Jamie Greene to lodge amendments 256 and 257, and Sharon Dowey to lodge amendments 258 and 259. However, I cannot support those amendments today.

The Parole Board operates with the primary aim of assessing whether an individual is suitable for release, based on their readiness to reintegrate into society and on the risk that they might pose. The process is conducted carefully and with all relevant evidence being taken into account. Although transparency is important—I stress that it is important—there must be a balance to ensure that the Parole Board's decisions, which involve highly sensitive information, are made independently and based on a thorough assessment that is given without fear or favour. It is also important to ensure that sensitive personal information about the offender and about victims and others involved in the case is not disclosed unnecessarily and does not unintentionally compromise safety.

We all very much agree on the desire to ensure that victims and their families feel informed and supported. It is absolutely essential that those who are impacted by crime can engage meaningfully with the process and we all want to ensure that they are treated with dignity and respect. However, I do not believe that the proposed changes require primary legislation. Instead, they should be considered as part of the broader Parole Board for Scotland rules. I fully intend to include consideration of the issue in the consultation on parole reform that I discussed when commenting on the amendments in group 13. One reason for that comes from some of the issues that Ms Clark touched on regarding the status of information.

I ask Mr Greene and Ms Dowey not to move amendments 256, 257, 258 and 259, and to allow the consultation to run and gather the widest possible range of views on the matter. If those amendments are moved, I ask the committee to oppose them.

I turn to Mr Greene's amendments 251, 260 and 261. Once again, although I recognise that the issues raised in the amendments are deeply sensitive and are a cause of on-going concern for victims' families, we must, even with regard to such emotive issues, also consider the practical and legal issues that arise.

Amendment 251 says that, when deciding whether to grant parole, the Parole Board

"must take into account any remorse shown by the prisoner in relation to the impact of the ... offence on any victim".

I understand that Jamie Greene does not intend the measure to require the prisoner to admit guilt through that expression of remorse in order to be granted parole if no such admission has previously been made. As he says, that would clearly raise other legal concerns.

Release on parole does not depend solely on the individual admitting guilt or showing remorse for their actions. The board takes into account the full circumstances of the case, including the offence itself and the trial judge's report as well as the individual's behaviour in prison. The board can also examine whether the prisoner has taken steps to address any underlying issues that may have contributed to their behaviour or that could inform their future actions. In part 2 of the Parole Board (Scotland) Rules 2022, section 11 states that the board

"may take into account any matter which it considers to be relevant".

In this context, there is already scope for the board to take account of the individual's overall actions and behaviour when considering release. Those could, where applicable, include any expression of remorse or contrition.

I will pick up on points made by Ms Mackay and Fulton MacGregor. I can speak with some certainty on this as someone whose bread and butter was compiling parole reports and other assessments, including the old RA1-4 spousal assault risk assessments.

Remorse and empathy are interwoven into the many assessments that social workers, prison officers and psychologists make. However, the difficulty is that about 80 per cent of the prison population has, we believe, a communication difficulty, whether it be neurodivergence, a learning disability or mental health issues. Where we need to take great care is with those who can learn the language of therapy, who can absorb the language of social workers, psychiatrists and psychologists, and who can be very slick at communicating remorse, when what lies underneath it is a whole other matter and different motivations.

Also, to be blunt, I think that it is not clear how the board would assess an individual's expression of remorse, given the subjective nature of these matters and the difficulty of applying a consistent approach across different cases.

Jamie Greene: There is a slight conflict here, cabinet secretary. At the beginning of your comments, you said that remorse is, of course, a factor that the Parole Board may take into account. However, you have just highlighted exactly the problem in saying that you do not see how the board can do that, because of the nature of remorse. Either it does take remorse into account, or it does not—I am not quite sure which.

Angela Constance: What I think that I am clearly saying is that, in the work that is done with offenders to address their offending behaviour, a very prominent strand in any assessment of someone's rehabilitation is their attitude to their offending history. Although some of us might have thought that we were very good at that work, we

ultimately have to recognise the complexity of assessing people. I have no doubt that the Parole Board, because of the way in which the rules are drafted, can—and does—take the matter into account.

My concern is that the practical effect of amendment 251 will not, on one level, have the impact that I think that you are striving for. It is the amendment that causes me most anxiety, because, at the end of the day, this is all subjective, and, in particular, I do not want to tilt the system in favour of our more socially adept, slicker-at-communicating, more deviant offenders. Of course, assessments can take account of someone's neurodiversity and all the rest of it, but, as someone who has worked in the field, I genuinely think that this is a deeply problematic area. Of this group, it is amendment 251 that causes me most concern.

In summary, then, given the Parole Board's capacity to address the concern where it arises, I do not support the amendment. I ask Mr Greene not to move it, and, if he does, I ask the committee to oppose it.

Liam Kerr: This is just for my own clarity. At least part of your case is that amendment 251 is not necessary; the Parole Board is already doing what it addresses, so there is no need to reiterate it, and if Mr Greene chooses not to move the amendment—or, if he does, but the committee votes it down—the remorse piece will still be there, because it is there already. Is that a fair reflection of what you are saying?

Angela Constance: Remorse and empathy are there, but in the context of everything else in order to enable a rounder and more holistic view of risk.

Moving to amendment 260, I am very aware of the deep hurt that the issue that it addresses can cause to a victim's family and friends. It should be noted that failure to disclose the location of a body can already be prosecuted as a criminal offence in itself—that of attempting to defeat the ends of justice—and the court can and will take into account an offender's refusal to disclose the location of a victim's remains when sentencing. I am aware that it is, of course, one of the many issues that Mr Greene consulted on in his proposal for a victims bill.

I also remember very well the debate that Mr Greene and I had at stage 3 of the Bail and Release from Custody (Scotland) Bill—now the Bail and Release from Custody (Scotland) Act 2023. At that time, I raised a number of legal issues with his proposition. It was a much more sweeping amendment that certainly would have caused great anxiety, for example in relation to ECHR. I have given considerable thought to the issue since that debate—in which, if I recall correctly, I said to Mr Greene that my door was open on these matters.

I should add that the Parole Board already takes such matters into account when considering release. The Parole Board (Scotland) Rules were amended in April 2022 to make it clear that, where applicable, the board may take into account failure to reveal the location of a victim's remains when making its decision. In cases in which such circumstances arise, it is clear that the board has scope to reflect that concern in its considerations.

However, I have no issue with amendment 260, which would require the Parole Board, when considering the release of a prisoner sentenced for murder or culpable homicide, to take account of whether the prisoner has information about the disposal of the victim's remains but has not disclosed it. I am happy to support amendment 260. At stage 3, we might propose some tweaks to the drafting, which might be needed to ensure a good fit with other stage 3 amendments—particularly the other amendments in this group, on which we propose to work with Mr Greene before stage 3. Some minor changes might be needed, but I am happy to support amendment 260 for now.

I cannot, however, support Mr Greene's amendment 261, which addresses a similar issue. It requires that, when a prisoner serving a sentence for murder or culpable homicide is considered for temporary release and

"the governor has reasonable grounds to believe that the prisoner has information about ... the victim's remains"

but has not disclosed it, the governor must take the issue into account when making the decision whether to grant temporary release.

A grant of temporary release is made only after careful consideration, and any failure to comply with the conditions of release can result in recall to custody. The term "temporary release" can cover a broad range of activities, from escorted day release to periods of home leave where appropriate; it can also be used when prisoners are escorted to attend appointments for medical treatment or events such as a funeral of a close family member.

Again, I appreciate that, when a victim's family is left without the knowledge that they seek, such circumstances might be difficult to accept. However, the operation of temporary release is an essential part of the process by which the Scottish Prison Service can assess the individual's readiness for eventual release, and it provides robust evidence on which the Parole Board can base its decisions.

The Scottish Prison Service conducts a case-by-case assessment before each grant of

temporary release, including consideration of the risk that the prisoner might pose a danger or cause harm to the public. Any grant of temporary release is made under detailed licence conditions, which can be adjusted to reflect the particular circumstances in each case.

In addition, the Scottish ministers' directions on the application of prison rules with regard to the use of temporary release require that

"the Governor must consider the views of ... victims"

when deciding whether to grant temporary release,

"where their views are made known"

to them. That can be accommodated through the work of the victim notification scheme and, when the victim's family is registered with the VNS, they will have the opportunity to make representations to the SPS before a prisoner is permitted temporary release for the first time.

Given that a broad assessment is made before any use of temporary release, and that victims already have scope to express their concerns about the possibility of temporary release being granted, it is not necessary to add the specific measures that are proposed in amendment 261. In light of that, I cannot support the amendment and urge the committee to oppose it.

The Convener: I call Jamie Greene to wind up and indicate whether he wishes to press or withdraw amendment 249.

12:00

Jamie Greene: This has been a good debate. It has taken some time, but it was very important. I thank members for their contributions.

The debate has raised some important issues about the parole process, the decision making that goes on in parole hearings, victims' understanding of the decisions and the levels of communication that they are entitled to and are receiving—or are not receiving, as the case may be. It was important to put some of that out in the public domain.

I am pleased on a number of counts, particularly with what the cabinet secretary said on amendments 249 and 250, which I said at the outset were the most important in the group. They would insert into legislation that the consideration of victims' safety and security should be paramount throughout the parole process. If the cabinet secretary, as I think she alluded to, is willing to work with me on something in that vein ahead of stage 3, I will happily do that. I would very much like to see the proposal come back.

I take on board the comments that were made about some of the other amendments, with which there were some problems. Amendments 256 and 257, which are about the Parole Board more generally, might be about things that do not require primary legislation, but they might feature as part of a future consultation. I am pleased to hear that the Government is about to take a much wider and more comprehensive look at parole. People have been calling for that for quite some time, and I look forward to seeing that piece of work when it comes out in August, the subsequent responses to it and any legislative changes—through secondary legislation or otherwise—that arise from it. I know that the committee will do that work justice. If I can play a meaningful part in any of that, please let me know. It is an important step and probably a good way of looking at all of this holistically.

Some of my amendments in this group and in the previous group proposed tweaks to and reforms of the process in quite a piecemeal way, but I felt that they were important. If they form part of wider changes to the Parole Board rules—if the rules change, and the cabinet secretary knows that I will hold the Government to account on that in due course—that is all very positive.

I will not revisit the arguments on amendment 251 and the expression of remorse. There was a good discussion, and I appreciate that the language that is used in relation to some of this is very complex. It is very hard to define remorse. How do you demonstrate that you are sorry for something without just saying, "I am sorry"? I appreciate that complexity, but I did not make up the amendment for the fun of it.

I pay particular tribute to Ellie Wilson, who has been calling for an amendment of this nature. As I said, we are being asked to go a lot further by some people who believe that someone who does not show remorse should stay in prison—that is effectively what some people think. I tried to find a compromise as best I could. I felt that it was important to try to put into legislation the idea that remorse should be a factor in any release decision. However, I can see that my attempt will be futile.

After today's meeting, I would be interested to hear how the campaigners respond to the debate that we have had and whether they feel that there is room for something ahead of stage 3. I will leave that to them to consider, and I will happily work with anyone who approaches me on that ahead of stage 3. However, for now, I will not move amendment 251, for all the good reasons that have been given.

Finally, I put on the record my thanks to the cabinet secretary for accepting amendment 260, which, in my consultation and again today, I dubbed the Suzanne's law element. It is really important, and we have debated it as a Parliament

for many years. A former justice secretary, Mr Yousaf, promised to look at it and tried to tweak the system as best he could. The cabinet secretary and I also had a good exchange on it a few years back, and I have kept the issue live and on the table for good reason. Amendment 260 is a more legally sound compromise that meets the needs of those who have asked for it. I understand that it might not keep everyone happy, but I have certainly tried my best to get the provision on to the statute books, and I hope that we will do that today. Again, I am happy to tweak the amendment ahead of stage 3 if that would make it more legally sound.

I am grateful for the debate that we have had, for colleagues' comments and, indeed, for the support that the Government has offered for some of the proposals that I have made this morning.

Amendment 249, by agreement, withdrawn.

Amendments 250 to 257 not moved.

The Convener: I call Sharon Dowey to move or not move amendment 258.

Sharon Dowey: I note the cabinet secretary's comment that the proposal does not require primary legislation, and that the consultation will commence in August, so I will not move the amendment.

Amendments 258 and 259 not moved.

Amendment 260 moved—[Jamie Greene]—and agreed to.

Amendments 261 and 262 not moved.

Section 30—Vulnerable witnesses

The Convener: The next group is on special measures in civil cases. Amendment 141, in the name of the cabinet secretary, is grouped with amendments 122 to 128 and 142 to 144.

Angela Constance: I will start with my amendments 141 to 144. The bill deems a person to be vulnerable in a civil case if they have a civil protection order against another party to the case. Amendment 141 adds lawburrows to the list of relevant orders. That is an order that can be made to protect against violence by a particular person. The amendment makes it clear that interim remedies and measures are included. It is, for example, common for a person to obtain an interim interdict.

In addition, amendment 141 provides that a person is to be deemed to be vulnerable if they are applying for a civil protection order or have brought an action for damages following sexual abuse, harassment or assault.

Amendment 143 will amend section 15 of the Vulnerable Witnesses (Scotland) Act 2004, which makes provision on vulnerable witnesses and on taking into account the views of a vulnerable child witness in relation to special measures. As it stands, section 15 includes a presumption that a child aged 12 or older is of sufficient age and maturity to form a view. The amendment will replace that presumption with a new one, which is that the child is able to express their views

"unless the contrary is shown".

Amendment 142 is a related technical amendment.

Amendment 144 will amend section 33 of the bill, which makes provision on special measures in non-evidential hearings. It relates to when a party to the case has not been deemed to be vulnerable but the court considers that the party might nevertheless benefit from special measures. The amendment will provide that, when making an order in those circumstances, the court must take into account the party's views and, if the party is a child, the views of the child's parent. It will also provide that the court must

"have regard to the best interests of the party".

On Liam Kerr's amendments, I am pleased to be able to support amendments 122, 124 and 126 to 128, but I cannot support amendments 123 and 125.

I do not want to speak for Mr Kerr on his amendments, but I note that, in 2021, the Scottish Government consulted on the planned register of solicitors that was provided for under the Children (Scotland) Act 2020 for certain family proceedings. The bill will extend the 2020 act's provisions to civil cases more generally.

I am happy that amendments 122 and 124 would require the Scottish ministers to set in regulations the level of remuneration for solicitors on the register, as opposed to the current position whereby that is optional.

I support amendments 126 and 127, which would require the Scottish ministers to

"prepare and publish a report on the consultation"

that we need to have with the Faculty of Advocates and the Law Society of Scotland before making regulations on the register. I also support amendment 128, which sets out some details on what the report should cover.

However, I cannot support amendments 123 and 125, as they would not be workable. Amendment 123 would require that the Scottish ministers must

"confer the duty of maintaining the register on a person",

as opposed to that being an option in the bill. At the moment, our intention is that the duty to maintain the register will remain with the Scottish

ministers, with the day-to-day administration to be carried out by a contractor. It would therefore not be appropriate for there to be a requirement to confer the duty of maintaining the register on another person. The Scottish Legal Aid Board and the Scottish Courts and Tribunals Service have both told us they do not want that duty, and I do not want to confer—or perhaps foist—the duty on a body that does not want it, so it is better to proceed as we have proposed.

I therefore ask the committee to oppose amendments 123 and 125 if they are moved and to support the remaining amendments in the group.

I move amendment 141.

Liam Kerr: I am grateful to the cabinet secretary for her remarks. For the benefit of the committee, I note that I have seven amendments in the group, which are numbered 122 to 128, and they all relate to section 32 on page 16 of the bill. As drafted, section 32 will amend the Vulnerable Witnesses (Scotland) Act 2004. As section 22D of the 2004 act sets up a presumption that the personal conduct of certain cases should be prohibited, section 32(4) in the bill, as drafted, sets out that

"a register of solicitors who may be appointed by a court"

in such circumstances should be maintained.

For full transparency, I remind my colleagues that I am a practising solicitor.

Subsection (2) of proposed section 22E says:

"The Scottish Ministers, by regulations... must... specify the requirements that a person must satisfy"

in order to be on and stay on the register. Regulations must then set out the processes for entry to, removal from and appealing a decision about the register. It is important to note that no members have raised any concerns about those provisions.

However, by the omission of reference to remuneration in the regulation obligation, the Scottish ministers will have the discretion to regulate on the remuneration of solicitors appointed in those cases, but they will not need to do so. Accordingly, my amendment 122 seeks to fill that lacuna in the legislation by requiring the Scottish ministers to address that aspect in the regulations.

Amendment 123, which I shall come back to, simply takes on the principle and would ensure that ministers would be obliged to confer on someone the duty to maintain the register.

Amendments 124 and 125 are consequential to those amendments.

12:15

Amendments 127 and 128 relate to the same set of amendments being made to the Vulnerable Witnesses (Scotland) Act 2004. Proposed new section 22E(3) requires that, before the regulations that we have just looked at are made under section 22E(2), the Scottish ministers "must consult" the Faculty of Advocates and the Law Society of Scotland. To the best of my knowledge, no member or stakeholder has raised any issue with that perfectly supportable principle.

It occurred to me that it is all well and good to have consultation but that it is important to know what the consultation finds and concludes. My amendment 127 would simply require that a report on that consultation be published, and amendment 128 sets out what should be in the report. That would ensure that the views of the Law Society and the Faculty of Advocates could be fully considered before regulations were made that could affect vulnerable people's access to the legal professions. Amendment 126 would simply make a technical change to pave the way for amendments 127 and 128 to be inserted properly.

The cabinet secretary made some important remarks about amendments 123 and 125. On reflection, I can see that my amendment 123 would override the new section 22E(2)(d)(i), which, as drafted, leaves the decision on regulation with the Scottish Government, and the Scottish Government "may" then pass on the responsibility. My amendment 123 would mean that the Scottish Government "must" pass it on, whether or not that is the best idea. That requirement would not be particularly sensible, in my view, and it was certainly not my intention. I also listened to the cabinet secretary's reflections on the agencies that would be involved and their opinion on the amendments.

With that in mind, I do not intend to move amendments 123 and 125, but I intend to move the rest of my amendments in the group.

The Convener: As no other members would like to come in, I invite the cabinet secretary to wind up.

Angela Constance: I have nothing further to add, convener.

Amendment 141 agreed to.

Section 30, as amended, agreed to.

Section 31 agreed to.

Section 32—Register of solicitors for section 22B of the Vulnerable Witnesses (Scotland) Act 2004

Amendment 122 moved—[Liam Kerr]—and agreed to.

Amendments 123 not moved.

Amendment 124 moved—[Liam Kerr]—and agreed to.

Amendment 125 not moved.

Amendments 126 to 128 moved—[Liam Kerr]—and agreed to.

Section 32, as amended, agreed to.

Section 33—Vulnerable parties

Amendments 142 to 144 moved—[Angela Constance]—and agreed to.

Section 33, as amended, agreed to.

After section 33

The Convener: The next group of amendments is on trial diets. Amendment 91, in the name of Sharon Dowey, is the only amendment in the group.

Sharon Dowey: Amendment 91 would require the Scottish Courts and Tribunals Service to prepare and publish an annual report to the Parliament on the use of floating trial diets and their impact on victims. The amendment tries to find a commonsense compromise between two arguments, balancing the traumatic experiences of victims with the unfortunate reality that our courts are overstretched and backlogged.

We have heard from victims that floating trials can add to the trauma and stress that they face. One victim of sexual crime told the committee in our informal session that

"floating trials are not very good because you are having to remember 10 or 11 dates that will always be significant to you ... Dates are massive for people suffering with post-traumatic stress disorder and complex post-traumatic stress disorder."

Rape Crisis Scotland highlighted that floating trial diets can have an impact on the quality of evidence that victims are able to give. Chief executive Sandy Brindley said:

"People have a trial that is allocated to a certain period, and every night they are waiting on a call to tell them whether it is going to go ahead the next day. That is far from trauma-informed practice, and it is not how we get the best evidence from vulnerable witnesses."—[*Official Report*, *Criminal Justice Committee*, 17 January 2024; c 49-50.]

Sandy Brindley also told us that some victims end up having to rehearse their evidence every day, saying that

"they wake up and go through"

it all

"in their mind",—[*Official Report*, *Criminal Justice Committee*, 17 January 2024; c 49.]

just in case they are called to give evidence. The traumatising effect that that could have on victims is deeply concerning.

The Lord Advocate also shared with us her experience of prosecuting sexual cases in the High Court and the trauma inflicted on victims by making them wait by the phone to find out when they will be called to give evidence. She called floating trial diets "a profound problem", explaining that

"They are deeply upsetting for victims who are waiting for their case to be heard, and challenging for the prosecutor who is waiting for the case to come in".—[*Official Report*, *Criminal Justice Committee*, 10 January 2024; c 30.]

However, the Scottish Courts and Tribunals Service estimated that moving entirely from floating trials to fixed trials in the High Court would add an average of at least 11 weeks of delay to each individual case and worsen the court backlog. As we know, this Government has presided over an extreme backlog in the courts, and the Courts and Tribunals Service makes the point that floating trial diets allow for better flexibility in scheduling cases and using the finite resources available to it.

In its evidence, Victim Support Scotland acknowledged that there is, unfortunately, a trade-off between certainty for victims and the impact on courts. However, when it has spoken to victims, they have said that they prefer certainty about the date of their trial, even if that means a delay.

I note that the cabinet secretary has heard both arguments and supports reducing the use of floating trial diets, because of the anxiety and uncertainty that they can cause to victims, while also recognising that the state of the court system means that abolishing them might do more harm than good. That is also the position of the committee, which has concluded that it is unfortunately not realistic to stop the use of floating trials completely at this time.

However, given the impact on victims and in the face of the testimony that we have heard, it would be wrong simply to do nothing. As a result, my amendment provides for an evidence-led approach to ensure that the proper research is conducted before we take any further action on changing the use of floating trial diets. There is no reason not to do that research. After all, if we want to reduce or phase out floating trial diets, we need to know exactly when they are used, how they are used and their impact on victims, as well as how we balance that against the impact on the courts of the practical realities of abolishing floating trial diets.

I hope that the cabinet secretary and members of the committee will support my amendment, which is a sensible compromise. It allows for an

evidence-led approach to this difficult issue and would be a first step towards reducing floating trial diets and ultimately helping victims, which we all want to do.

I move amendment 91.

Rona Mackay: I completely agree with what Sharon says—you laid out the situation well. We know what the situation is, however, so I am not sure that the amendment is necessary. You have stated the effects of not having floating trial diets as well as the harm that they do, and the courts are aware of that, so I do not think that the amendment is necessary.

Sharon Dowey: We have heard from many witnesses about the trauma. The cabinet secretary and the Lord Advocate know about the trauma that it causes—everybody knows. The bill is there to address the trauma that victims face when they go through the court system and my amendment is the only one on the subject, so I do not feel that we as a committee have done anything to address that trauma that victims face.

If members have suggestions on anything else that would improve the situation for victims, I would be happy to hear them, but I think that this would be a first step in looking at the full situation and getting a report back to see when floating trial diets are used, why they are used, what impact they have on victims and what we can do to improve things for victims, because that is what the bill is meant to do. I hope that we are passing legislation that will improve things for victims rather than just sound good. After listening to victims giving their testimonies, this became, for me, another area that we need to look at improving.

Angela Constance: I very much understand the intention behind amendment 91. The committee has heard from victim support organisations and from survivors about the distress that the uncertainty of floating trials can cause. Indeed, the issue was explored in the policy memorandum for the bill.

You have also heard from the Scottish Courts and Tribunals Service that abolishing floating trials in the High Court would add, on average, 22 weeks to reaching a trial date. That was reflected in the committee's stage 1 report, which stated:

> "we do not think it is realistic to legislate to prohibit the use of floating trials completely. Instead, we recommend that the Scottish Courts and Tribunals Service should make every effort to keep the use of floating trials to the absolute minimum that is required."

I agree with that position, and I would like to see the use of floating trials reduced, but not at the expense of people needing to wait for justice.

The courts service also recognises that there is a need for greater transparency and awareness of the use of floating trials, and I understand that it is considering ways that it could provide more information on that. It might also be worth being aware that the Scottish Courts and Tribunals Service and the Crown Office are trying to improve estimates of how long trials will run for. Two years ago, around 50 per cent of cases lasted longer than anticipated; that has reduced to 33 per cent.

It is also worth highlighting that the bill already requires the courts to consider trauma-informed practice when business is being scheduled. In the new sexual offences court, there will be a presumption that complainers pre-record their evidence before the trial, helping to reduce the direct impact that a distant or uncertain trial date has on them.

I understand Ms Dowey's desire for greater accountability over how floating trials are used and for more to be done to recognise the negative impacts that they can have. However, I do not believe that the amendment would give us meaningful information. It would capture floating trials only in the High Court, not solemn trials in the sheriff court, which account for a greater number of trials without a fixed start date. More importantly, it would require the courts service to report every year on the impact that floating trials have on victims, but the courts service has very little direct engagement with victims and so could not report in a way that gives us any real insight into victims' experiences. I therefore urge the committee to oppose the amendment.

12:30

The Convener: I call Sharon Dowey to wind up and to press or withdraw amendment 91.

Sharon Dowey: I agree that yearly reporting might be a bit onerous on the system if it is not going to have any real impact, but I would ask that the matter is kept high on the cabinet secretary's agenda so that, when she is talking to various officials in the justice system, she can make sure that it is high on the list of things for which solutions need to be found. I will not press amendment 91.

Amendment 91, by agreement, withdrawn.

The Convener: The final group this morning is on court transcripts. Amendment 145, in the name of Pauline McNeill, is grouped with amendments 179 and 263. I call Pauline McNeill to move amendment 145 and speak to all the amendments in the group.

Pauline McNeill: Amendment 145 is a probing amendment. It makes the Government-led pilot for access to free court transcripts permanent. All

members will be aware that Hannah Stakes, who campaigns on the issue, says that there have been 84 applications for transcripts to date and that she has been contacted numerous times by those who have applied, articulating the importance of the issue to them personally.

Eamon Keane, a solicitor who acts for victims of sexual violence, said that, in his view, the free pilot has aided his work greatly and that

"The transcript of evidence is often the only comprehensive and objective account of what was or was not said in cross-examination in a case."

He goes on to say:

"Clients understandably only have a partial memory of the process of giving evidence. That is a critical point. I can think of two cases in which, without the transcript, matters would have dragged on to everyone's detriment".

Angela Constance has said that most of the applications have been made to seek some degree of closure and recovery, in keeping with the emphasis on the trauma-informed and person-centred aspect of the pilot. I would like to put on the record how much I welcome the cabinet secretary's extension of this important pilot. I know that she is committed to it, but I want to probe the issue and ensure that we have it on the record that I want to see it as a permanent measure, although I accept that it needs to be tried and tested.

I move amendment 145.

The Convener: I am pleased to join colleagues to speak on the issue of access to court transcripts for survivors of rape and serious sexual offences. I thank the cabinet secretary for the positive way in which she has engaged with me and other committee members on the issue.

The difficulties that survivors have historically had in accessing the record of a trial were first brought to the committee's attention in 2021. I pay tribute to the women who described the challenges that they faced, with one having to pay more than £3,000 for a transcript.

For some survivors, access to transcripts has a practical function when they might be involved in another process, such as a complaint about their treatment. For many, access to a record of what was said is an important part of the healing process and, importantly, it reflects a justice system that is trauma-informed. As one survivor told us:

"If people are unable to afford transcripts to corroborate complaints against those in the legal profession, it essentially means that lawyers are unaccountable. That should be of grave concern to a democratic society."

My amendment 179 is also a probing one and is relatively narrow in its scope, relating only to sexual offences that are set out in section 288C of the Criminal Procedure (Scotland) Act 1995, which are currently included in the on-going pilot. My amendment relates to cases heard in both the High Court and the proposed new sexual offences court.

I am grateful to the cabinet secretary for her on-going support and her willingness to extend the pilot and for indicating to me her position on seeking to take time to consider issues such as a potential legislative change and the costs involved. I am also grateful for her invitation to work with her to discuss what may be developed ahead of stage 3. I therefore will not move amendment 179. I thank the cabinet secretary for her engagement on the matter and look forward to further work with her on the issue.

I call Jamie Greene to speak to amendment 263 and the other amendments in the group.

Jamie Greene: I thank my colleagues. It is interesting to see members from three different political parties expressing the same thoughts about access to court transcripts. That is really positive and it is good to see the convener speaking on the subject.

The previous two speakers have said that their amendments are probing amendments, but my amendment 263 is not: it is a substantive amendment that I hope the Government will give some thought to. The reason for that is that, over the years, I have listened to the arguments about access to court transcripts. We have all heard the same evidence on that and have heard the same points of view being expressed regarding how ridiculously expensive and difficult that is.

As a result of those conversations, many of which happened a number of years ago, there is an element of pressure both within and outside the Parliament for the Government to do something about that. The pilot, which was specifically in relation to access to transcripts for victims of rape and sexual offences, was a welcome one and the extension of that pilot is also welcome. I understand that those things come at a cost, both monetary and in resourcing.

I have gone about things in a slightly different way with amendment 263. I understand that it would probably be quite impractical, unfeasible and expensive to make all court transcripts accessible for free to everyone, all the time. I would like to think that we can get to a position in the future where that is possible and do not really understand why that is not currently the case in a digital age. We have been here for three hours and four minutes so far today and every single word that has been said in this meeting will be made available to the public, within 24 hours, for people to scrutinise and interrogate and will form the future content of the riveting memoirs that I will no doubt publish.

My point is that, in the modern landscape it is possible and doable to make what is said in public available to the public when they need it. That is the key to the argument about court transcripts, which can offer a vital resource to victims in their future interactions with the justice system.

If passed, my amendment 263 would establish a permanent fund that would allow people to access court transcripts. I appreciate that producing those transcripts comes at a cost. I hope that that will come down, but we are where we are so, in the meantime, I have created something that is almost parallel to the legal aid system and that would allow people to apply for access to a fund to pay for court transcripts. That would be a more permanent solution than simply having trial after trial of free access to transcripts without any long-term solution. I believe that we could amend the Criminal Procedure (Scotland) Act 1995 to create permanent access to transcripts via a dedicated fund for that purpose, and that purpose alone.

My amendment 263 would enable the Scottish Government, to determine—perhaps through secondary legislation or regulation-making powers; I am willing to look at that—how applications would be made, the eligibility criteria and the process to be followed. In coming up with that process ministers would have to consult the relevant parties, all of whom are those that members would expect to have to be consulted.

I consider the pilot scheme to be a short-term fix to a long-term problem. Although the Government's willingness to proceed is welcome, I note, from a letter that the cabinet secretary sent two days ago to the three members who have an amendment on this aspect, her view that

"further thought is required regarding how we deliver the principle of free access in a way that is deliverable, sustainable, fair, and cost effective".

I do not disagree with that, but about three years ago, I was sitting just over there, on the other side of the table, when we had a similar conversation. There has been plenty of time for further thought as to how we might deliver a long-term solution. Through my amendment I have tried to come up with a practical solution.

I, too, believe that access to transcripts should not be restricted to rape and sexual offences cases. That is why I believe that we should approach the issue in a slightly different way. By creating a fund that sets criteria about who can apply and in which cases, we could widen access outside the scope of those particular areas. People might require access to transcripts in other cases, such as those involving domestic abuse, so I would like to extend the franchise, as it were, to include a whole range of factors.

I accept that there is not an unlimited pot of cash for doing that. However, I hope that members would understand that, by putting aside money for that purpose and setting ground rules about who could apply, fairness and rationale would be involved. I hope that the cabinet secretary will reflect on that.

It is good to see members addressing the issue and trying to get something on the face of the bill. If we could bring the matter back and work together on it at stage 3, I would be happy to be part of that discussion. I hope that we could have something in the bill by stage 3.

The Convener: As no other member wishes to come in, I invite the cabinet secretary to respond.

Angela Constance: I assure members that I view all three amendments on this aspect with the same seriousness. I have endeavoured to keep the committee informed of progress on the pilot, which enables free access to court transcripts for victims in rape and serious sexual assault cases. It is the first such pilot in the United Kingdom, and it has attracted interest from elsewhere.

I have been open with the committee about the challenges involved, in particular the level of demand, the need to meet our obligations under data protection law, and the current limitations of technology redaction and artificial intelligence, in particular as regards accuracy. I recognise that, in the future, there will be an opportunity for such areas to be considered as part of the pilot's extension.

I remain mindful of concerns that have been expressed about how such an approach might see a change in behaviour, through transcripts being shared through social media. I am therefore ever conscious of ensuring that we consider any unintended consequences of our actions and that we are confident about how we might respond if those concerns were to be realised. The evidence to date does not support the concerns, but the pilot is still in relative infancy.

I have also been reassured, through the detail provided by applicants, that the reasons behind requests for transcripts accord with the Scottish Government's wider aim of delivering a truly person-centred, trauma-informed justice system. However, some of the feedback suggests that more needs to be done. I have therefore extended the pilot for a further 12 months so that we can resolve any issues ahead of assessing changes that might be required in legislation. It is worth reiterating that I want the pilot to provide information that will support any future legislative change to the general position under the Criminal Procedure (Scotland) Act 1995, on which the three amendments in this group are founded, and the specific secondary legislation—the Transcripts of

Criminal Proceedings (Scotland) Order 1993 and the Transcripts of Criminal Proceedings (Scotland) Amendment Order 1995—all of which are pre-devolution legislation.

I have already outlined to the three members with amendments on this matter that, although I do not support the amendments as they stand, I am entirely sympathetic to their aims and want to work with all of them ahead of stage 3, as there will be an opportunity to include aspects of all their intentions at that point.

Amendment 145, in the name of Pauline McNeill, would significantly increase the number of free transcripts that are being produced and create a major capacity issue for the Scottish Courts and Tribunals Service and the company whose services have been procured for that purpose. In turn, that would create a significant cost to the public purse.

12:45

However, I would like to discuss the matter further with Ms McNeill, alongside Jamie Greene's amendment 263, which is an innovative proposal that recognises the costs that are associated with free transcripts that are paid for from the public purse. Therefore, over a longer time than we have had to consider the amendments, I would like to consider what the proposal for a regulating power, which Jamie Greene's amendment would introduce, would look like in practice and how it could enable the aspiration of wider access that is outlined in Pauline McNeill's amendment 145.

On amendment 179, in the name of Audrey Nicoll, notwithstanding my words of caution, I consider that there is an opportunity to build on the premise of the amendment, subject to some further refinement. I fully understand the desire to ensure certainty around the pilot and the limited opportunity that remains to achieve that in this parliamentary term. I would also like to place the current pilot on a statutory footing. It is important that we get this right and that we recognise that there might be a need for further legislative changes, informed by and evidenced from a range of areas, including those who have participated in the pilot to date.

I think that that delivers a level of cross-party consensus and, therefore, recognition of how we can deliver and acknowledge our respective positions. Noting that and that I will work with members, I ask the three members to withdraw their amendments and to work with me and collectively ahead of stage 3.

The Convener: I call Pauline McNeill to wind up and to press or withdraw amendment 145.

Pauline McNeill: I am sure that I speak for all the members who have spoken in the debate when I say that I am delighted by the cabinet secretary's response. That is what I expected, because I know that she is personally committed to this. I agree that we must be clear about the purpose of the transcript in the first place. I spoke to the fact that it could be helpful to lawyers as well as to victims, so it is worth scrutinising in detail who the service should be extended to and, obviously, what the cost would be. The critical thing is to make it permanent. It must be sustainable in the long run, or it is not worth doing.

I am content to seek to withdraw amendment 145, and I will be delighted to work with the cabinet secretary in any way to get something that everyone is content with by stage 3.

Amendment 145, by agreement, withdrawn.

Amendment 179 not moved.

The Convener: I call amendment 263, in the name of Jamie Greene. Jamie, do you wish to move or not move the amendment?

Jamie Greene: On the basis of what we have heard, I will not move the amendment.

Amendment 263 not moved.

The Convener: I will pause our stage 2 proceedings at this point. The next group is significant and substantial and I do not intend to start it at this point today. We will resume consideration of amendments at our next meeting, on Wednesday 26 March. I thank the cabinet secretary and her officials for attending.

Meeting closed at 12:48.

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