



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 17 December 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE

33rd Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Bibby (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Clare Adamson (Central Scotland) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Joan McAlpine (South Scotland) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Aileen Campbell (Minister for Children and Young People)

Mary Fee (West Scotland) (Lab)

Mark McDonald (Aberdeen Donside) (SNP)

Siobhan McMahon (Central Scotland) (Lab)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 1

Scottish Parliament

Education and Culture Committee

Tuesday 17 December 2013

[The Convener *opened the meeting at 10:02*]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning and welcome to the 33rd meeting in 2013 of the Education and Culture Committee. I ask everyone to switch off their mobile phones and any other electronic devices they might happen to have, as they affect the broadcasting system.

Today we begin stage 2 consideration of the Children and Young People (Scotland) Bill. I welcome to the meeting Aileen Campbell, Minister for Children and Young People, and her officials. The officials are, of course, not permitted to participate in the formal proceedings.

I also welcome a number of non-committee members who will be participating in today's proceedings. Mary Fee and Siobhan McMahon have joined us for the start of the meeting, and Mark McDonald will join us later when we reach his amendments.

Everyone should have a copy of the bill as introduced; the first marshalled list of amendments, which was published on Friday; and the first groupings of amendments, which set out the amendments in the order in which they will be debated. We will not go beyond part 4 of the bill today, and there will be one debate on each group of amendments. Depending on the progress that we make, I will conclude proceedings at a suitable point. Any amendments that we do not reach today will be dealt with at our next meeting on 7 January.

For each debate, I will call the member who lodged the lead amendment in the group to speak to and move the amendment and to speak to all other amendments in the group. All other members with amendments in the group, including the minister, if relevant, will then be asked to speak to their amendments, and members who have not lodged any amendments in the group but who wish to speak should indicate as much by catching my eye or the clerks' attention. If the minister has not already spoken on a group, I will invite her to contribute to the debate just before we move to the winding-up speech.

The debate on the group will be concluded by my inviting the member who moved the first

amendment in the group to wind up. After the debate, I will check whether the member who moved the lead amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved they must seek approval to do so and, if any member objects, the committee will immediately move to the vote on the amendment.

If any member does not want to move their amendment when it is called, they should say "not moved". Please note, however, that any other MSP can choose to move that amendment if they so wish. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting is done by division through a show of hands. It is important that members keep their hands raised clearly so that the clerks can record the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

With all those rules, guidelines and comments in mind, we begin day 1 of stage 2.

Section 1—Duties of Scottish Ministers in relation to the rights of children

The Convener: Amendment 119, in the name of Liam McArthur, is grouped with amendments 190, 120, 194, 195, 123, 196, 125, 89, 169, 172, 174 and 175.

Liam McArthur (Orkney Islands) (LD): I am conscious of how much ground we have to cover this morning, so I will try to be brief, although that might be slightly tricky, given how many amendments I have in this group.

The purpose of amendment 119 is to allow the bill to do what it originally said on the tin, by underscoring the central importance of children's rights within our society and ensuring that children's views and interests are taken into account by decision makers across the public sector.

During stage 1, we heard from a number of organisations that argued strongly for full incorporation into the bill of the United Nations Convention on the Rights of the Child. Although, like others, I was not persuaded of their case, I certainly recognised the need to strengthen the provisions as they stand.

The evidence from the Law Society of Scotland and the Faculty of Advocates was that the bill "appears to be diluted" in terms of children's rights

and adds little to what is already in place. Similarly, the committee observed that the duty on ministers represented

“little more than a restatement of existing obligations.”

Therefore, there is a real risk that the bill represents a missed opportunity, unless the changes that I am proposing are agreed to.

Amendment 119 would strengthen the duty on ministers to

“have due regard to the UNCRC requirements”

rather than simply keep those requirements under consideration. That reflects ministers’ initial intention, the expectations of those in the sector about what the bill would deliver and what similar legislation in Wales is beginning to achieve.

Amendment 190 recognises that while full incorporation of the UNCRC into the bill did not find support among committee members, there was a feeling that ways should be found to incorporate, or at least better reflect, the key articles 3 and 12, on upholding the best interests of the child and ensuring that the child’s voice is heard.

In a similar vein, amendment 120 seeks to beef up the requirement for ministers to report on the action that they have taken, detailing

“how they have complied with the duty”

that would be placed on them. That does not seem an unreasonable request or requirement to place on ministers.

Those three amendments are mirrored by amendments 123, 196 and 125, which seek to ensure that a consistent approach is taken across public authorities. Many will argue, with no little justification, that that approach is already a feature of their decision-making processes, but it is difficult to understand how that differs from what ministers themselves might argue. If we are to achieve a cultural shift and practical benefits from properly respecting and reflecting children’s rights, consistency across the public sector would be essential, particularly when one considers that much of the decision making that directly affects children takes place at the local level.

Amendment 194 picks up another recommendation that the committee made at stage 1, which is that there should be a requirement on ministers to undertake a children’s rights impact assessment in relation to bills that are introduced in Parliament. There is now an established method of carrying out such assessments, and I think such a requirement would ensure confidence that the principles of the bill are being delivered across the board.

In response to the committee’s recommendation, the minister indicated that she felt that the requirement to undertake children’s rights impact assessments could be delivered through “non-legislative means”. As Together points out in its briefing for today’s meeting, the Government committed to trialling CRIAs in its UNCRC action plan “Do the Right Thing” back in 2008. Since then, not a single CRIA has been undertaken.

The other amendments in the group offer additional improvements to the bill. I might have the opportunity to respond in more detail once I have heard what the minister and Neil Bibby have to say in addressing their amendments. In the meantime, I hope that those relatively brief comments are helpful to the committee.

I move amendment 119.

Neil Bibby (West Scotland) (Lab): I will also try to be as brief as possible. I will speak to all the amendments in my name. Amendment 195 is on the introduction of a children’s rights implementation scheme, through which ministers would have to outline the arrangements that they have made and the steps that they will take to safeguard and promote children’s rights. Amendments 169, 172, 174 and 175 aim to ensure that children’s services plans are prepared, and related services are provided, with a view to securing the UNCRC requirements to better effect.

Members will be aware of the committee’s call for the Scottish Government to provide an explanation of the practical actions that it intends to take to increase awareness of children’s rights. My amendments address that point directly and involve a model that is similar to that being used in Wales, where the children’s rights scheme sets out the arrangements that Welsh ministers will have to put in place to make sure that they and Welsh Government staff comply with the duties that are placed on them to report on compliance arrangements every five years. Although the Welsh measure has been in place for a relatively short period, the positive impact of an implementation scheme in Wales is beginning to become clear. More children and young people are involved in influencing legislation, there have been more child-friendly Government publications, and ministers have been accountable in their consideration of children’s rights when developing policy and legislation. I know that the Scottish Government often talks about its desire to make Scotland the best place to grow up in the world, so I am sure that it will be keen to adopt best practice from elsewhere in the United Kingdom when it comes to implementing children’s rights.

On amendments 169, 172, 174 and 175, there is a concern that there is a disconnect between the provision in part 1 of the bill on reporting on

children's rights, and those in part 3, around children's services planning. The amendments would specifically embed children's rights in children's services planning to provide a framework through which public bodies can safeguard, support and promote the rights and wellbeing of children in their area.

I know that the Scottish Government has said that it remains open to suggestions about how the bill might be strengthened to support those aims. I therefore urge the minister, the Government and members to join organisations such as Children 1st, Barnardo's Scotland and the Commissioner for Children and Young People in Scotland in supporting my amendments 195, 169, 172, 174 and 175. The amendments will help to provide ministers with a strategic and comprehensive approach to executing their duties, improve their accountability in doing so, and improve children's services plans.

I also state my support for the amendments in the name of Liam McArthur. In relation to amendment 190, on articles 3 and 12 of the UNCRC, the need to act in the best interests of the child, which was raised by the UNCRC in 1959, has been integral to the practice of law, social work and education for many years. Indeed, the idea has been present in Scots child law since the Guardianship of Infants Act 1925. In more recent times, there have been moves towards the greater involvement of children, particularly since the Children (Scotland) Act 1995. To place such a duty on ministers would put in law what tends to happen already and should be supported.

Article 12, on listening to children's voices in decision making, has been embraced by those who work with children, and I support it, too. The Scottish Government has consistently said that it is committed to listening to the views of children and young people, so I expect it to support Liam McArthur's amendments 190, 120, 123, 196 and 125. However, we should guard against tokenistic consultation. If the Government is not willing to support Liam McArthur's amendments, I would welcome clarification of and details about the measures that the Government will take to ensure that consultation is not tokenistic.

I also support Liam McArthur's amendment 194, on children's rights impact assessments, which are an important tool for ensuring children's rights, and amendment 119, which is the due regard amendment.

I urge members to support all the amendments in the group, which will allow us to ensure that the bill is suitably ambitious and avoids becoming, as Liam McArthur said, a missed opportunity.

The Minister for Children and Young People (Aileen Campbell): Amendment 89, in my name,

is a minor amendment that intended to ensure consistency with language used elsewhere in the bill, for example in sections 30(2) and 50(2).

Amendments 119, 120, 123 and 125 seek to place duties on Scottish ministers and other relevant public authorities to "have due regard to" the rights set out in the UNCRC, and to report on how they are satisfying those duties. I am clear that having such duties would not guarantee the type of nuanced approach that is likely to best serve the interests of children.

I understand that people will look to the experience of the Welsh Government, which has introduced duties that are broadly similar to those that Liam McArthur proposes. In response, I note that we are happy to draw on the experience of others, but, ultimately, we need an approach that is fit for purpose in Scotland—one that reflects our constitutional arrangements, our distinct legal system and the range of other factors that make us unique. The notion of a duty to have due regard to a piece of international law is untested in Scotland. We have no way of knowing how the courts would interpret and enforce such a duty. The bill should not place squarely at the door of the courts the responsibility for testing and directing our approach to a treaty whose wording does not always easily translate into clear, enforceable law. However, that is what a due regard duty could do.

10:15

On the extension of a due regard duty to other public bodies, the Convention of Scottish Local Authorities has made it clear that it would not wish such a duty to be placed on its members at this time. The bill already places on public bodies a host of duties that will result in better protection and promotion of children's rights, and the changes that the bill proposes are deliverable.

Amendment 194 would result in a duty being placed on the Scottish ministers to undertake a children's rights impact assessment for all future Scottish Government bills. As indicated to the committee at stage 1, ministers recognise the importance of assessing the impact of our policies on our children and their rights. That is why we are taking steps to produce non-legislative guidance on the issue for use by civil servants and ministers. However, it is not necessary or desirable for the bill to prescribe exactly how impact assessments should be undertaken. Our experience in relation to equalities legislation supports that view.

We must also address proportionality. I recognise the value of submitting robust impact assessments on pieces of legislation that are likely to impact on children, but not all bills require that

step to be taken. We should focus our activity on the issues that are most important to our children and young people.

Amendments 190 and 196 would have the effect of placing a new duty on the Scottish ministers and other relevant public bodies to have children's best interests as "a key consideration" where those children are likely to be affected by a decision. We have some concerns about the introduction of such a concept. The UNCRC clearly recognises that the best interests of a child should be a primary consideration in all matters affecting them. We are supportive of that principle, but it does not make sense to pursue the aim through blanket duties on ministers and public bodies, particularly when that might lead to an increased emphasis on the courts and on unnecessary and unhelpful litigation. Instead, we should make targeted and enforceable changes to the law that will guarantee the changes that we want without the accompanying risks that I have just described. That is exactly what we are doing through, for example, the Criminal Justice (Scotland) Bill, which the Parliament is considering.

On amendment 195, we recognise the benefit of having clear and robust plans in place to support further recognition of the UNCRC and we intend to provide for that in the bill through our own amendment—amendment 88—which will be discussed in a separate group. Again, there is an issue of proportionality to be addressed in respect of amendment 195. It could result in a fairly onerous obligation to publish fairly frequent reports, and I am concerned that we run the risk of report overload. It also prescribes fairly broad-ranging consultation arrangements that, although they are well intentioned, do not need to appear in primary legislation.

Amendments 169, 172, 174 and 175 seek to ensure that children's services planning aims to address children's rights, as set out in the UNCRC. We have been clear about wanting public bodies to report on what they are doing to further the UNCRC, and that is why we have placed duties on them in part 1. It is not appropriate to impose a further duty in part 3. Moreover, by focusing on how services are safeguarding, supporting and promoting the wellbeing of children, planning will give practical effect to the UNCRC.

For all the reasons that I have stated, I do not support amendments 119, 190, 120, 194, 195, 123, 196, 125, 169, 172, 174 and 175. I support my own amendment 89.

Joan McAlpine (South Scotland) (SNP): I am concerned that amendments 119, 190, 120, 123, 196 and 125, in the name of Liam McArthur, would

introduce a lack of flexibility and, perhaps, be a bit too heavy handed.

As the minister said, a due regard duty is untested; we do not know the risks involved. Only 15 per cent of the consultation respondents said that the duties in section 1 did not go far enough.

The UNCRC is an aspirational document and does not easily translate into legislation—we took evidence from Professor Norrie on that at stage 1. It is clear that the best interests of the child should be the primary consideration, but Liam McArthur's amendments do not seem to put those as the primary consideration, only a key one. That seems to be an alternative legal concept and not consistent with the UNCRC.

I welcome the fact that the Government is undertaking CRIs in a non-legislative way. As the minister said, that will give us more flexibility should circumstances change in future.

Turning to the amendments in Neil Bibby's name, I feel that including an implementation scheme in the bill would be too inflexible, disproportionate and onerous, and much of what is proposed will already be given effect through section 1, which is more proportionate.

Liz Smith (Mid Scotland and Fife) (Con): During stage 1 and in preparing for this meeting I have listened carefully to the debates on what is probably one of the most challenging and interesting parts of the bill. I have found that the legal advice that we received on several aspects of the bill, both from the Scottish Government and from many other groups that have been talking about the UNCRC—particularly those who favour incorporation—has been difficult to work through, because that advice has not been particularly clear.

I fully recognise that the Government is not in a position to publish all its guidance—I understand that. However, a slightly more detailed response to the arguments would have been helpful, particularly for those who argue that full incorporation is a legitimate way forward; I understand some of the points that they have raised.

I have listened carefully to Mr McArthur, and I have a great deal of sympathy with his amendments, because he is trying to ensure that there is a balance between not incorporating the UNCRC into Scots law and ensuring that there is more of a level playing field and that we think more carefully about some of the duties that should fall on ministers and on other public bodies such as local authorities. Having said that, we are in a difficult area when it comes to the phrase "due regard". I am not entirely comfortable with its interpretation; maybe Mr McArthur can say a little more about that when he sums up. I certainly have

difficulty with amendment 194, on the children's rights impact assessment. I worry about how far that would take some of the issues, but I would be interested to hear Mr McArthur's view on that.

I have some sympathy with Mr Bibby's amendments, but I am not entirely confident that he has thought through the bureaucratic and, in some cases, financial burden that might be put on local authorities as a result. His intentions are absolutely clear, and they are good, but I am not sure that they actually match the amendments.

The Convener: I call Liam McArthur to wind up and to indicate whether he wishes to press or withdraw amendment 119.

Liam McArthur: I thank all members who have contributed. I have listened carefully to what has been said. I obviously have no difficulty with Government amendment 89. Neil Bibby's clarification of the purpose and intent of his amendments reassures me and I am happy to support them.

The bill is fundamentally about extending children's rights, and the evidence that we received at stage 1 was fairly clear that, as things stand, the bill does not do anything to progress children's rights in key areas. Therefore, as I said, if this is not to be a missed opportunity, we need to stiffen up the provisions in part 1 of the bill. I respect what the minister said about providing something that is tailored to Scotland's needs and Scotland's legal structure and which allows an appropriate level of flexibility. Nevertheless, the evidence that we received from a wide range of bodies operating in the area—Children 1st, Barnardo's and the UNICEF UK, to name but a few—indicates their concerns that the bill does not go far enough in doing what it said it would do on the tin.

It was particularly disappointing to hear the Government's response on CRIAs. The committee recommended that we needed to go further in relation to CRIAs—if not in every bill, then certainly in all bills that touch on the interests of children and young people, so when the time comes I intend to press amendment 194. For the time being, I press amendment 119.

The Convener: The question is, that amendment 119 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 119 disagreed to.

Amendment 190 moved—[Liam McArthur].

The Convener: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 190 disagreed to.

The Convener: Amendment 191, in the name of Siobhan McMahan, is grouped with amendments 192, 197 and 199 to 202.

Siobhan McMahan (Central Scotland) (Lab): We require reference to the United Nations Convention on the Rights of Persons with Disabilities in the bill to give an additional assurance that disabled people's views are embedded in the bill and will be given due regard and consideration in all aspects of policy development.

I understand that the Government is satisfied that the UNCRC requirements are sufficient to provide for that. However, recent publications—including a report that was commissioned by the Scottish Commissioner for Children and Young People entitled "It Always Comes Down to Money": Recent changes in service provision to disabled children, young people and their families in Scotland—have demonstrated a great and urgent need for disabled children's voices to be heard. I believe that my amendments will provide that voice and give greater assurance than the UNCRC requirements could ever provide. The Scottish Government does not wish to highlight specific groups of children. However, given that the bill specifically mentions looked-after children, I would argue that the precedent has already been set and that it would be remiss of the bill not to

mention disabled children in the way that I propose.

Article 7 of the UNCRPD places a duty on member states to take adequate account of children's views. Although the UNCRC includes article 22, which references the rights of disabled children to enjoy the rights of others, having specific regard to the UNCRPD would entrench the belief that disabled children are valued agents in Scottish society. More emphasis should be placed on ensuring that the Children and Young People (Scotland) Bill makes adequate provision for the rights of disabled children to be realised. Embedding the UNCRPD into primary legislation would build a strong foundation for public authorities around Scotland to adjust their practice and procedures to reflect the national intention to uphold disabled children's rights.

Integrating article 7 of the UNCRPD into the bill at this stage will require few additional resources to those that are already accounted for by establishing steps to consider the UNCRC. If that is postponed until a later stage, however—it is likely the UNCRPD will be legislated for at some point—the process of repeating and revising the legislation to account for that will incur further costs.

I move amendment 191.

Neil Bibby: I welcome the amendments in the name of Siobhan McMahon, as they raise important issues about the need for greater focus on and consideration of the rights of disabled children. We have a stated policy aim of getting it right for every child and, in order to get it right for every child, we must close, not widen, the equalities gap between disabled and non-disabled children. Later amendments will deal with the need for a specific focus on children who live in poverty. Here, we must ensure that the bill makes adequate provision for the rights of disabled children to be realised.

As Siobhan McMahon said, putting the UNCRPD in primary legislation will provide a strong foundation for public authorities to adjust their practices to reflect the national intention to uphold disabled children's rights. Health and Social Care Alliance Scotland has said that integrating article 7 of the UNCRPD into the legislation would require few additional resources, and I understand that there are precedents for integrating the UNCRPD principles into legislation in both the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Social Care (Self-directed Support) (Scotland) Act 2013.

Disabled children can be some of the most disadvantaged and vulnerable children in Scotland. The amendments are needed to ensure that the bill is not a missed opportunity and that it

makes a substantial difference to the lives of disabled children. I therefore support the amendments in Siobhan McMahon's name.

10:30

Clare Adamson (Central Scotland) (SNP): I have listened carefully to my colleagues and understand their intention in lodging the amendments. However, my concern is that the principle of the bill is getting it right for every child, which includes children with special needs. If, at this stage, we tried to compartmentalise specific groups, there is a danger that we would make special provision for some children. The unintended consequence of that would be to disadvantage other groups, specifically in the area of protected characteristics. I do not think that the amendment is necessary. The UNCRC covers all children up to 18, including those with a disability.

Liz Smith: Although I have every sympathy with the intention of the amendments, there are unintended consequences that could make it quite difficult in the rest of the bill. We perhaps need to think that through a bit more carefully.

Aileen Campbell: All the amendments in this group seek to place requirements on Scottish ministers and public bodies to take steps with the aim of furthering the rights set out under article 7 of the UNCRPD. While we are strong supporters of the UNCRPD, we do not feel that amendment 191 is necessary. As Clare Adamson pointed out, the rights set out under the UNCRC apply equally to all children, including disabled children.

I recognise the importance of ensuring that ministers and public bodies do all that they can to support disabled children in enjoying their rights, and I thank Siobhan McMahon for raising the points that she did. However, reflecting this particular issue on the face of the bill has some risks attached.

In part 1 of the bill, we are seeking to promote a notion of universality—the notion that, no matter what a child's background is and what their needs are, Scottish ministers and public bodies will work to promote their rights. To recognise explicitly some groups of children and not others could begin to dilute that message and would therefore go against the grain of what we are trying to achieve. The fact that we are not making explicit reference to disabled children absolutely does not detract from the commitment we are making to them.

While I support the intention behind the amendments in this group, I cannot support them.

Siobhan McMahon: I have listened to members' comments. I argued for universality when we mentioned other children, so it is not a

huge leap to mention disabled children. It would be an additional assurance to mention the UNCRPD requirements in the bill and therefore I press amendment 191.

The Convener: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 191 disagreed to.

Amendment 120 moved—[Liam MacArthur].

The Convener: The question is, that amendment 120 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 120 disagreed to.

Amendment 192—[Siobhan McMahon].

The Convener: The question is, that amendment 192 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 192 disagreed to.

The Convener: Amendment 87, in the name of the minister, is grouped with amendments 88, 193, 121, 122, 124 and 126.

Aileen Campbell: As members know, the Scottish Government is generally satisfied that the ministerial duties that are included in section 1 strike the right balance. They offer a degree of protection in domestic law and ensure that the UNCRPD influences the decisions that the Scottish ministers take. However, they also recognise that the courts are generally not the best place to adjudicate on issues of social policy. That said, I previously made it clear that we would be happy to consider how the provisions might be strengthened by building on the approach that I have just described.

Amendments 87 and 88 are a direct response to the evidence that we heard in the committee's stage 1 scrutiny of the bill. If they are agreed to, they will place an additional requirement on ministers to prepare a plan that sets out how they intend to satisfy the duties that are included in section 1(1). The amendments also recognise the important role that children must play in developing that plan.

We accept that such plans are useful in holding the Government to account for the approach to children's rights. That is why, as a matter of good practice, we have previously taken steps to prepare and publish documents of a similar nature. I can understand why both the committee and stakeholders would like to ensure that future Governments do likewise, and I trust that the amendments represent a satisfactory response to the recommendation that is included in the committee's stage 1 report that such plans be provided for in the bill.

I am not convinced that amendment 193 would offer any material benefit. Section 1(3) requires ministers to prepare a report that sets out the steps that they have taken to further the rights that are set out in the UNCRPD. Ministers are best placed to identify the steps that they have taken with that aim in mind. I am therefore unsure about what benefits would be offered by a consultation with stakeholders. Imposing a requirement to consult all the bodies that are referred to in the amendment is excessive. Furthermore, I do not take the view that primary legislation is generally the best place to describe when and how Government should engage civic society in its

work. We should and we do engage with organisations as a matter of course. For that reason, I am not able to support amendment 193.

Amendments 121 and 126 propose that reports be published in a child-friendly format. We recognise the importance of delivering activity that helps children to understand how their rights are being promoted and protected, but that activity must meet the needs of its target audience. It might not always be the case that a child-friendly report—whatever that would mean in practice—is the best way to get information across to children. In those instances, it would not seem sensible to require the publication of such a report. Again, I am not convinced that primary legislation is the best place to describe how children should be involved in the work of Government. Primary legislation often does not recognise the need for flexibility, which is important in working with our young people. For that reason, I am not minded to support amendments 121, 126 or 122, which has a broadly similar aim.

Amendment 124 is a technical amendment that should be read in conjunction with amendment 125 in group 1 and amendment 126 in group 3.

In summary, I support amendments 87 and 88 and do not support amendments 193, 121, 122, 124 and 126.

I move amendment 87.

Liam McArthur: I welcome the provisions under section 2(1) on producing a report every three years on the steps that have been taken, and I certainly welcome the minister's amendments, which respond to concerns that the committee raised at stage 1.

My amendments try to ensure that the information that ministers and other public bodies prepare is as accessible as possible.

Amendment 193 would broaden out the requirements for who is to be consulted on reports, although I acknowledge that, in referring specifically to voluntary organisations, it may run the risk of being seen to actively exclude others. I was slightly concerned by the minister's apparent suggestion that stakeholders would not be involved in the process of preparing reports, but perhaps I picked that up wrongly. Perhaps she can clarify that in her concluding remarks.

Amendment 122 would place an onus on ministers to

“promote public awareness and understanding”

of the key findings and recommendations of their children's rights reports. Amendments 121 and 126 seek to ensure that the reports are produced in such a way as to make them accessible to those whose interests they endeavour to further.

The minister expressed concern about the reference to the need for child-friendly language to be used, but it mirrors similar provisions in earlier legislation, notably that which established the children's commissioner. It recognises that accessibility and awareness raising among children and young people will require creative use of, for example, internet social media, television and other methods of communication. There seems to be little point in committing to the production of such reports if every effort is not made to ensure that they are as accessible as possible to all those who may have an interest.

Neil Bibby: I support amendments 193, 121, 122, 124 and 126, in the name of Liam McArthur, and I am happy to support amendment 88, in the name of Aileen Campbell. As I have said previously, it is important that children's views are considered in the Scottish ministers' plans. I warn against the possibility that the legislation will be tokenistic. We do not want that. If the Government does not support amendment 193, it would be helpful for the committee to get more information and detail on what practical steps ministers and the Government will take to ensure that meaningful consultation is carried out with children.

Liam McArthur's other amendments are eminently sensible as they promote awareness and understanding of the UNCRC. It is desirable to create child-friendly and accessible reports. I am happy to support those amendments.

The Convener: I will add a comment. I welcome Government amendments 87 and 88, which respond to the recommendations in the committee's stage 1 report. I am grateful to the Government for supporting our views on the measure.

I share some of the concerns that the minister expressed about amendment 193. I am not sure what its purpose would be. It is about a report that covers issues that have already been dealt with, and I am not sure what the purpose of consultation would be in that case. I also have some concerns about exactly what child-friendly language would entail. I am not sure what the practical definition of that would be. Although we should, of course, make all our publications as open and transparent as possible to as many people as possible, I am not sure that, in all cases, that requires them to be child friendly.

Liam McArthur: May I respond, convener?

The Convener: Briefly.

Liam McArthur: I hear what you say. Initially, I had similar questions about child-friendly language and how that might be defined, but we have already established that there is a precedent, not least in the legislation that established the

children's commissioner, so I presume that there is a recognised definition and understanding of what it means. All that we would be doing is providing consistency between the bill and other pieces of legislation that the Parliament has passed.

The Convener: I heard the member make that comment earlier. It is interesting, but it does not necessarily mean that we should follow that example in this case. However, I understand the point that he is trying to make, and I will be interested to hear what the minister has to say in response to it. I call on her to wind up on the current group of amendments.

Aileen Campbell: I thank members for their comments. As I said in my opening remarks on the group, I am not convinced that amendment 193 would serve a useful purpose. In response to the points that Liam McArthur made, I clarify that, under part 1, ministers are required to prepare a report that sets out the steps that they have taken to further the rights that are set out in the UNCRC. I am not sure what value consultation on that would have, as the report will be a factual representation of the steps that have been taken.

For the reasons that I described earlier, I am not convinced that primary legislation is always the most appropriate vehicle for illustrating our commitment to consultation. We have well-established processes and a strong record of consulting stakeholders on these and other matters, and that has been achieved without the need for legislative duties. There is now an expectation that stakeholders will be involved in policy making. That is absolutely correct, and I see no reason for it to change.

On amendments 121 and 126, I remain unconvinced that a child-friendly report is always the best way in which to get information across to children. I also remain unconvinced that imposing duties through primary legislation necessarily represents the best mechanism for describing how we intend to engage with children and young people in our work. We undertake a lot of engagement with children and young people, and the bill is an example of that. We do that engagement in a number of ways, and it is essential to keep that flexible approach. Therefore, I am still not minded to support amendments 121 or 126, or indeed amendment 122, which has a broadly similar aim.

In summary, I support amendments 87 and 88 but not the other amendments in the group.

Amendment 87 agreed to.

Amendment 88 moved—[Aileen Campbell]—and agreed to.

Amendment 193 not moved.

Amendment 121 moved—[Liam McArthur].

10:45

The Convener: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 121 disagreed to.

Amendment 122 not moved.

Section 1, as amended, agreed to.

After section 1

Amendment 194 moved—[Liam McArthur].

The Convener: The question is, that amendment 194 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 194 disagreed to.

Amendment 195 moved—[Neil Bibby].

The Convener: The question is, that amendment 195 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 195 disagreed to.

Section 2—Duties of public authorities in relation to the UNCRC

Amendment 123 moved—[Liam McArthur].

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 123 disagreed to.

Amendment 196 moved—[Liam McArthur].

The Convener: The question is, that amendment 196 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 196 disagreed to.

Amendment 124 moved—[Liam McArthur].

The Convener: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 124 disagreed to.

Amendment 125 moved—[Liam McArthur].

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 125 disagreed to.

Amendment 197 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 197 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 197 disagreed to.

Amendment 126 not moved.

The Convener: Amendment 198, in the name of Mary Fee, is grouped with amendments 204, 211, 215, 221, 229, 233, 235, 239, 241, 247 and 249.

Mary Fee (West Scotland) (Lab): All my amendments in this group address the wellbeing and needs of children who have been affected by parental imprisonment, which is a group who frequently fall through the safety net when it comes to accessing support services.

Amendment 198 would require reports that are published by public authorities outlining the steps that they have taken to secure better or further effect in respect of the UNCRC requirements to include information about what they have done to address the wellbeing needs of children affected by parental imprisonment.

Amendment 204 would add the Scottish Prison Service to the list of other service providers. Amendment 211 would help to redress the imbalance in children accessing service plans by ensuring that children's services include a strong focus on the support and services that are available to children affected by parental imprisonment. Similarly, amendment 215 would affect children's service plans. It would require the bill explicitly to recognise the need for the plans to improve outcomes for children affected by parental imprisonment.

Amendment 221 would place a duty on local authorities and each relevant health board to consult children, including children affected by parental imprisonment, in preparing children's service plans. Amendment 229 would place a duty on public authorities to ensure that the reports that are provided for in section 13 include information about the extent to which those authorities have provided services to support children affected by parental imprisonment.

Amendment 233 highlights the need for guidance to be issued by the Scottish ministers on how local authorities, health boards and other service providers should exercise their function in relation to children's service plans in supporting children affected by parental imprisonment.

Amendment 235 is essential if there are to be significant improvements to the access of children

affected by parental imprisonment to key services. The amendment would help to promote a more consistent approach across Scotland to the type and level of services that are put in place through children's services planning to support children of imprisoned parents.

Amendment 239 highlights the need to ensure that guidance is introduced about how service providers and the named person service should exercise their function in relation to children and young people affected by parental imprisonment. Amendment 241 is vital if there are to be significant improvements in the level of support that is available to children affected by parental imprisonment. Amendment 241 would help to promote a more consistent approach across Scotland to the support that is provided by the named person service.

Amendment 247 highlights the need for guidance to be issued by the Scottish ministers regarding how a child's plan should support a child who is affected by parental imprisonment. The amendment is designed to ensure that ministers give a commitment now, at stage 2, that the Scottish Government will introduce guidance on how that will operate.

Amendment 249 is vital to secure significant improvements in the level of support that is available to children who are affected by parental imprisonment. It would promote a consistent approach across Scotland to the support that is provided by the named person service.

I move amendment 198.

Neil Bibby: As my colleague Mary Fee said, her amendments are needed to improve the outcomes of children affected by parental imprisonment. An estimated 20,000 children are in families affected by parental imprisonment, which is a substantial number. As has been said, parental imprisonment can often have a negative impact on children's mental health and other wellbeing indicators. Mary Fee's amendments would help children's services planning, child's plans and the named person service to include a strong focus on ensuring that children affected by parental imprisonment are able to access and secure the vital support and services that they will require to fulfil their potential and make the most of their lives.

I support Mary Fee's amendments 198, 211, 215, 221, 229, 233, 235, 239, 241, 247 and 249, and I hope that other members will do too, to ensure that the bill is not a missed opportunity.

Aileen Campbell: As has been indicated, the majority of amendments in the group highlight the needs of children affected by parental imprisonment, and I thank Mary Fee for raising the needs of that particular group. However, we do not believe that the amendments are necessary, as

the existing provisions across the relevant sections of the bill provide appropriate coverage.

By focusing on the needs of all children up to the age of 18, the bill will ensure that children's services planning, as set out in part 3, and the named person service, as set out in part 4, will cover children affected by parental imprisonment, including any guidance and directions issued by Scottish ministers. Moreover, where children in that group have particular needs, the provisions of part 5 will ensure that child's plans can address those needs. Similarly, the reporting on the UNCRC that is set out in part 1 should cover the needs of all children, not least those for whom unique issues may need to be highlighted.

What is crucial is that the provisions of the bill as drafted are made to work for children affected by parental imprisonment. We will ensure that guidance and, where needed, directions, as well as public body reporting under part 1, will cover the distinctive needs of that group as appropriate.

Amendment 204 is not necessary, as amendments 90 and 91 in my name seek to clarify that the Scottish Prison Service will be covered by part 3 as a provider of children's and related services. Those amendments will remove Scottish ministers from the list of other service providers in section 7(1) and add them to the list of persons who provide children's and related services in section 7(2), but only when providing services in exercise of their functions under the Prisons (Scotland) Act 1989. The SPS is an agency of the Scottish Government and therefore shares the same legal personality as Scottish ministers. Amendments 90 and 91 seek to describe the SPS in the correct way. For that reason, I do not support amendment 204.

In summary, I do not support any of the amendments in the group.

Mary Fee: I thank the minister for her comments and my colleague Neil Bibby for his supportive comments.

Children affected by parental imprisonment frequently fall through the safety net for accessing support services. My amendments could make a huge difference to the lives of children affected by parental imprisonment and the bill does not go far enough to offer support and protection for those children. It would be a missed opportunity if my amendments were not included in the bill and I wish to press amendment 198 and move the other amendments in the group.

The Convener: The question is, that amendment 198 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 198 disagreed to.

Section 2 agreed to.

Section 3—Authorities to which section 2 applies

Amendment 89 moved—[Aileen Campbell]—and agreed to.

Section 3, as amended, agreed to.

Schedule 1 agreed to.

Section 4—Interpretation of Part 1

Amendment 199 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 199 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 199 disagreed to.

11:00

Amendment 200 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 200 disagreed to.

Amendment 201 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 201 disagreed to.

Amendment 202 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 202 disagreed to.

Section 4 agreed to.

Section 5—Investigations by the Commissioner

The Convener: Amendment 1, in the name of Liz Smith, is grouped with amendments 2 to 5.

Liz Smith: At stage 1, the committee asked for considerable clarification of the specific role of the SCCYP on account of the fact that there appeared to be different interpretations of the new powers set out in the bill. Amendments 1 to 5 are designed to clarify beyond doubt the powers to be conferred on the children's commissioner.

I think that it is fairly plain to the committee that, given the bill's general intent, there is scope to tighten up part 2 so that there is complete certainty regarding when it is right and proper for the children's commissioner to intervene in a case. I have listened carefully to the Government's perspective on that and looked at the children's commissioner's recent letter.

By adding the requirement that a general investigation must not duplicate what is properly the function of another individual, amendment 1 would clarify the role of the children's commissioner in that respect. Likewise, by inserting the word "individual" into the bill, amendment 2 would introduce a clear distinction between proposed new section 7(2) of the Commissioner for Children and Young People (Scotland) Act 2003, which refers to a general investigation, and proposed new section 7(2A) of the 2003 act, which would concern individual cases. I think that there is currently a lack of clarity.

At first glance, the adjustment might appear to be minor, but amendment 2 would increase the clarity of the entire bill on this matter and would set down clear principles to be followed when the children's commissioner comes to initiate both general and individual investigations. After hearing evidence from the children's commissioner himself, it became clear that perhaps in some quarters part 2 of the bill was being interpreted rather more broadly than was first envisaged. Amendment 2, in tandem with amendment 1, would ease such apprehensions and make it clear that a general investigation is to be carried out only when all other avenues have been completely exhausted. In turn, that would address the concerns of bodies such as COSLA and the Scottish Public Services Ombudsman that, if not properly checked, the new powers could see the commissioner tread on the toes of organisations such as Education Scotland, the Care Inspectorate, et cetera.

As I said, this committee asked the Scottish Government to clarify its understanding of the commissioner's new powers, and the Scottish Government responded that it did not foresee

there being a role for the commissioner to have extensive on-going involvement in a case prior to local processes being exhausted. That was a welcome explanation, but amendment 4, by inserting the word “otherwise” after the word “not”, would see proposed new section 7(2A) of the 2003 act carry forward that full intention.

Amendment 5 would prohibit the children’s commissioner from acting as a mediator when functioning under the new powers and ensure that the wishes of the Scottish Government are properly reflected in the bill. The children’s commissioner has stated that he does not intend to use the extension of powers for such a process, but there is a danger that successors might feel differently. Amendment 5 would ensure that that position is upheld in the short, medium and long terms.

I hope that these amendments represent the spirit of the bill, as the provisions need to be strengthened.

I move amendment 1.

Liam McArthur: The entire committee was slightly alarmed by what appeared to be quite a significant divergence in the views expressed by the minister on the one hand and the children’s commissioner on the other about the extent of the latter’s remit, and we also heard evidence from the SPSO about a potential overlap in their respective roles. The issue needs to be addressed and resolved before we proceed much further with the bill and certainly before we reach stage 3 and, in the absence of Government amendments to that effect, I am inclined to support Liz Smith’s amendments.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will be interested to hear the minister’s comments but my take is that amendments 1, 2, 3 and 5 really have no practical effect. After all, the bill already makes it clear that the commissioner cannot pursue an investigation unless he is satisfied that it does not duplicate another body’s work.

The Convener: I will make a few remarks myself before calling the minister.

Mr McArthur is quite right that the committee received evidence that, to put it politely, rather confused matters. The committee was concerned about the difference in interpretation of the commissioner’s powers in this section of the bill and I would certainly be grateful, minister, if you could give committee members some comfort about the actual position and that there is a clear and shared view of the commissioner’s powers in the bill.

Aileen Campbell: I thank members for their comments.

As far as amendments 1 to 5 are concerned, we are clear that no investigation by the commissioner should take place until local processes have been exhausted and that the commissioner should not duplicate the work of other persons. Indeed, the bill recognises those points and makes it clear that the commissioner may not pursue an investigation that would duplicate work that is properly the function of another body, which would include any complaint resolution functions delivered by service providers.

With regard to mediation, we agree that the commissioner should not take on such a role before all other relevant complaints-handling processes have been exhausted. However, once those processes have been exhausted, we would not want to prevent the commissioner from mediating on an issue where such a course of action was likely to result in a matter being resolved more quickly and effectively than could perhaps be achieved with a full investigation. Ultimately, it is all about responding in a way that best meets the child’s needs.

I also understand that the commissioner has recently written to the committee, confirming that his view is consistent with our own on this issue. Accordingly, we see no need for changes to be made and do not support amendments 1 to 5.

Liz Smith: I thank the minister for clarifying the Scottish Government’s position. However, although I accept that the intentions are there, I am still not convinced that, as far as the semantics and wording are concerned, the issue has been made absolutely clear in section 5. Perhaps we can consider the matter again before stage 3. Given that the convener himself has intimated the very considerable concerns that were expressed about interpretation, I will press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 1 disagreed to.

Amendment 2 moved—[Liz Smith].

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

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 2 disagreed to.

Amendment 3 moved—[Liz Smith].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 3 disagreed to.

Amendment 4 moved—[Liz Smith].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 4 disagreed to.

Amendment 5 moved—[Liz Smith].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 5 disagreed to.

Sections 5 and 6 agreed to.

Section 7—Introductory

The Convener: Amendment 165, in the name of Jayne Baxter, is grouped with amendments 168, 170, 171, 217 and 173.

Jayne Baxter (Mid Scotland and Fife) (Lab): My amendments 165, 170 and 217 in this group are designed to ensure that the bill includes a strong focus on tackling child poverty. The amendments would also help to ensure that tackling child poverty is at the very centre of children's services planning and that children's services plans make a significant contribution to tackling child poverty. I believe that placing a duty on local authorities and health boards to ensure that the aims of children's services plans include helping to tackle child poverty will also help to promote a more consistent approach to eradicating child poverty across Scotland.

Section 9 provides that one of the aims of children's services plans is that

"children's services in the area concerned are provided in the way ... which is most integrated from the point of view of recipients".

It is reasonable to assume that "recipients" refers to children, young people, parents and carers. We should refer to them explicitly, as it is important to have language at the heart of the bill that reflects the people affected.

I move amendment 165.

Liam McArthur: My amendments 168 and 173, which are supported by Jayne Baxter—I very much welcome that support—reflect the findings of the report, “Putting the Baby in the Bath Water: Give priority to prevention and the first 1,001 days”, which was put together by a number of organisations operating in this field and places particular emphasis on the need for a preventative approach in this area and a transition away from reactive, crisis-driven, costly services towards governmental plans and services that make primary prevention real. That was one of the key recommendations of the Christie commission report. The amendments would give local authorities that want to accord priority and major resources to primary prevention in early years a basis in Scots law for making that local choice. The amendments would put on a statutory footing the support that we have across the Parliament for the preventative spending agenda. I hope that that will attract support from the committee, although I am aware that amendment 171 in the name of Joan McAlpine seeks to do much the same thing. If my amendment 168 is not supported, I will certainly support amendment 171.

Joan McAlpine: Amendment 171 arose from discussions on the “Putting the Baby in the Bath Water” report with Barnardo’s Scotland, the WAVE Trust and others. It recognises that children’s services plans should show how children’s services planning is achieving the aims of early intervention and preventative action, which are key principles underlying the bill as a whole.

The purpose of amendment 171 is to add text to section 9(2) to include among the aims of a children’s services plan that it

“ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising”.

The effect of the amendment would be to require local authorities and health boards to set out in preparing their children’s services plans how the services will work towards securing the achievement of the aims of early intervention and preventative action over the period covered by the plans. I welcome Mr McArthur’s supportive comments about my amendment.

11:15

Neil Bibby: I support amendments 165, 170 and 217, in the name of my colleague, Jayne Baxter. The purpose of the amendments is to ensure that local children’s services planning contributes to the aims laid down in Scotland’s child poverty strategy. I am sure that we all share the aspirations of making Scotland a better place for children to grow up in, and of eradicating child poverty. Although many children will grow up in Scotland with a great start in life, far too many

grow up in poverty. We need to direct resources, but we need also to direct the focus of children’s services plans, which, according to the Child Poverty Action Group, must play a vital part in developing and progressing the child poverty strategy for Scotland by ensuring that a consistent approach is taken to tackling child poverty across Scotland by local authorities, health boards and other key agencies.

At stage 1, we heard concerns about the lack of a joined-up vision from the Scottish Government in respect of the bill and other legislation and policies, and we have heard about the need to make rights real and to ensure that policies and law practically help children. The amendments seek to do that and would help to join up our approach to tackling child poverty, helping not only to provide a consistent approach but to strengthen links between the child poverty strategy for Scotland and children’s services plans.

As the Child Poverty Action Group pointed out in its briefing, although local authorities in England and Wales have a legal duty to produce child poverty strategies, setting out their plans for reducing child poverty in their area, no such obligations exist in Scotland. I therefore urge members and the minister to agree to the amendments, which are also supported by Barnardo’s Scotland, the Poverty Alliance, Children 1st, Children in Scotland, Save the Children, One Parent Families Scotland, and the church and society council of the Church of Scotland, so that the bill is not a missed opportunity.

I shall also support amendments 168 and 173, in the name of Liam McArthur, and I concur with Liam McArthur’s comments on amendment 171, in the name of Joan McAlpine, and would be happy to support amendment 171 if amendment 168 is not agreed to.

Aileen Campbell: Amendment 165 seeks to insert a definition of the “Child Poverty Strategy for Scotland” into section 7(1) of the bill as a result of the related amendment 170, which seeks to extend the aims of the plans to include tackling child poverty. Amendment 170 aims to ensure that the child poverty strategy for Scotland is explicitly addressed by children’s services plans, but we do not believe that either amendment is necessary.

The intention of the bill is for such plans to cover a wide range of activity related to children’s services in each local area. Many of those services will focus on improving child poverty. Consequently, having such a provision in the bill might raise questions about why other key strategies have not been mentioned. Guidance on that part of the bill should ensure that those links are made, and we are extremely keen to work with relevant organisations to ensure that child poverty

is properly addressed in guidance. Consequently, I do not support amendments 165 and 170.

Amendments 168 and 173 seek to ensure that the prevention of harm to children in the first place should be an explicit aim of children's services planning. We believe that the existing aims set out in section 9—in particular the aim in section 9(2)(a)(i)—cover that. Children's services plans that aim to best safeguard, support and promote the wellbeing of children and young people will also focus on the prevention of harm occurring in the first place. We are of the view that that existing aim, in combination with the additional aim set out in amendment 171, which we support, means that amendments 168 and 173 are not necessary, and we feel that those issues can be further clarified through guidance. Consequently, I do not support amendments 168 and 173.

I do support amendment 171 and I welcome the "Putting the Baby in the Bath Water" campaign for highlighting the importance of early intervention and primary prevention in children's services planning. Those principles are the foundation of what we are all trying to achieve across children's services, so we are happy to see the aim explicitly set out in the bill.

On amendment 217, I agree with the sentiment behind the amendment that parents and carers as well as children should be considered in children's services planning. We believe that the primary focus of planning of children's services should be the users of those services, which in many, but not all, cases will be parents and carers as well as children. The amendment suggests that all parents and carers should be part of the plans, and there will be some situations—for example, child protection—where that can be problematic. Guidance is the best place to make clear how parents and carers should be taken into account in planning. For those reasons, I do not support amendment 217.

In summary, I do not support amendments 165, 168, 170, 217 and 173, but I do support amendment 171.

Jayne Baxter: I welcome the comments from committee members and the minister. I am particularly heartened to hear about Joan McAlpine's amendment, as it is the only SNP amendment that we are considering this morning. However, the aim of addressing poverty needs to be explicit in the bill, not implicit; therefore I will press amendment 165.

The Convener: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 165 disagreed to.

The Convener: At this point, we will have a short suspension and will resume in a couple of minutes.

11:20

Meeting suspended.

11:26

On resuming—

The Convener: Amendment 166, in the name of Liam McArthur, is grouped with amendments 167 and 203.

Liam McArthur: As we heard in relation to the previous group of amendments, there is widespread cross-party support for the findings of the "Putting the Baby in the Bathwater" briefing. I welcome the fact that the committee will agree to amendment 171, which picks up some of the concerns that underlie amendment 167 in my name, which is supported by Jayne Baxter.

Amendment 166 reflects the findings of that briefing from Children 1st, the WAVE Trust, Barnardo's and others. There is a desire for specific reference to younger children to be made in the bill. We all acknowledge that what underlies the support for a preventative approach is recognition of the fact that what happens in the earliest days of a child's life can have a significant and lasting effect on outcomes thereafter.

Amendment 166 tries to give proper attention to the needs of children from birth in the first 1,000 or so days of their lives. Therefore, I hope that it will attract the committee's support.

I move amendment 166.

Siobhan McMahon: The aim of amendment 203 is to ensure that family support services are reflected in children's services planning to inform local commissioning strategies. It would serve as a clear guide to public authorities that family support

services should be reflected in such strategies. I hope that the committee will support that.

Clare Adamson: I thank the agencies behind “Putting the Baby in the Bathwater” for the work that they have done and the briefings that they have provided to the committee, which have been useful. However, I return to the universality of the bill. In the getting it right for every child approach, by definition we include those under the age of three. Therefore, amendment 166 is unnecessary.

The same applies to including the need for additional support in the definition of services. That is already covered by the universality of the bill.

The bill covers services that are for the benefit of all children with particular needs, so I really do not think that amendment 203 is necessary either, although I appreciate the member’s reasons for lodging it.

Liz Smith: I add my support for Liam McArthur and Siobhan McMahon. We have struggled for a long time with who is and is not covered by the definitions in the bill, particularly when it comes to service providers. From that angle alone, it is important that we tease the matter out before stage 3 so that we have a comprehensive decision on it. Therefore, I lend my support to all three amendments in the group.

11:30

Jayne Baxter: I am pleased to support the amendments, which would support the principle of ensuring that children’s services plans apply from birth and of recognising the importance of the earliest years of a child’s life when developing those plans.

Amendment 167 is especially important because we know that, for too many children, it can take a considerable time for a diagnosis to be made or for their additional support needs to be formally recognised. Without that, it could be crucial months or years before a child’s needs are taken into account.

The Convener: I very much support the principle behind the amendments, but I disagree with Liz Smith—it is pretty clear that the bill covers all children and it is unnecessary to single out groups of children in the bill.

Liz Smith: There are semantic issues about who is and is not classified in the bill. The meaning of “service provider” is different in different parts of the bill. Clarity is needed about that.

The Convener: That is an interesting point. Amendment 166 would add the words “including infants and children aged under 3”,

but that is unnecessary, as they are covered. I do not support that amendment not because I do not support the principle but because I think that that group is covered and that the amendment would add nothing. The same is true of other amendments. I will not support the amendments in the group.

Aileen Campbell: Amendment 166 is unnecessary, as the existing definition covers services for children generally, including children who are under three. All the definitions are made clear in each definition section in the bill.

Amendment 166 echoes proposals that were made in the “Putting the Baby in the Bath Water” campaign. Like other members, we welcome that campaign and congratulate it on its work on the bill. We absolutely share the policy goals that lie behind that campaign, and we will ensure that guidance makes it clear that children’s services plans should cover services for children up to the age of three. Consequently, I do not support the amendment.

Amendment 167 aims to ensure that children’s services planning covers services for children with suspected as well as confirmed additional support for learning needs. The amendment is unnecessary, as the existing definition at section 7(1)(a) covers that. Moreover, we will want to ensure in guidance that planning covers services for children with suspected as well as confirmed needs. Consequently, we do not support the amendment.

Amendment 203 has a good policy intention—to ensure that children’s services planning covers support for the families of children with particular needs. Children’s services planning should include support for families in their caring roles for such children, and the bill already covers services that are for the benefit of children with such needs. Guidance can make that more explicit. The amendment does not make clear what services for families would be covered, which could undermine the focus of such planning in children’s services. Consequently, we do not support the amendment.

In summary, we do not support any of the amendments in the group.

Liam McArthur: Despite the minister’s concluding sentence, I welcome the contributions from colleagues and the minister, which have generally been consensual. The convener and Clare Adamson raised concerns about amendment 166, but I do not think that it would any way detract from or strike at the heart of the principle of universality. The amendment recognises the importance of the earliest years and would complement amendment 171, which we discussed under the previous group. I also support Siobhan McMahon’s amendment 203.

I confirm that I will press amendment 166.

The Convener: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 166 disagreed to.

Amendment 167 moved—[Liam McArthur].

The Convener: The question is, that amendment 167 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 167 disagreed to.

Amendment 203 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)

Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 203 disagreed to.

The Convener: Amendment 90, in the name of the minister, is grouped with amendments 91 to 94 and 96 to 100.

Aileen Campbell: Amendments 90 to 94, 96, 99 and 100 clarify the reference to the Scottish ministers with respect to the role of the Scottish Prison Service. In particular, they remove the Scottish ministers from the definition of “other service provider” in section 7(1) and instead list them in section 7(2) as persons who may provide children’s or related services as the SPS.

The bill, as introduced, lists the Scottish ministers as an “other service provider”, which would have some unintended consequences. For example, by virtue of section 7(4), ministers would be obliged to consult themselves before bringing forward an order under section 7(3). The purpose of amendments 90 to 94, 96, 99 and 100 is to clarify how part 3 should apply to the Scottish ministers when they provide services as the SPS.

Amendments 97 and 98 address another set of unintended consequences. Section 10(7) requires the agreement of all the other service providers to the draft children’s services plan before it can be submitted to ministers and published. In some circumstances, that could mean that an “other service provider” withholding their agreement could prevent a plan from being published should the issue not be resolved.

I have lodged amendment 97 to avoid disagreements preventing a plan from being finalised by removing section 10(7). At the same time, a new subsection (8) would enable any disagreements with the plan to be publicly set out and would require the Scottish ministers—as the SPS—and other service providers to prepare and publish a notice setting out their reasons for disagreeing with a matter in the plan.

The combined effect of those changes is to remove the power of veto and require a public statement of any disagreement. The changes will not affect the existing requirement for service providers to be consulted and participate in the development of plans, which is provided for in section 10 as a whole.

Correspondingly, amendment 98 to section 12 is also needed. Its purpose is to prevent the Scottish ministers and other service providers from being bound to implement a matter in a plan with which they might disagree, which is in line with the notice set out in section 10(8). The effect of the amendment will be that the Scottish ministers and

other service providers would not be compelled to provide relevant services in line with the plan, but only to the extent of the matter with which they disagree.

I urge the committee to support all the amendments in the group, and I move amendment 90.

The Convener: No members have indicated that they wish to speak. Minister, do you wish to wind up?

Aileen Campbell: I waive my right to do so.

Amendment 90 agreed to.

Amendment 204 moved—[Mary Fee].

The Convener: The question is, that amendment 204 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 204 disagreed to.

The Convener: Amendment 205, in the name of Siobhan McMahon, is grouped with amendments 206 to 210, 212 to 214, 218, 220, 224 to 228, 230, 232 and 237.

Siobhan McMahon: The bill introduces a new right for young people who are leaving care to request assistance and support from a local authority up to the age of 25. Although that is to be welcomed, as it will support some of Scotland's most vulnerable young people, it falls short of supporting all vulnerable young people.

My amendment 205 aims to support young disabled people who are transitioning into adult life. It specifically requires a children's services plan to be prepared with a view to ensuring that transitions are planned well in advance. That would support the transitions process and would be of particular benefit to young disabled people who have less complex support needs, and for whom the adult social care assessment frameworks might mean that they fall short of being assessed for a formal care plan as they move into adulthood and independent living.

On amendment 207, although the Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009 make provision for transitions planning, it is only applicable to disabled young people who have been assessed as having an additional support for learning need via a co-ordinated support plan or individualised education plan, and the powers of the ASL acts do not extend beyond the responsibility of the education authority to develop a plan. The acts cannot place duties on other public bodies to comply beyond school leaver age.

I move amendment 205.

Liam McArthur: I echo Siobhan McMahon's sentiments, which are very much the same as those that underlie amendment 237 in my name.

Notwithstanding the safeguards that are currently in place, from casework in my constituency—I suspect that colleagues have also experienced the same—I am aware of children who are progressing through the system feeling as if they will fall off a cliff edge when they reach adulthood. I do not think that we have got transition planning right yet. Those people are often the most vulnerable and the transition stage is absolutely critical to them.

Amendment 237 seeks to ensure that transition planning is well embedded for all those who need it and that young people are kept fully informed and involved in the process. I therefore hope that amendment 237 will command support across the committee and from the Government.

George Adam (Paisley) (SNP): I agree in principle with much of what has been said, but amendments 218 and 210 could cause some confusion at a local level where adult services and children's services are working together and trying to cross over at one point. Some children's services might end up suffering from that.

Although I agree in principle with what has been said, there might be problems with the idea as it has been proposed and it would be less than practical to try to make it work out there in the real world.

Aileen Campbell: Our provisions on children's services planning in part 3 of the bill recognise that children deserve dedicated and integrated planning that makes clear how services are responding to their needs. The bill is based on the idea that children require co-ordinated and targeted support across all the range of services that can support their wellbeing, at strategic level as well as in planning for each individual child.

To widen such planning to include young persons up to the age of 25 risks diluting the focus of children's services planning. The services that children require are not always the same as those

that young adults require, and to combine both into the same set of plans runs the risk of overcomplicating planning, potentially resulting in plans that do not address the needs of children and young adults in the detail that they deserve.

Nevertheless, we believe that good transition planning is essential for those children whose needs will require continuing support into adulthood. Planning for that should be covered by children's services plans. The existing provisions of the bill allow for that and it is hard to see how the absence of good transition planning would best safeguard, support and promote the wellbeing of children who are approaching 18 and are being left in uncertainty about how they will continue to be assisted.

Liam McArthur: Will the minister take an intervention on that point?

Aileen Campbell: Yes.

Liam McArthur: The minister talks about the current provisions allowing for such planning to be done, and we are all aware of where good practice exists. Thankfully, it is not the case that every vulnerable child who is moving into adulthood finds themselves falling off a cliff edge. Nevertheless, despite the existing provisions, that does still happen. Rather than simply allow for it, does the bill not provide an opportunity to require that transition planning to happen as a matter of course?

Aileen Campbell: I acknowledge the member's point that good practice exists across Scotland—we should draw on that—but this issue is best addressed in guidance. I see that as the opportunity in the bill to ensure that transition planning is done in the most appropriate way to support young people who need additional support as they move into adulthood.

I am always happy to engage with the wider range of stakeholders who have been pushing for these particular amendments to ensure that the guidance is robust as it can be. However, given our belief that this matter is best approached through guidance, we do not support Siobhan McMahon and Liam McArthur's amendments in this group, although I acknowledge the spirit in which they have been lodged.

11:45

Siobhan McMahon: I thank the minister for her comments. Although I disagree with her conclusion, I acknowledge that progress has been made in this area.

That said, as has been pointed out by Liam McArthur—I appreciate his support on this matter—the problem for many third sector organisations and for the parents and children in

this situation is that children are falling through a hole. The services are just not there and there is already confusion, and the amendments seek to address that matter in law rather than through guidance. As a result, I will press amendment 205.

The Convener: The question is, that amendment 205 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 205 disagreed to.

The Convener: Amendment 52, in the name of Liz Smith, is grouped with amendments 53 to 57, 64 and 66 to 81.

Liz Smith: One of the bill's complexities relates to the use of the terms "wellbeing" and "welfare". We know in our hearts that wellbeing sounds a little bit better and a bit more holistic than welfare and is a term that is perhaps missing from various pieces of legislation. However, the more we go into the issue, the more difficult it becomes to define wellbeing and I think that in practical terms the law will simply come back to the term "welfare". That is irrespective of the safe, healthy, achieving, nurtured, active, respected, responsible and included—or SHANARRI—indicators, which have been successful up to a point; indeed, I know that certain subdivisions of SHANARRI in local authorities have also been helpful, again up to a point. However, I think that the term "wellbeing" is fraught with many practical difficulties. It might be more holistic, but it is also a little more vague and is therefore not helpful as far as the bill is concerned. The conflation of the two terms could give rise to complications and confusion in the duties of certain service providers.

Amendment 52 seeks to define a related service as that provided in a local authority which, although not a children's service, is still capable of having a significant effect on a child's welfare. Amendment 53 seeks to ensure that children's services are provided in a way that best safeguards, supports and promotes the welfare of the child in the area concerned, while amendment 54 seeks to introduce a similar duty for related

services by again ensuring that, in the area concerned, such services are provided in a way that safeguards, support and promotes the welfare of children.

Amendment 55 relates to the implementation of the children's services plan and seeks to ensure that section 12(2) does not apply to the extent that the person providing the service considers that to comply with it would adversely affect the welfare of a child. Amendment 56 seeks to guarantee that the annual report published by either a local authority or a health board would take into account the extent to which the provision has achieved outcomes in relation to the welfare of children in the areas prescribed by Scottish ministers.

Amendment 57, which relates to part 4, seeks to define as one of a named person's functions promoting, supporting or safeguarding, where appropriate, the welfare of that child. Again, by substituting the term "wellbeing" with "welfare", I hope that the bill will result in a better service and provide greater clarity with regard to a named person's duties.

Finally, amendment 64 relates to information sharing and seeks to ensure that service providers divulge information in certain circumstances where it might be relevant—of course, it will depend on how we vote on that particular terminology later—to the exercise of any function that affects or might affect the welfare of the child or young person in question.

Unless the term "wellbeing" is much more tightly defined, problems could arise with children's services having to carry out a whole range of complex, even slightly esoteric tasks. If we make welfare the standard term throughout the bill, not only will a greater degree of clarity emerge, but the bill will come into line with major pieces of existing legislation, which rarely refer to wellbeing.

I move amendment 52.

Colin Beattie: In seeking to replace the term "wellbeing" with "welfare", the amendments in the group hit at an essential element of the bill. A core concept of the bill is the change from the more restricted term "welfare" to a term that is wider and more holistic, as Liz Smith mentioned, namely "wellbeing". In the consultation on the bill, 90 per cent of respondents agreed that

"a wider understanding of ... wellbeing should underpin our proposals".

I would therefore be concerned if the proposed terminological change took place.

Jayne Baxter: I do not support the amendments in the group. Much of the work that we do for young people, especially under GIRFEC, is based on the concept of wellbeing. I support that wider, more holistic approach and I

would be worried about us moving away from that. I would like to ensure that the concept of wellbeing is as embedded in the bill as it can be, so I do not support the amendments.

Liam McArthur: At stage 1, there was concern about the broadening out of the scope beyond welfare to wellbeing, principally in relation to the effect that it would have on the targeting of resources. A number of witnesses raised that with us, and there was also concern that there might be a redirection of focus in some areas that would not be helpful. Nevertheless, like others, I am concerned that the amendments would undermine the status of the GIRFEC process, so I cannot support them.

The Convener: I agree with Colin Beattie, Liam McArthur and Jayne Baxter. To remove the term "wellbeing" and replace it with "welfare" would be a step in the wrong direction. As Colin Beattie said, it would rather strike at the heart of what the bill is trying to do. Like other members, I will not support the amendments.

Aileen Campbell: Part of what we are seeking to achieve with the bill is the promotion of early intervention and prevention. Adopting the concept of wellbeing and taking that more holistic approach should encourage people to identify concerns at an earlier stage, as Colin Beattie and the convener mentioned. Rather than using the concept of welfare, which has been interpreted variously by services across a number of different pieces of legislation, we want to establish a clear, common definition of wellbeing that captures our early intervention principles and the advice of professionals who work across children's services.

The concept of wellbeing that we have set out in the bill is already widely used and is well understood by practitioners. Wellbeing is therefore already embedded in practice, and to dispense with it would seriously impact on practitioners' ability to take forward early intervention and remove a concept that is already accepted and widely implemented across Scotland. As the convener, Liam McArthur and Jayne Baxter acknowledged, wellbeing is the foundation of the GIRFEC approach and it has provided a common language for practitioners in taking forward GIRFEC across Scotland.

The concept was clearly endorsed in our consultation on the bill, as 90 per cent of respondents agreed that

"a wider understanding of a child or young person's wellbeing should underpin our proposals."

Those views were echoed in the evidence that the committee received. For example, Professor Norrie supported the use of the term "wellbeing" as opposed to "welfare" in his written evidence to the committee, stating:

“the Bill, and especially the ‘wellbeing’ provisions, is not about compulsory intervention but about seeking to avoid the need for compulsory intervention.”

A number of children’s charities also spoke to the committee about the importance of setting out wellbeing in the bill. For the reasons that I have outlined, I do not support the amendments in the group.

The Convener: I call on Liz Smith to wind up and say whether she wishes to press or withdraw amendment 52.

Liz Smith: I thank members for their comments. I entirely accept that we all like the concept of wellbeing. However, the use of the word “concept” in defence of the term “wellbeing” is interesting. Wellbeing is a concept, and my concern is that it is difficult to define that concept in law. If we are confident that it is already being well used in guidance, I do not see why it has to go into the bill, especially as it is extremely difficult to define.

I press amendment 52.

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

Members: No.

The Convener: There will be a division.

For

Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 52 disagreed to.

Amendment 206 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 206 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 206 disagreed to.

Amendment 207 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 207 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 207 disagreed to.

Amendment 208 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 208 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 208 disagreed to.

Amendment 91 moved—[Aileen Campbell]—and agreed to.

Amendment 209 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 209 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 209 disagreed to.

Amendment 210 not moved.

Section 7, as amended, agreed to.

Section 8—Requirement to prepare children's services plan

Amendment 211 moved—[Mary Fee].

The Convener: The question is, that amendment 211 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 211 disagreed to.

Amendment 212 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 212 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 212 disagreed to.

Section 8 agreed to.

Section 9—Aims of children's services plan

Amendment 213 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 213 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 213 disagreed to.

Liam McArthur: On the basis that we will agree to amendment 171, I will not move my amendment 168.

Amendments 168 and 53 not moved.

12:00

Amendment 214 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 214 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 214 disagreed to.

Amendment 215 moved—[Mary Fee].

The Convener: The question is, that amendment 215 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 215 disagreed to.

Amendment 169 moved—[Neil Bibby].

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 169 disagreed to.

Amendment 170 moved—[Jayne Baxter].

The Convener: The question is, that amendment 170 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 170 disagreed to.

Amendment 171 moved—[Joan McAlpine]—and agreed to.

The Convener: I welcome Mark McDonald to the committee. Amendment 216, in the name of Mark McDonald, is grouped with amendments 219, 222, 234, 236, 238, 240, 242 to 246, 248 and 250 to 256. If amendment 244 is agreed to, I cannot call amendment 183, in the group “Views of child in relation to child’s plan”, because of pre-emption.

Mark McDonald (Aberdeen Donside) (SNP): I thank the Royal College of Speech and Language Therapists, which I met on a number of occasions to discuss my amendments. They are intended to be probing amendments, to look at whether the issues that they raise can be put on the Government’s agenda when it drafts the guidance relating to the bill.

It is worth putting in context, in relation to speech, language and communication needs, that around half of children and young people in deprived communities have speech, language and communication difficulties. Such difficulties are the most common experienced by children and young people, affecting about two children in every classroom. The majority of young people in crisis have speech, language and communication difficulties. More than 60 per cent of children referred to psychiatric services, 88 per cent of young unemployed men and a significant percentage of young men in young offenders institutions are found to have speech, language and communication difficulties.

Issues relating to speech, language and communication are critical, which is why it is important to consider how they can be encapsulated. For example, amendments 216 and 219 look at how those issues can be encapsulated in children’s service plans. Amendment 234 is about guidance for local authorities, health boards and other service providers to optimise speech, language and communication development for children and young people.

The intention of amendment 243 is to ensure that directions could also be issued about the type of strategic action that could optimise that speech, language and communication development. I heard the committee debate issues of wellbeing and welfare. The amendment looks at issues relating to a child’s wellbeing and how speech, language and communication needs would factor into that. Section 31 might take cognisance of that but, again, that could perhaps be reflected in the guidance.

Amendment 250 deals with what strategic action could be taken, following on from the child's plan, to optimise speech, language and communication development.

Amendment 251 gets to the nub of the matter. Section 42 includes the phrase

"regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting."

As such interactions will include speech, language and communication, it would be interesting to hear from the minister whether they are factors in the Government's considerations on section 42. I would also be interested to know whether the minister would be willing to invite the Royal College of Speech and Language Therapists to be involved when it comes to the drafting and formulation of guidance in this area.

A number of Jayne Baxter's amendments are extremely similar in nature to the ones that I lodged, except for amendment 254, which relates to the establishment of a speech, language and communication strategy. I have some sympathy for that, given the success that the Scottish Government's autism and dementia strategies have had, but I do not think that the bill is necessarily the place to provide for such a strategy. Perhaps the lodging of the amendment could lead to further discussions and, I hope, some positive moves in that direction.

I move amendment 216.

Jayne Baxter: With the benefit of hindsight, it is clear that the issues of speech, language and communication are ones that we could have explored more fully in our earlier consideration of the bill. Children and young people need to be enabled to express themselves and to communicate to the best of their ability to understand their rights and to enjoy them fully. It seems like a niche area to focus on, but I believe that, when we look at the figures, the need for my amendments speaks for itself. Around half of the children and young people from deprived communities have speech, language and communication difficulties, which are the most common difficulties that are experienced by children and young people—two pupils in every classroom experience them, as Mark McDonald said.

To elicit a child's views, the child must have the optimum opportunity and, where necessary, effective support to understand information and to express their views. To provide such support effectively, public authorities must take into account the child's speech, language and communication needs, and the child's optimum capacity to understand the process and to express their views.

Amendment 254 is rather lengthy. It relates to the creation of a national speech, language and communication strategy for children and young people. Significantly, Scotland—unlike other parts of the UK—currently has no comprehensive unified strategic focus on optimising all children and young people's speech, language and communication development. A national strategy could deliver a major step change in such development. In the event that amendment 254 is not agreed to, I would be keen to hear from the minister what steps the Scottish Government intends to take to progress the measures that are outlined in it so that we do not miss the opportunity that the bill presents.

Liam McArthur: I listened with interest to Jayne Baxter's comment that this was an area to which we did not necessarily pay sufficient attention at stage 1. A similar claim could be made in relation to any number of areas. Even if we had doubled the amount of time that we spent on the bill at stage 1, we would probably still have only scratched the surface on a range of key issues that are relevant to the bill.

As Mark McDonald indicated, this group of amendments reflects the value of having the ability to lodge probing amendments. I do not think that there is a feeling that it would be appropriate to put the provisions in question on the face of the bill, but I hope that the fact that the amendments have been lodged and considered at stage 2 will ensure that the issues that underlie them can be addressed in guidance in due course.

The Convener: Before I invite the minister to respond, I would like to make some comments of my own.

I very much support the nature of Mark McDonald's amendments, but I agree with Liam McArthur that—as Mark McDonald himself said—they are probing amendments. It is extremely important that we get the opportunity at this stage to hear the Government's view on speech and language therapy and on the specific issue of a strategy, which Jayne Baxter raised. Therefore, we would be grateful if the minister could explain the Government's position on the amendments in this group and the general area that has been opened up as a result of Mark McDonald's helpful lodging of his amendments.

Aileen Campbell: I thank Mark McDonald and Jayne Baxter for raising the needs of that group of children. The Government absolutely supports the intent behind their amendments, as that group of children should and must benefit from the provisions of the bill. However, we believe that the existing provisions already enable their needs to be addressed.

The bill is founded on a holistic approach to the wellbeing of children and young people in all circumstances and with all conditions, as we have already said in debate. The bill has been drafted to ensure that the needs of any particular group of children will be supported by the different provisions, whether at a strategic level, as in the children's services plans in part 3, or at individual level, as in the support for individual children through parts 4, 5, 6 and 7. That includes speech, language and communication needs.

Moreover, we believe that guidance is the best place to address those children's specific needs under the different parts of the bill, and indeed, the needs of all groups of children with particular issues. To provide reassurance to Mark McDonald and Jayne Baxter, we will commit to ensuring that the distinctive needs of children with speech, language and communication issues will be addressed by guidance as appropriate and that we will work with appropriate organisations to do so. We appreciate the work of the Royal College of Speech and Language Therapists in raising those important issues.

The Convener: I call Mark McDonald to wind up and to indicate whether he wishes to press or withdraw amendment 216.

Mark McDonald: I realise that the committee has had a marathon session so I shall keep my remarks brief. I am satisfied that the minister has taken on board the points that have been raised through the amendments, so I seek to withdraw amendment 216.

Amendment 216, by agreement, withdrawn.

Amendment 217 moved—[Jayne Baxter].

The Convener: The question is, that amendment 217 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 217 disagreed to.

Amendment 218 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 218 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 218 disagreed to.

Amendment 172 moved—[Neil Bibby].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 172 disagreed to.

The Convener: Amendment 173, in the name of Liam McArthur, has already been debated with amendment 165.

Liam McArthur: I realise that I might have been a bit premature in not moving amendment 168, but now that we have actually agreed to amendment 171, I will not move amendment 173.

The Convener: I thought that at the time, but it is up to you.

Amendments 173, 219 and 54 not moved.

Amendment 220 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 220 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 220 disagreed to.

Amendment 174 moved—[Neil Bibby].

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 174 disagreed to.

Amendment 175 moved—[Neil Bibby].

The Convener: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 175 disagreed to.

Section 9, as amended, agreed to.

Section 10—Children's services plan: process

Amendment 92 moved—[Aileen Campbell]—and agreed to.

12:15

The Convener: Amendment 176, in the name of Liam McArthur, is grouped with amendments 223, 231 and 128.

Liam McArthur: As Mark McDonald said, this has been a marathon session, so I will try to keep my comments relatively brief. I put on record my gratitude to Barnardo's Scotland and Aberlour Child Care Trust for their assistance with amendment 176.

Section 8 provides for local authorities and health boards to introduce children's services plans. Those plans will help with the co-ordination, design and delivery of services, which will, in turn, improve outcomes for children and young people. Although the bill provides for local authorities and health boards to consult a variety of organisations and agencies, thereby giving them an opportunity to contribute to the preparation of the plans, there is not sufficient provision to include the views of children and young people. Amendment 176 seeks to address that. It very much speaks to the fundamental principles of the bill, which are about the centrality of children's rights and ensuring that their voice is heard at every stage where that is appropriate.

The other amendments in the group follow a similar pattern and seek to achieve the objectives of having the widest possible consultation and having children's voices heard throughout the process. Therefore, I will support those other amendments.

I move amendment 176.

Jayne Baxter: In preparing children's services plans, bodies should include direct consultation with children and families, as the recipients of services, as well as with service providers. There should also be reports on how that has been achieved. Therefore, I will move amendments 223 and 231.

Liz Smith: I agree with Mr McArthur and Mrs Baxter. I thank the groups that have helped us on the issue. Amendment 128 would require the Scottish ministers to consult the organisations that fall within section 10(2) and that might have an interest in the guidance, and such other persons as the ministers consider appropriate. I hope that that will ensure that the Scottish ministers consult voluntary organisations on guidance in which those organisations have an interest, prior to the

issue or revision of that guidance. Many voluntary organisations provide services for children on behalf of local authorities and other agencies, including health boards. As such, it is only right and proper that the consultation provisions are broadened to reflect that.

Joan McAlpine: Although I am sympathetic to the sentiments behind the amendments in the group, I am not sure that the amendments are necessary. Amendment 176 is unnecessary, as there is already a requirement in the bill to consult organisations that represent the interests of children as well as children themselves. Amendment 223 suggests that young people over 18 should be consulted. My concern is that that would dilute the focus of children's services. The amendment does not set a proportionate limit as to how much consultation would be required. The requirement in amendment 231 would be difficult to undertake and enforce. For example, how would we measure service users' expectations of the level and quality of service?

I accept that the intention of Liz Smith's amendment 128 is to ensure that Barnardo's and other such organisations are consulted before guidance is issued. I do not have a problem with that but, as a matter of course, the Government consults a wide range of organisations and children and families and it is inconceivable that it would not do so in the future. Therefore, the amendment need not be included in the bill.

Aileen Campbell: Amendment 176 adds a duty to consult children and young people in children's services planning. The amendment may have practical complexities that are best addressed through guidance that sets out how the views of children and young people are best represented in the planning process. A requirement exists in sections 10(1)(b)(i) and 10(2)(a) for those preparing a plan to consult such organisations that "represent the interests of persons who use or are likely to use any children's service or related service",

and those persons would, of course, include children themselves.

Amendments 223 and 231 remind us that children's services plans must focus on the needs of children and their families. However, the amendments are problematic. For a start, they refer to "young people", which, given the definition of children in the bill as those up to the age of 18, suggests that children's services planning should extend to include services to support a much wider age group, which, we believe, would hugely dilute the focus of planning on children.

The amendments also lack the proportionality that is essential for how local authorities and health boards respond to the needs and views of people in their area. Proportionality is crucial here

if planning is not to become a burden rather than a boon for public bodies, and that is best addressed in guidance, which should make clear our collective expectations over how user views should inform planning. For those reasons, we do not support amendments 223 and 231.

Amendment 128 seeks to ensure that guidance on children's services planning is issued or revised by the Scottish ministers only after consulting organisations falling within section 10(2) and such other persons as they consider appropriate in addition to the existing duty on ministers to consult the persons to whom the guidance relates. While we understand the intention behind the amendment, discussions on how that will work in practice will form part of the process of developing guidance around the duties in part 3, where consultation with relevant organisations will be ensured. It is not appropriate to legislate for that on the face of the bill; consequently, we do not support amendment 128.

In summary, we do not support the amendments in this group.

Liam McArthur: I thank colleagues and the minister for their comments on all the amendments in the group. I have listened carefully to what has been said. On amendment 176, I do not understand the concern about the aspiration to consult children and young people on the development of the plans on the basis that we do not set a limit on that consultation or the quality of it. Presumably, if that were a concern, a number of aspects of the bill would fall. If we are serious about putting children's rights at the centre and ensuring that the voice of children is heard as a result of the bill, changes need to be made, one of which is encapsulated in amendment 176.

Jayne Baxter set out the justification for her amendments. I have nothing to add to that. On amendment 128, in the name of Liz Smith, we are very conscious that a large amount of detail is to be taken forward through guidance, which is entirely right and appropriate, but that serves only to underscore the importance of ensuring that, as the guidance is developed and subsequently amended, the widest possible input from stakeholders with the relevant expertise is brought to bear. On that basis, amendment 128 is sensible.

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 176 disagreed to.

Amendment 221 moved—[Mary Fee].

The Convener: The question is, that amendment 221 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 221 disagreed to.

Amendment 222 moved—[Jayne Baxter].

The Convener: The question is, that amendment 222 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 222 disagreed to.

Amendment 223 moved—[Jayne Baxter].

The Convener: The question is, that amendment 223 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

Abstentions

McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 223 disagreed to.

Amendment 224 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 224 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 224 disagreed to.

Amendments 93 and 94 moved—[Aileen Campbell]—and agreed to.

Amendment 225 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 225 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)

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

Amendment 225 disagreed to.

The Convener: Amendment 95, in the name of the minister, is grouped with amendments 101 to 107, 111 to 116 and 118.

Aileen Campbell: Amendments 101 to 103, 105 and 106 are minor drafting amendments to tidy up direction-making and guidance powers in sections 15 and 16 to ensure drafting consistency with other similar powers elsewhere in the bill. On amendments 95, 104, 107, 111 to 116 and 188, the Delegated Powers and Law Reform Committee in its report on the bill recommended that, where guidance or directions are issued by ministers under the named persons, child's plan and wellbeing provisions in the bill, there should also be a duty for that guidance or those directions to be published. Our intention has always been to publish all bill guidance or directions. However, the bill does not currently specify that and therefore we were happy to accept the committee's recommendation to do so.

To ensure consistency of approach, this group of amendments also moves disparate guidance and direction provisions from throughout the bill and inserts them into a new catch-all section that places a duty on ministers to publish all bill-related guidance and directions and provides that those can be issued generally or for particular purposes and to different persons for different purposes.

I urge you to support my amendments 95, 101 to 107, 111 to 116 and 118.

I move amendment 95.

Amendment 95 agreed to.

Amendments 96 and 97 moved—[Aileen Campbell]—and agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

Section 12—Implementation of children's services plan

Amendment 226 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 226 be agreed to. Are we agreed?

Members: No.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 226 disagreed to.

Amendment 55 not moved.

Amendment 227 moved—[Siobhan McMahon].

12:30

The Convener: The question is, that amendment 227 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

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

Amendment 227 disagreed to.

Amendment 98 moved—[Aileen Campbell]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Reporting on children's services plan

Amendment 228 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 228 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 228 disagreed to.

Amendment 229 moved—[Mary Fee].

The Convener: The question is, that amendment 229 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 229 disagreed to.

Amendment 56 not moved.

Amendment 230 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 230 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 230 disagreed to.

Amendment 231 moved—[Jayne Baxter].

The Convener: The question is, that amendment 231 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 231 disagreed to.

Section 13 agreed to.

Section 14—Assistance in relation to children's services planning

Amendment 99 moved—[Aileen Campbell]—and agreed to.

Amendment 232 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 232 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 232 disagreed to.

Amendment 100 moved—[Aileen Campbell]—and agreed to.

The Convener: Amendment 127, in the name of Liz Smith, is in a group on its own.

Liz Smith: Amendment 127 would remove the ability of local authorities and health boards to compel private and voluntary bodies, whether or not they have received state funding, to comply with demands for information, advice or assistance.

Section 14 states:

“A person mentioned in subsection (2) must comply with any reasonable request made of them to provide a local authority and each relevant health board with information, advice or assistance for the purposes of exercising their functions under this Part.”

The bodies that are mentioned in subsection (2) include the private and voluntary organisations that were previously described in section 10(1)(b)(i), which provide a service in the area that, if it were provided by the local authority, any relevant health board or other service providers, would be in a children's service or a related service. As well as the bodies that deliver services

under contract to public bodies, section 10(1)(b)(i) would include activities that are not funded or supported by those public bodies.

I am grateful to organisations such as Barnardo's Scotland, which have in the past been uncertain about why the power to compel has been necessary. Generally speaking, voluntary bodies are more than happy to comply with information requests from such other bodies. Consequently, amendment 127 would remove the ability of local authorities and health boards to compel private and voluntary bodies, whether or not they have received state funding, to comply with demands for information, advice or assistance.

I move amendment 127.

Clare Adamson: Over the course of stage 1, we took a lot of evidence about information sharing and how it will be key to making the bill work. I do not believe that the provision is unreasonable. Any request from a local authority or health board under section 14 must by definition be reasonable, and organisations will not have to comply if they do not think that a request is reasonable. Such organisations could be involved in the preparation of children's services plans and in delivering those services, so it is perfectly reasonable to have the requirement in the bill.

Liam McArthur: I will pick up the point that Clare Adamson has, justifiably, raised. There are concerns about who the arbiter of reasonableness is in that relationship. Barnardo's has pointed out that the relationship that it and other voluntary organisations have with local authorities and health boards is generally positive and constructive. Therefore, it seems strange to introduce a new power of compulsion, whereby the arbiter of reasonableness appears to be the local authority or health board, rather than to rely on the proper functioning of that voluntary relationship.

I will listen with interest to what the minister has to say, but I have a great deal of sympathy for amendment 127 and for the evidence that was provided by Barnardo's and others that supports it.

The Convener: Before I call the minister, I support the comments of Liz Smith and Liam McArthur about questions in this area. It would be helpful, minister, if you could clarify your interpretation of what the bill says. Like other members, I have spoken to organisations—mainly Barnardo's—about their concerns in the area. I cannot imagine that it is the Government's intention to force organisations in the way that it could be interpreted. It would help the committee enormously if you could clarify the position.

Aileen Campbell: Thank you for allowing me the opportunity to clarify the position.

Amendment 127 tries to remove a burden from non-statutory bodies to assist local authorities and health boards in the preparation of children's services plans by removing them from the scope of the duty in section 14(1). However, we think that it is important that those bodies are able to assist in that way, as they have a key role in developing those plans. Local authorities and health boards, while accounting for a large share of the services that should go into the plans, will need information and commentary from a wider group of service providers to ensure that the plans have the maximum strategic impact. Allowing an opt-out from a duty to assist would undermine the intention of creating collective responsibility for planning services around the wellbeing of all children in an area.

It is important to recognise that the duty in section 14(1) is for those persons mentioned in section 14(2) to comply only with "reasonable requests". Also, by virtue of section 14(3), the duty does not apply when the person considers that providing the information, advice or assistance that has been requested would be incompatible with any duty of the person or would unduly prejudice the exercise of any of their functions. Those considerations provide safety checks on local authorities and health boards to ensure that they cannot abuse the provision in section 14 to compel persons to act in a way that would undermine their functions or be unduly onerous on them.

I hope that that has been helpful in clarifying our position. I do not support amendment 127.

Liz Smith: I will first pick up the important point that the minister made about collective responsibility. This is about having the widest impact on the children and taking into account their best interests. We have come across circumstances in which certain organisations have not been very clear about where their responsibility lies. Sometimes, children have missed out because they have not been able to access some of the services that they need. On that basis, I wish to press amendment 127.

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)

Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 127 disagreed to.

Section 14, as amended, agreed to.

Section 15—Guidance in relation to children's services planning

Amendments 101 to 103 moved—[Aileen Campbell]—and agreed to.

Amendment 233 moved—[Mary Fee].

The Convener: The question is, that amendment 233 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 233 disagreed to.

Amendment 234 not moved.

Amendment 104 moved—[Aileen Campbell]—and agreed to.

Amendment 128 moved—[Liz Smith].

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 128 disagreed to.

Section 15, as amended, agreed to.

Section 16—Directions in relation to children's services planning

Amendments 105 and 106 moved—[Aileen Campbell]—and agreed to.

Amendment 235 moved—[Mary Fee].

The Convener: The question is, that amendment 235 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

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

Amendment 235 disagreed to.

Amendment 236 not moved.

Amendment 107 moved—[Aileen Campbell]—and agreed to.

Section 16, as amended, agreed to.

Section 17—Children's services planning: default powers of Scottish Ministers

The Convener: Amendment 108, in the name of the minister, is grouped with amendments 109, 110 and 117.

12:45

Aileen Campbell: Amendment 108, which relates to section 17(1), seeks to replace wording that was inadvertently left out of the bill when it was introduced and to ensure that the local authority, health board and other service providers' duty to comply with section 12 is excluded from the direction-making power in section 17.

In effect, the amendment ensures that directions focus on issues of planning and not the implementation of plans and the delivery of services set out in section 12. It is all about consistency; the new wording mirrors the wording already in place in sections 15(1) and 16(1) in respect of guidance and other direction-making powers.

Amendment 109 is a minor amendment that seeks to improve the drafting of section 17(3) to clarify the persons whom the Scottish ministers

may direct to exercise planning functions, using their power in section 17(2)(b).

The purpose of amendments 110 and 117 is to remove the joint boards enforcement mechanism provided for in section 17(6) to (9). After discussion with COSLA, it was agreed that joint boards might result in the unnecessary transfer of powers from local authorities and health boards and that the existing direction-making powers in sections 16 and 17 are sufficient for enforcement.

I hope that the committee will be able to support amendments 108, 109, 110 and 117.

I move amendment 108.

Amendment 108 agreed to.

Amendments 109 and 110 moved—[Aileen Campbell]—and agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

After section 18

The Convener: I call Liam McArthur to indicate whether he wishes to move amendment 237.

Liam McArthur: Given what has gone before, convener, I move in hope rather than expectation.

The Convener: But you are moving all the same.

Liam McArthur: Indeed.

Amendment 237 moved—[Liam McArthur].

The Convener: The question is, that amendment 237 be agreed to. Are we agreed? [*Interruption.*] Are we not all agreed?

Members: No.

Liam McArthur: Close.

The Convener: You need only one to say no, Liam. There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)

Bibby, Neil (West Scotland) (Lab)

McArthur, Liam (Orkney Islands) (LD)

Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)

Adamson, Clare (Central Scotland) (SNP)

Beattie, Colin (Midlothian North and Musselburgh) (SNP)

Maxwell, Stewart (West Scotland) (SNP)

McAlpine, Joan (South Scotland) (SNP)

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

Amendment 237 disagreed to.

The Convener: Given the time and the fact that we have reached the end of part 3 of the bill, I

intend to stop the proceedings. We will pick up where we have left off at our next meeting, which will be in January, and we will also consider amendments to parts 5 to 7. The deadline for lodging amendments to those parts of the bill is this Thursday at noon.

I thank members for their attention and the minister and her officials for their attendance.

Meeting closed at 12:47.

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