



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 14 January 2014

Session 4

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EDUCATION AND CULTURE COMMITTEE

2nd Meeting 2014, 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)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 6

Scottish Parliament

Education and Culture Committee

Tuesday 14 January 2014

[The Convener *opened the meeting at 09:01*]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning, and welcome to the second meeting in 2014 of the Education and Culture Committee. I remind everyone present to switch off their mobile phones and any other electronic devices, because they can interfere with the broadcasting system.

Today, we will continue our consideration of the Children and Young People (Scotland) Bill at stage 2. Once again, I welcome the Minister for Children and Young People, Aileen Campbell, and her accompanying officials. Officials are, of course, not permitted to participate in the formal proceedings.

We will not go beyond part 11 of the bill today. Depending on the progress that we make, I will conclude proceedings at a suitable point. Any amendments that we do not reach will be dealt with at our next meeting, on 21 January.

Section 42—Early learning and childcare

The Convener: Amendment 337, in the name of Liam McArthur, is in a group on its own.

Liam McArthur (Orkney Islands) (LD): Shortly, we will come to the substance of what we are looking to the bill to achieve on early learning and childcare but, whatever we decide in that context, I think that we would all accept that the bill can represent only a first step towards achieving our ambitions. There is an opportunity and, indeed, a need for us to underscore the purpose of what we seek to achieve and to ensure that it is outcome focused and focused on the needs of the child and of the family.

We all recognise the positive benefits that access to good-quality early learning and childcare in the crucial early years can deliver, which are wide ranging and are not limited to the aims that are set out in amendment 337. Nevertheless, I think that it is helpful to identify those key aims, beyond the policy memorandum, by making clear the specific challenges that we are—or, at least, should be—seeking to overcome through the measures in part 6.

As I said, we will come on to the issue of the level of ambition that we should show, particularly with respect to provision for children from the poorest backgrounds, but I hope that agreement can be reached, at least on the key aims that we are trying to meet.

I move amendment 337.

The Convener: As no other members wish to speak, I call the minister.

The Minister for Children and Young People (Aileen Campbell): Amendment 337 seeks to amend the early learning and childcare provisions to include specific reference to the aims of those provisions. It is unusual to place such general text in a bill, as it would have no practical effect. The one exception is that we have set out in the bill the aims of children's services plans. That is appropriate, because it relates to the aims of such plans rather than the aims of the bill itself.

Throughout the consultation on the bill and since its introduction, the Scottish Government has made clear commitments that the provisions are a first step towards longer-term aims that meet the needs of all children, parents and families, which will lead to improved outcomes for children and will support parents to work or study, as Liam McArthur acknowledged. That staged approach will focus initially on those children from more disadvantaged backgrounds in the context of access to high-quality, universal provision.

We have demonstrated our commitment to expanding eligibility by announcing an increased entitlement to cover two-year-olds in families that are seeking work from August this year, and a further expansion to those two-year-olds who meet the current criteria for free school meals from August next year. That will be funded through the Barnett consequentials that were confirmed in December last year. However, that still falls short of the transformation that we seek to make for all children and families in Scotland, further commitments on which have been set out in the Scottish Government's white paper, "Scotland's Future".

In relation to the aims of early learning and childcare, the bill introduces a new and more integrated concept of care and learning, which will be defined in more detail in statutory and supporting guidance on what we mean by early learning and childcare. Through that guidance, the Scottish Government will set out the bill's provisions in the context of the wider and longer-term aims, which will emphasise the evidence base for the expected multiple benefits and improved outcomes for children and families.

In summary, we do not support amendment 337.

Liam McArthur: I listened to what the minister said, particularly about the practical effect of amendment 337. Nevertheless, there would be value in setting out more clearly—beyond the policy memorandum, as I said—the aims that we seek to achieve through the bill. On that basis, I will press the amendment.

The Convener: The question is, that amendment 337 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 337 disagreed to.

Section 42 agreed to.

Section 43—Duty to secure provision of early learning and childcare

The Convener: Amendment 48, in the name of Liz Smith, is grouped with amendments 49 and 50.

Liz Smith (Mid Scotland and Fife) (Con): Thousands of children lose out on nursery provision simply because they were born in the wrong month. Children who were born between 1 September and 29 February receive fewer hours of nursery provision than those who were born in other months of the year, so their parents are also at a financial disadvantage.

Recent comprehensive statistical evidence that Reform Scotland published showed that that anomaly, which results from the Scottish Government's policy of funding nursery provision after a child turns three, means that nursery provision can vary by up to 317 hours or by more than £1,000 within the cost of nursery partnership provision.

A child who was born between 1 March and 31 August is entitled to the full two years of nursery provision before beginning school, but a child who was born between 1 September and 31 December gets only 18 months' provision and a child who was born between 1 January and 28 February receives just 15 months. The Scottish Conservatives believe that that situation is grossly unfair and that it would be much better if nursery

provision started at a fixed point in the year for all children.

The Scottish Government's defence of the current situation is that, when a child starts nursery at the beginning of the first term following their third birthday, that makes the best use of the entitlement and takes proper account of the child's age and educational needs, and parents can keep younger children in nursery and defer the start of school if they feel that that is best. I ask the Scottish Government to consider the following points.

If we take a child who was born in late July and one who was born in late October, who both start primary school at the same time, where on earth is the logic in arguing that the child who was born in late July is entitled to six months more of nursery education? Under the current arrangements, only children who were born in January or February can defer entry to primary school and be guaranteed an extra year's nursery provision. There is therefore further discrimination between those who were born between September and December and those who were born in January and February.

If there are to be arbitrary cut-off points, that is fine, but we need to be sure that all children are treated equally and that the system does not discriminate on the basis of children's birthdays. Only 50 per cent of children who are born in Scotland are entitled to two full years of nursery provision. Children within the September to February group whose school entry is not deferred receive 400 hours less than the 600 hours a year under the Scottish Government's policy.

Amendments 48 to 50 are designed to make the necessary changes to ensure a level playing field. I believe that the proposed changes have the support of Labour and Liberal members and of a wide cross-section of society. I hope that the minister will agree to change what is currently a highly discriminatory policy, which causes many children to lose out and many parents to face a financial penalty just because of when their children were born.

I move amendment 48.

Liam McArthur: Like Liz Smith and other members, during stage 1, I raised the issue of potential discrepancies in relation to how some children would benefit from the additional early learning and childcare provision that is being introduced through the bill.

I am pleased that Liz Smith has lodged amendments that would address that shortcoming. Given what appeared to be a cross-party consensus during the stage 1 debate on the need to tackle the issue, I hope that the minister will agree to these sensible changes. Indeed, given

that, last week, she lodged amendments to address not dissimilar anomalies regarding eligibility criteria for those who are entitled to aftercare, it would be passing strange for her not to take the same approach in relation to eligibility criteria in this instance.

I reiterate my support for amendments 48 to 50 in Liz Smith's name, which would, as she said, create a level playing field.

Colin Beattie (Midlothian North and Musselburgh) (SNP): My concern with a change to commencement dates is that there seems to be no funding available for it. The amendments do not indicate where the funding would come from, despite the fact that the change would result in perhaps 30,000 additional two-year-olds entering the system. There is currently no capacity in the system for that.

I think that everyone round the table would like further expansion of early learning and childcare as and when it can be done. The Government's proposals to allow for future expansion of the facility to more children are eminently sensible, but it has probably done the maximum that it can at the moment. The bill certainly provides future flexibility to allow changes to come in at a later date.

Under Liz Smith's proposal, there would still be a slight variation in the provision as to whether the child starts on their birthday or the term after their birthday. The current system makes best use of the entitlement in relation to the kids' needs and ages, so I will certainly oppose the amendments.

Aileen Campbell: As we have heard, amendments 48 to 50, through moving to a system of all children receiving two full years of funded early learning and childcare, would result in significant numbers of children taking up their entitlement, some from the age of two and a half.

Although the Government absolutely accepts the need to build on the provisions in the bill, the priority at this stage must be to build additional hours and flexibility into our high-quality universal provision—increasing the entitlement to about 16 hours a week—and to focus on our more vulnerable two-year-olds as we expand. As I said, we have demonstrated our commitment to do that through the increased coverage of more vulnerable two-year-olds that was announced last week.

The amendments are unnecessary, as any further expansion or changes to commencement dates for entitlement to early learning and childcare for two or three-year-olds can be achieved through secondary legislation made under the bill.

The bill makes a significant change in reconfiguring the system of early learning and childcare, and further expansion must be subject to adequate funding. All the research shows that pre-school provision is beneficial to young children, particularly those who are most disadvantaged, only when it is of high quality.

On the dates on which three-year-olds take up the funded entitlement, local authorities can and do deliver provision beyond the minimum number of hours and the minimum of eligible children. A number of local authorities already start children from their third birthday, or the month after their third birthday, where they have capacity to do so. The youngest children—those born in January or February—who may get less provision when they are three, will continue to be entitled to an additional year after they are four, where parents want that, to ensure that they benefit from early learning and childcare and are ready to start school.

As I said, the commencement dates for entitlement to early learning and childcare will be set through secondary legislation. The intention is to continue commencement for three-year-olds from the first term after their third birthday. Some slight variation will always remain—relating to whether children commence from their third birthday or the first term after that birthday—but I reiterate that the system makes the best use of the entitlement in relation to children's ages and needs.

There are capacity issues. Colin Beattie suggested the possibility of 30,000 additional two-year-olds and the associated costs that go with that. He raised some pertinent points that Liz Smith might address when she sums up.

I reiterate that the bill represents the first step in our journey towards transforming childcare, starting with those who need it most—the most vulnerable two-year-olds. Last week, we indicated our intention to expand that provision further. Therefore, I do not support the amendments in this group.

09:15

Liz Smith: I listened carefully to what the minister said, which repeated the comment that the Scottish Government has made before—that the current policy makes the best use of the entitlement. That is all very well for children who can receive the entitlement, but it is not all very well for those who are discriminated against because of their birthday.

I note what the minister said about the cost. There is of course a cost, but there is also a choice about priorities. I do not accept that the blatant discrimination against quite a large number

of children can be allowed to continue. If the cost must be met, it should be met. In the context of all the recent Government announcements, it is hard for a minister to defend the existing policy, given all the other commitments that the Government has made about the essential nature of looking after our youngest children.

I do not accept the minister's response. I will press amendment 48.

The Convener: The question is, that amendment 48 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 48 disagreed to.

The Convener: Amendment 84, in the name of Neil Bibby, is grouped with amendments 338, 85, 86, 339 and 340.

Neil Bibby (West Scotland) (Lab): I am pleased to speak to my amendments 84 to 86, which would increase and guarantee the number of two-year-old children in Scotland who are eligible for early learning and childcare. I am disappointed that it appears from a letter to the committee last week that the minister has already ruled out Scottish National Party Government support for increasing and guaranteeing in the bill the number of two-year-olds who are eligible for childcare.

We all know the importance of providing quality childcare. It helps a child's learning and development and helps to put money in families' pockets. It is targeted at the poorest and helps to reduce child poverty, and it is good for the economy more generally.

All parties that are represented on the committee have said that we need to provide more childcare, particularly for two-year-olds. However, just 3 per cent of two-year-olds will be guaranteed free nursery provision in the bill, which states that looked-after two-year-olds and those who are the subject of a kinship care order will be eligible for free nursery provision. I have said since before the bill was published that that is unambitious and

risks being a missed opportunity. Opposition parties have rightly said that we can and should go much further—I repeat that, despite the Scottish Government's partial U-turn last week. That was a U-turn, given that the minister said on 8 October 2013:

"I am not prepared to announce something that we cannot deliver on later".—[*Official Report, Education and Culture Committee*, 8 October 2013; c 2968.]

The Scottish Government has not gone far enough to back Labour's proposal to give half Scotland's two-year-olds childcare now. From September this year, 40 per cent of two-year-olds in England will receive nursery and childcare provision, but only 15 per cent will get that in Scotland. When that goes up to 27 per cent in Scotland in the following year, the SNP Government will still lag behind the Conservative and Lib Dem coalition on childcare.

As members know, amendment 85 would entitle half Scotland's two-year-olds to 600 hours of childcare a year by using receipt of working tax credits and child tax credits as a criterion. That would benefit 30,000 children and save their families more than £2,000 a year in childcare costs—the figure was calculated using the same methods that the Scottish Government uses for its claims—and would be action to help with the cost of living and take children out of poverty. The policy is identical to the first stage of the plans that are in the Scottish Government's white paper.

There are resources and powers to deliver on childcare now, as the First Minister proved last week, so this is a question of political will. Given that the policy is in the white paper, I expect SNP members to support amendment 85, which appeared to be SNP Government policy six or seven weeks ago.

Members should also support amendment 86, which would guarantee childcare for the poorest two-year-olds. It would extend childcare to two-year-olds who qualify to receive free school meals. That would mean that approximately 27 per cent of the poorest and most vulnerable two-year-olds would receive early learning and childcare, which was the SNP's policy last week.

I am pleased that my amendments are supported by a significant number of children's charities and others, who reaffirmed their support this week. Helping children in poverty should be a priority, and I expect members to support—as a minimum—amendment 86, given that its provisions appear to be the new SNP policy on childcare as announced last week.

I welcome Liam McArthur's amendments 338 to 340. Our amendments propose different criteria, but they are consistent in acknowledging that the bill needs to go much further in providing nursery

places and guaranteeing childcare for two-year-olds, so I am happy to support those amendments.

It is worth restating that, even after the Scottish Government's partial U-turn of last week, 40 per cent of English two-year-olds will, as of September this year, receive childcare, while only 15 per cent of two-year-olds in Scotland will receive such provision. The Scottish Government will still be lagging behind England on childcare, even when it gets the percentage up to 27 per cent.

I ask the minister to state in her response whether she thinks that the situation is satisfactory, and to explain why Scottish two-year-olds will not have the same access to nursery provision as English two-year-olds. Is the minister happy with that? I think that parents will agree with me that it is not satisfactory.

It is also worth stating that SNP members will, in voting against the amendments, be voting against their own white paper policy and the policy change that was announced last week. There seems to be a real reluctance to put additional childcare entitlements for two-year-olds in the text of bill, and the obvious question is why. The original childcare entitlement for 3 per cent of two-year-olds was in the text of bill, so why will the Government not go further and include additional entitlements?

Why will the Government not support its own policy and put its stated childcare commitments in the text of the bill? If the minister refuses to do so, will she confirm that there will be no commitment to childcare—other than for looked-after two-year-olds—in the bill as currently drafted?

My Labour colleagues and I have said that the bill risks being a missed opportunity, but in reality it is fast becoming a childcare bill with next to no childcare commitments written into it.

I move amendment 84.

Liam McArthur: What a difference a week makes. I know that we were unable to deal with part 6 of the bill last week, for perfectly understandable reasons, but it leaves us wondering what might have been. Would the minister have been granted licence to pre-empt the First Minister's announcement later in the day regarding the extension of early learning and childcare provision for two-year-olds, or would Mr Salmond have required her to block the Opposition amendments in this grouping that are aimed at doing just that, in order to keep his powder dry?

Whatever the case, I reiterate my colleague Willie Rennie's welcome for the substance of what was announced last Tuesday afternoon. Although the 27 per cent of two-year-olds who stand to benefit from the extension in provision by the

summer of next year falls short—as Neil Bibby explained—of the 40 per cent that are covered south of the border, that is by any measure a major advance on what the Scottish Government had originally proposed in the bill.

The extension will bring real benefits to some of the most disadvantaged two-year-olds from this year onwards, and I congratulate the minister on that change of position. Colleagues will recall that an extension has been a priority for Scottish Liberal Democrats over successive budgets. It reflects our belief that, welcome though the plans are for three and four-year-olds, it is the investment before the age of three that can make the most significant difference in closing gaps in cognitive development, social skills and so on, and ultimately in attainment and outcomes later in life. That was the thrust of the evidence that we received from Save the Children, among others, and of the well-established empirical findings of Nobel laureate Professor James Heckman. If those gaps are not closed at that stage, it is difficult—if not impossible—to close them subsequently.

That is why my colleague Willie Rennie has been pressing the First Minister on the issue week after week. Initially, those calls were rejected on the basis of policy differences between the Scottish Liberal Democrats and the Government. More recently, the SNP ministers have argued that, in order to deliver ambitious plans for early learning and childcare for two-year-olds, we first need the powers of independence. Given that childcare is an entirely devolved area, that position was never credible, and last week's announcement has thankfully put it to rest.

Not surprisingly, I am still keen for the Government to go further and to be more ambitious in the bill. Moreover, the delays in reaching the current position have had the unfortunate consequence—as Neil Bibby said—of limiting the scope for us to properly scrutinise the Government's proposals for two-year-olds, which we are told will be introduced in secondary legislation rather than in the text of the bill.

In that context, the amendments in this grouping are very valuable. Indeed, they perhaps offer members an opportunity not only to keep the Government honest but to press for greater ambition yet.

I support Neil Bibby's amendments, albeit that they go further than the figure of 40 per cent of two-year-olds that we have proposed until now. Ultimately, that is where we should be heading. Of course, it may be achievable only in stages, and my amendments address the ways in which eligibility criteria might be extended, although it seems logical to start with free school meals and tax credits.

Amendment 338 links eligibility to disability living allowance, reflecting the additional or specialist needs that that group of two-year-olds may have. Access to quality early learning and/or childcare in that context would be hugely beneficial in laying the foundations for improved outcomes in later life.

Amendment 339 widens the criteria to include those identified as having additional support needs and could make a dramatic difference to later outcomes. It also chimes with the approach that is taken in the Education (Additional Support for Learning) (Scotland) Act 2009.

Amendment 240 ties eligibility to those whose parents are in receipt of state pension credit. Although the previous two categories will be covered south of the border only from September 2014, two-year-olds in this group already benefit from what is being put in place by the coalition Government. The amendment also picks up a slight deficiency in Neil Bibby's proposals, which appear to exclude this group of two-year-olds on the basis of the age of their parents or guardians. I think that he would perhaps accept that.

Again, I welcome the progress that has been made on the issue over the past week. The new year appears to have ushered in a new willingness on the part of the Government to listen. However, I urge the minister to go further and to support an even greater level of ambition for two-year-olds from the most disadvantaged backgrounds. On that basis, I will move the amendments in my name.

Clare Adamson (Central Scotland) (SNP): I will speak to amendments 84 to 86. The bill has always been a starting point for the Scottish Government's ambitions and I am sure that, as Neil Bibby said, all members around the table agree on the importance of expanding childcare. However, at the core of this Government's actions is that the changes should also be affordable, costed, phased, and delivered in a sustainable way. On the developments last week, we heard that, as Neil Bibby said, the original figure for two-year-olds who have access to childcare will change from 3 per cent to 15 per cent by August this year. In addition, with the changes that the Government outlined last week, provision will be extended by August 2015 to reach 27 per cent of two-year-olds. We know that those changes are phased, costed and planned for. The investment in the training of childcare specialists announced last week is also welcome.

The Government's proposal is absolutely the right way to move ahead. We can talk about the 40 per cent figure for provision down south, but we have seen the reports on the quality of care. This Government will not compromise on the quality of childcare provision—I include staff ratios in that. The amendments are not required at the moment.

The bill is a starting point and we have seen that the Government will continue to expand provision when it is reasonable to do so and when that has been costed.

Mr Bibby made comments about people voting against amendments that echo what is in the white paper. The bill is in the context of where we are now—we have a devolved Government with a fixed budget, within which we have no flexibility. We can deliver transformational childcare policy only if people seize the opportunity of independence, in which case we will vote for childcare as set out in the white paper.

Jayne Baxter (Mid Scotland and Fife) (Lab): Although I support all the amendments in the group, I wish to focus on those in the name of my colleague Neil Bibby.

It is disappointing that we did not have time to reach the amendments at our meeting last Tuesday, especially when we consider the subsequent debate in the chamber that afternoon, but we are finally here now. It is clear that there is support from the Scottish Government for extending childcare provision to 50 per cent of two-year-olds; indeed, that is clearly laid out in the white paper. Where we differ from colleagues in the Scottish Government is that we want to deliver that commitment now. Amendments 85 and 86 in particular could make a real financial difference to many parents across Scotland. By putting those amendments into the Children and Young People (Scotland) Bill today, we would be able to create a policy now—not years down the line—that would assist in getting parents into work and would help to lift the most vulnerable children out of poverty.

Joan McAlpine (South Scotland) (SNP): I apologise to the convener, the minister and members for my slightly late arrival.

I, too, wish to speak to amendments 84 to 86. First, I congratulate Liam McArthur on the measured and consistent nature of his remarks and his acknowledgement that what the Government is proposing is a substantial advance as regards early years education.

However, it must be put on the record that the Labour Party has no credibility whatever on the measure, because it voted against extending childcare provision last week. It has no clue how to pay for its proposals under the devolved settlement, other than by depriving young children of free school meals, although the free school meals policy is backed widely by child poverty charities.

We can advance to the level of childcare that we require only with full independence, which will allow the income tax from women returning to work to come back into the economy. That will make the policy sustainable in the long term.

I do not support amendments 84 to 86. It is amazing that Labour had the cheek to lodge them.

09:30

Liz Smith: I fully understand and accept that not all childcare can be delivered in one context. The Conservatives have been totally consistent about that. Nonetheless, a major point of principle is raised: at no stage in evidence to the committee or in negotiations with individual members did we have any indication whatever of how money would be found for possible policy changes or of the timescale for such changes.

I regret that the minister has announced that secondary legislation will be required, because the bill's intention is clear. In its comments, the Government has been clear about the major principle that is behind the bill—it is very much about childcare. I regret that that focus has been dissipated and that we have ended up in a situation in which such amendments must be discussed at stage 2 and possibly at stage 3, when they are central to the arguments that have been made, particularly by many children's charities.

I add my support to the amendments in the group, because they are important to advancing the policy debate.

The Convener: I must be honest and say that, without proper analysis of where the finance would come from, it is impossible to see how any member can seriously consider supporting the amendments in Neil Bibby's name. In last week's debate in the chamber, Mr Bibby said that we could just use the £300 million of Barnett consequentials. I am afraid that that shows a gobsmacking level of financial illiteracy on Labour's behalf, to be frank.

We all know that part of the £300 million is capital and that part of it is financial transactions. What is left is the money that has been announced for free school meals. The Labour Party has said that it would use that money, but it is insufficient to pay for the £100 million policy that Mr Bibby wishes to introduce.

That only leaves the money that has been allocated to equalising the poundage for business rates in Scotland and England and the money to expand the small business bonus scheme. If Mr Bibby can tell us how he would get the £100 million that the policy would cost, I am sure that members would be extremely interested in that detail. What is also missing from amendments 84 to 86 and from Labour members' comments is how the capacity to introduce the policy now would be found, where the staff would come from, how that would be paid for and any other detail that

would make the policy available and its introduction now sustainable.

The amendments in Neil Bibby's name are no more than an attempt to cover the Labour Party's embarrassment at voting against free school meals and the expansion of childcare that the First Minister announced last week. I know that Labour members are in a difficult and embarrassing position, but the amendments do not help them. I do not support the amendments.

Aileen Campbell: We share the ambition to deliver early learning and childcare to significantly more two-year-olds who are in greater need. We know that children from more disadvantaged backgrounds benefit most from high-quality early learning and childcare. Far from ruling out expansion in my letter, I have consistently said that we will expand provision through secondary legislation. We have always planned to expand eligibility through the order-making power in the bill when that is affordable. Any orders will be subject to the affirmative procedure, so it will receive detailed parliamentary scrutiny. That is why the order-making power is included in the bill, as I said on 8 October.

I am absolutely delighted that the First Minister announced last week that, from August next year, we will increase entitlement to those two-year-olds who are set out in amendment 86, but we do not need an amendment to do that. The proposals that the First Minister announced, which, as the convener pointed out, Neil Bibby's party voted against, cover two-year-olds in families that are seeking work—approximately 15 per cent of two-year-olds from August this year. That will be followed by the two-year-olds who are set out in Neil Bibby's amendment 86—approximately 27 per cent of two-year-olds who meet the criteria for free school meals. That represents a phased and sustainable expansion of childcare for the most vulnerable two-year-olds. We are prioritising the young children and families who will benefit most from an expansion of funded hours.

That is a positive step in expanding childcare provision, but it is not the transformation that we seek through independence. That can come only when the revenue that is generated by increased numbers of women in the labour market can be used to pay for the increased provision of childcare.

We share Neil Bibby's ambitions, but we have to be absolutely realistic. There are not the resources to do what he proposes. As we set out in "Scotland's Future: Your Guide to an Independent Scotland", a more fundamental transformation of childcare for pre-five children will be possible only with the increased tax revenues that will help to fund expanded childcare. Under our proposals, if labour market participation were increased, more

national insurance would be paid, while increased spending would boost VAT receipts and companies would pay corporation tax on the profits generated by their employees. This is about transforming the structure of our economy and the nature of our society.

That is why our ambitions for childcare cannot be funded on consequential hand-outs of money that is ours and comes back to us from Westminster. Under devolution, the vast majority of tax revenues flow to Westminster; we pay for Westminster policies that we do not necessarily agree with, such as the policy on Trident; and we are trying to mitigate the impact of welfare cuts that we cannot reverse, as tens of thousands of children grow up in poverty. It is suggested that about 50,000 children being pushed into poverty as a result of the coalition's welfare reforms.

I urge members to recognise that we always planned to expand early learning and childcare provision through secondary legislation. The intention was made clear that that would apply to three and four-year-olds in the first instance, with further expansion when that was affordable and sustainable. The confirmation of consequential funding in December has enabled us to commit to making that initial expansion.

In his closing remarks, I urge Neil Bibby to provide us with clarity on how he and the Labour Party expect the proposals to be delivered. I am not just talking about the money, although I would be extremely interested in his comments on how he intends to fund the proposals, in relation to which the convener made good and valid points about the consequentials and the understanding of them. I would also be interested in how Neil Bibby intends to deliver the proposals in relation to capacity issues, such as staffing. How does he expect that to be coped with between now and August this year? If he cannot be specific on how he wants to deliver the proposals, the rate of expansion that he proposes could be viewed as political grandstanding.

I want to discuss other amendments in the group. Amendments 338 and 339 seek to extend the 600 hours of provision to two-year-olds who qualify for disability living allowance and to two-year-olds who have been identified as having additional support needs for the purposes of the Education (Additional Support for Learning) (Scotland) Act 2004. It is important that parents and professionals recognise that young children with additional support needs should be supported under the 2004 act. There are existing duties to provide appropriate educational support for disabled children before an entitlement to funded early learning and childcare would take effect—potentially from birth, where a need is identified.

Young children with additional support needs or a disability will also benefit from the named person provisions and from the requirement for a child's plan where a wellbeing need is identified from birth. A key issue for young children with additional support needs that arise or become apparent in the first few years of life is the identification of those needs. A child's health and wellbeing are assessed from birth during the contacts that are set out in the child health programme, which now includes a 27-month universal health review. The named person will support the identification of wellbeing concerns at an even earlier stage than the one at which entitlement to early learning and childcare would take effect.

Finally, the bill proposes that local authorities consult locally representative populations of parents. Local authorities should use those opportunities to encourage broad, open and transparent dialogue with parents, and to identify the needs of parents with a range of needs, including those who have children who are disabled.

The statutory guidance that will support the bill's early learning and childcare provisions will refer to the code of practice on additional support for learning under section 27 of the Education (Additional Support for Learning) (Scotland) Act 2004, to make clear local authorities' existing obligations regarding disabled two-year-olds and those with additional support needs. It is not necessary to amend the bill in those respects. With that, I have set out the reasons why we cannot support amendments 338 and 339.

We announced a significant expansion of childcare last week. We have always made it clear that that can be done through secondary legislation. The crux of the matter is how Neil Bibby intends to find the funding to cover what he proposes. There are also significant capacity issues. If Neil Bibby cannot respond to those points, to ensure that the quality of provision is such that two-year-olds can benefit developmentally from this first step towards transforming childcare in Scotland, something is seriously lacking in his proposal.

Neil Bibby: I want to rebut some of the highly misleading claims of Joan McAlpine, the minister and the convener, who said that Labour voted against increased childcare provision last week. I remind members that Labour proposed last week to provide childcare for half Scotland's two-year-olds, whereas the SNP proposed to provide childcare for 15 per cent and then 27 per cent of two-year-olds. If any party voted against increased childcare last week, it was the SNP. I urge members to be careful about making erroneous claims, which I think highlight their insecurity about their party's childcare policy.

Labour and other Opposition parties have lodged dozens of amendments to the bill, and so far not one has been supported by a single SNP committee member or by the Scottish Government. Perhaps that is not surprising. However, I am surprised that SNP members will not support their own childcare policies, as set out in the white paper and the policy change that was announced last week. The Government's failure to support its own policy will leave parents and families perplexed about how committed the SNP Government is to its childcare policy. One week childcare is the Government's number 1 priority, then it is not the number 1 priority, and then it is again.

We have heard excuses from the minister, and what she said is confusing. The minister who said that she would not go further on two-year-olds now says—after the First Minister's announcement last week—that she was going to go further all along. The Scottish Government has the power and the resources to provide half of Scotland's two-year-olds with childcare now, as it proved last week—

Aileen Campbell: Will you take an intervention?

Neil Bibby: I want to conclude, minister.

Labour supports the provision of more childcare now, under devolution. As I said, the SNP could have gone much further last week but chose not to do so.

Finance has been mentioned. If finance is the reason for objecting to the amendments in the group, SNP members cannot possibly object to amendment 86, because the SNP announced the money for the policy last week.

George Adam (Paisley) (SNP): Will you take an intervention?

Neil Bibby: No.

Concern about finance is not an argument against amendment 86, because the Scottish Government last week pledged to introduce and fully fund the approach for which amendment 86 would provide.

On amendment 85, I simply point out that this is a matter of priorities. The Scottish Government pledged to spend £88 million on free school meals and childcare in 2015-16 and I have no doubt that it could have found—and will find—an additional £12 million from somewhere before the budget is finalised if it decides to spend £100 million.

On the comments about financial illiteracy, I remind the minister that she had to provide a revised forecast for the cost of providing childcare for looked-after two-year-olds. The estimate went from £1.1 million to £4.5 million.

Members talked about capacity issues. I remind the minister that on 8 May, in the context of her

objection to increasing provision beyond 3 per cent of two-year-olds, she said:

“it is not acceptable to this Government to run the risk of there being adverse impacts on our youngest children.”—
[*Official Report*, 8 May 2013; c 19514.]

Capacity issues are certainly not a reason to object to amendment 86 or indeed amendment 85.

09:45

The SNP could and should go further, as Labour has suggested, but it has chosen not to. A YouGov survey last week showed that parents agree: 66 per cent of parents think that the Scottish Government should get on with expanding childcare now. However, despite what the minister has said, she will not put an extension of provision for two-year-olds in the bill. Given that the two-year-old entitlement is already in the bill and that expanding it is the Government's own policy, I think that parents will be confused and will again question how committed the SNP Government is to its own childcare policies. They will be confused about why the Scottish Government is not putting its own stated commitments on childcare in the bill.

As I said, despite the partial U-turn last week, as of September this year 40 per cent of two-year-olds in England, but only 15 per cent of two-year-olds in Scotland, will get nursery provision. Even when the figure in Scotland goes up to 27 per cent, the SNP Government will still lag behind the Conservative and Liberal Democrat coalition.

The SNP could go further now on childcare but has chosen not to. The bill is a missed opportunity. It will be remembered as the childcare bill with next to no childcare commitments in it. We do not need separation to increase childcare. Members have said that they share Labour's ambitions for increasing childcare. If so, they should vote for our amendments.

The Convener: The question is, that amendment 84 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 84 disagreed to.

Amendment 338 moved—[Liam McArthur].

The Convener: The question is, that amendment 338 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 338 disagreed to.

Amendment 85 moved—[Neil Bibby].

The Convener: The question is, that amendment 85 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 85 disagreed to.

Amendment 86 moved—[Neil Bibby].

The Convener: The question is, that amendment 86 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 86 disagreed to.

Amendment 339 moved—[Liam McArthur].

The Convener: The question is, that amendment 339 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 339 disagreed to.

Amendment 340 moved—[Liam McArthur].

The Convener: The question is, that amendment 340 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 340 disagreed to.

Amendment 49 not moved.

The Convener: Amendment 327, in the name of Neil Bibby, is grouped with amendments 301 to 302 and 344 to 346.

Neil Bibby: Childcare for the early years is only one part of the Scottish model of childcare that we need to develop. We need to ensure that we have a model of childcare up to the age of 14 that meets the needs of children and their families. That is why back in May 2013 Labour proposed a childcare commission to examine all the issues. It is very unfortunate that the proposal was rejected by the Scottish Government. It was particularly unfortunate because the Children and Young People (Scotland) Bill says nothing about out-of-school childcare and childcare at holiday times. The white paper does not mention those either, which is a major oversight.

Improving access, availability and the affordability of out-of-school care is crucial in developing a Scottish model of childcare that supports children and helps parents. My Labour colleagues and I have consistently raised those issues in committee and chamber debates on the bill, and when childcare has been debated more generally.

Amendment 327, which is supported by Barnardo's, Children 1st and others, seeks to ensure that increasing childcare for the early years is not done to the detriment of out-of-school and holiday care. Councils are suffering significantly from budget cuts. Although they want to work with the Scottish Government to improve childcare, they need the funds to do that, and there is concern that out-of-school care and holiday care are vulnerable to budget pressures. Amendment 327 would ensure protection of existing services.

Children 1st, in its briefing for this meeting, said that parents and carers who contact parentline Scotland tell it that the need to improve availability of age-appropriate and affordable childcare for older children is a major issue. Childcare is important throughout childhood and is not limited to the early years.

Amendment 302 in the name of Clare Adamson is welcome in that it at least mentions out-of-school care. However, it would do little that is new. I suspect that local authorities already consult and plan alongside parents. The same is the case for amendment 301, although I welcome the intention to ensure that consultation happens. However, why does that have to be done every two years as opposed to every three, four or five years?

The general point is that the Scottish Government clearly does not view out-of-school care as a priority—it is not mentioned in the bill or the Government's white paper. However, the fact that the SNP Administration does not place any emphasis on it does not mean that we cannot pass an amendment that would allow future Governments that value out-of-school care the opportunity to increase its availability.

Amendment 346 would ensure that the Scottish Government, working with local authorities and their community planning partners, provides out-of-school care. Save the Children, Children in Scotland, the Scottish Out of School Care Network, Parenting Across Scotland, the Scottish Childminding Association and One Parent Families Scotland point out that non-statutory services are vulnerable to cuts. Because of that—coupled with the changes that are planned by the UK coalition Government that will result in withdrawal of financial support for parents of over-5s and successor arrangements being put in place only incrementally over several years—they fear that parents and carers here could face severe pressures. Therefore, there is an increasing case for putting the provision of childcare for school-age children on a statutory footing.

Those organisations believe that priority should be given to school-age children in low-income households with working parents. Others may disagree with that focus, but the key is to establish out-of-school care as a key part of a Scottish model of childcare. Scottish children are at a disadvantage compared with English children in that regard. There is an existing duty on local authorities in England—the Childcare Act 2006 was passed by the previous UK Labour Government—to secure for working parents sufficient childcare that covers childcare for children up to 14 years.

Amendment 344 would introduce a right to childcare for young children and school-age children under 15. It is widely recognised that there is a lack of suitable childcare in Scotland for children and their families. As I have said, the bill says little about childcare for children under 3 and nothing about school-age children. There is considerable support for the measure. The Parliament's Equal Opportunities Committee recommended that childcare for school-age children should be available on a statutory basis for children up to the age of 15. There is also public support for that—Save the Children has collected more than 1,000 signatures for its petition to the Scottish Government.

As is widely recognised, and as I very much recognise, there are cost implications for delivering wider childcare improvements in the long term. I do not expect that to happen overnight; I do not think that any member would. I hope that we can work together across the parties to amend the bill so that we can act when resources become available and can be given to local authorities so that they can provide more childcare for primary-school age children. My fear is that the bill, as it stands, is unambitious and that we will have missed an opportunity without substantial amendments in this area.

I move amendment 327.

Clare Adamson: I will speak to my amendment 301. I start by thanking Save the Children and other children's charities that have been involved in drafting the amendment.

The purpose of the amendment is to require authorities to consult every two years and to prepare and publish plans in relation to early learning and childcare that they have the power to provide. Coupled with the requirement in section 46 to consult, and to prepare and publish plans in relation to 600 hours of mandatory early learning and childcare, the provisions in amendment 301 would ensure that there would be a comprehensive picture of the availability and integration of those services consistently across the country. The amendment would also require authorities every two years to consult and plan in relation to all-day care and out-of-school care that they have either a duty or a power to provide, in order to ensure a comprehensive picture of availability, and to identify opportunities to integrate and support provision, as appropriate.

Amendment 301 would provide local authorities with a more comprehensive picture of provision for childcare of all ages, and would encourage integrated and longer-term planning of support and the range of provision. It would also increase transparency and would include parents and carers in the process at a level that is not achieved under the current planning process.

George Adam: We have already heard today about unsustainable proposals for childcare. The convener said that it was "financial illiteracy", but we have moved on to fiscal fantasy with the Labour Party. Neil Bibby says that he knows that costs will be involved and that he does not expect that what he wants would happen overnight. Why has he changed his attitude? It is expected that everything else would happen overnight. Why the change of heart? He usually asks for everything to be delivered now, at this precise moment.

The bill is a starting point. It is an opportunity for us to build towards something better for children. As some of my colleagues have already mentioned, the white paper says that when we get the powers of independence, we will be able to make that life-changing difference to young people. That is the important thing.

How would Mr Bibby pay for what he wants? Would it mean another attack on the small business bonus or would he take the money away from something else within the confines of devolution? Has Mr Bibby spoken to the Convention of Scottish Local Authorities and other relevant organisations? Amendment 327 is unnecessary because under the Children (Scotland) Act 1995, local authorities already have a statutory duty to provide care outside school hours and during school holidays. Amendment

344 seeks day care for pre-school children, which is no different from the early learning provision that is already offered in the bill. Mr Bibby not only has difficulty with the fiscal side of things, but seems to have difficulty with understanding the bill itself. Amendment 345 is too bureaucratic and would be difficult to define at national level.

Mr Bibby talks about trying to work with local government; having worked with Mr Bibby in local government, I would say that my five years was spent understanding what local government is about and how we can work with it in partnership, as opposed to the centre forcing things on it. I ask Mr Bibby and his Labour colleagues to think again and to try to join us here in the real world, where we work within the fiscal boundaries of the devolved settlement, and to look to the better future that independence offers.

Aileen Campbell: The amendments in Neil Bibby's name highlight the important issue of out-of-school care, which the Government takes very seriously. The financial memorandum has estimated the additional costs that will arise from the bill, and the Scottish Government's draft budgets for 2014-15 and 2015-16 include in full the costs of early learning and childcare. The Scottish Government has also since committed to fully funding the costs of an additional 15 per cent of two-year-olds in 2014 at £15 million, and an additional 27 per cent of two-year-olds in 2015 at £44 million. There is therefore no reason for local authorities to reduce funding from any budgets to meet the additional cost of early learning childcare as specified in the bill and through secondary legislation. We would not expect that.

10:00

Amendments 344 to 346 seek to introduce rights to day care for all pre-school children, and to out-of-school care for children up to the age of 14 who are attending school. They also seek to impose duties on local authorities to secure sufficient day care and out-of-school care in order to enable parents to work or study, based on assessments of sufficiency and the setting of mandatory hours for out-of-school care. However, the amendments' effect would be to take us down a route that has not worked in England and which is currently being repealed. They would create rights that cannot be delivered and for which there is no immediate capacity or resourcing, and they would impose duties on local authorities—duties that would be both subject to mandatory hours and to being delivered only as "far as" would be "reasonably practicable", which would likely be confusing and ineffective.

The Scottish Government has consistently indicated that the bill's provisions are a first—but significant—step towards developing a system of

early learning and childcare that meets the needs of all children, parents and families. Day care for pre-school children is, in practice, largely the same provision as early learning and childcare, and the bill and associated guidance documents will clarify how local authorities can deliver their statutory duties alongside wider powers for children before they start school.

I have been consistently clear in saying that the bill is a starting point—which George Adam reiterated—and that we will expand entitlement, where doing so is affordable, through secondary legislation under the bill, under an all-encompassing definition of early learning and childcare.

I have also said consistently that high quality is paramount, which is why we announced significant increases in the number of eligible two-year-olds, using consequentials that were confirmed by the UK Government in December last year. That is why the First Minister asked the Council of Economic Advisers to consider the economic and social impacts of improving levels of childcare, and to guide our thinking on changes in policy that could provide the best system for children and families in our economy. That is also why he has identified transformational change in early learning and childcare as being a key priority for Scotland. It is also why we have set out in the white paper, “Scotland’s Future”, that transformational change to match the levels that are commonplace across Europe can be achieved only with independence. It is also why I announced that I would ask the early years task force to look at out-of-school care and to recommend what more can be done on it. We are working and engaging with our valued partners including the Scottish Childminding Association, the Scottish Out of School Care Network and the Care and Learning Alliance, and many have already benefited through the third sector early intervention fund and our strategic funding partners.

I support amendments 301 and 302, which will support the longer-term aims to develop systems of early learning and childcare and out-of-school care, and will enable local authorities to co-ordinate consultation on and planning of all mandatory provision of early learning and childcare, alongside the non-mandatory provision that local authorities have the power to deliver or support. I welcome Clare Adamson’s amendments 301 and 302 and their aim to broaden the scope of consultation and planning in the bill, to reflect its longer-term aims to develop systems of early childhood learning and care for all children, parents and families.

I agree that amendments 301 and 302 will provide local authorities with a more “comprehensive picture” for children of all ages

and will encourage integrated and longer-term planning of and support for the range of provision.

This will create the opportunity for local authorities to co-ordinate consultation and planning of all mandatory provision of early learning and childcare, and out-of-school provision alongside the non-mandatory provision that local authorities have the powers to deliver, or support.

In this group, I support only Clare Adamson’s amendments 301 and 302.

The Convener: I call Neil Bibby to wind up and indicate whether he intends to press or withdraw amendment 327.

Neil Bibby: As I said in my introductory remarks, it is a major oversight that the Scottish Government has not mentioned out-of-school and holiday care in the bill or the white paper. I welcome the fact that the minister has said that the early years task force is now considering out-of-school care, but that should have been started some time ago. It is clear that we need to do more to improve access to and availability and affordability of out-of-school care during term time and school holidays. Given that, and the concerns that have been raised by parents and opposition parties, I am surprised that the minister has not lodged any amendments on out-of-school care.

As I said earlier, I welcome Clare Adamson’s amendment 302, but I do not believe that it sufficiently addresses the issue and the concerns that we have heard. I would expect that the services would be consulted on and planned with parents.

Although the bill may say something about out-of-school care, there is a real danger that if Clare Adamson’s amendment 302 is successful on its own it will do not very much to improve out-of-school care. That is why I lodged other amendments in this area. Amendment 327 is to protect existing out-of-school care services and my other amendments are to provide a potential framework for childcare for children under three and for primary-school age children.

Mr Adam mentioned that the Children (Scotland) Act 1995 already has regard to the matter. If Mr Adam reads my amendments, he will see that I am proposing to amend the 1995 act, because I do not think that the legislation is sufficient.

On finances, I acknowledge—as I have before and as is widely recognised—the potential cost implications of delivering childcare improvements in the long term, but my amendments provide the framework for that. It would not happen overnight, but over the longer term. I hope that we can amend the bill by working across the parties appropriately.

George Adam: Neil Bibby admits that there would be financial implications. I have already asked how he would pay for them. How would he pay for the measures?

Neil Bibby: Mr Adam is missing the point.

George Adam: So, does the money not count?

Neil Bibby: My amendments would provide the framework for providing out-of-school care and holiday care to children before the age of three and up to the age of 14. It would be possible to come up with individual policies after that, and it would be up to individual parties to propose policies along those lines. The amendments provide the framework for that.

I hope that, working across the parties, we can amend the bill to ensure that we are able to act when resources become available and are given to local authorities so that we can provide more childcare for primary-school age children.

I accept that there may be concerns over some aspects of my amendments, but they seek to address a gaping hole in the Scottish Government's childcare policy. If the amendments are not passed at stage 2, I sincerely hope that we can revisit them, or something similar, at stage 3. It is all very well to criticise the amendments, but there is a need to address the issue. No one, with the exception of Clare Adamson, and not even the minister, has made proposals.

I hope that members will support my amendments at stage 2. If not, we can revisit the matter at stage 3. Otherwise, this will be another area where the bill will prove to be a missed opportunity.

The Convener: The question is, that amendment 327 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 327 disagreed to.

Amendment 50 not moved.

Section 43 agreed to.

After section 43

The Convener: Amendment 341, in the name of Jayne Baxter, is grouped with amendment 313.

Jayne Baxter: Amendment 341 is designed to ensure that the order-making powers in section 43 are subject to increased parliamentary scrutiny. The intention is to ensure greater input from key stakeholders. The order specifying eligible pre-school children would be given the scrutiny worthy of such an important decision and would be properly debated by Parliament.

As is clear from the debate that we have had this morning, childcare and the provisions that are made by Parliament to support children and their parents are hugely important. The procedure that is set out in amendment 341 will ensure that all relevant bodies are consulted on the provisions, and it will give them an opportunity to help to shape proposals.

I move amendment 341.

Aileen Campbell: Amendment 341 seeks to make the order-making powers in section 43(2)(c)(ii)—to specify which children are eligible for early learning and childcare—subject to the super-affirmative procedure. My amendment 313 will make the order subject to the affirmative procedure, on the recommendation of the Delegated Powers and Law Reform Committee.

We think that the affirmative procedure will offer more detailed parliamentary scrutiny of orders. We consider that to be appropriate. Extensive consultation of stakeholders on eligibility for 600 hours of free early learning and childcare, and on supporting statutory guidance to be issued on the bill's provisions has been undertaken and will continue over the coming months. That will build on our consultation of stakeholders. I believe that we have a great deal of consensus around our aims to increase eligibility and in the first instance to focus on children who are most vulnerable, and we shall engage closely with stakeholders to achieve that. However, we consider that making orders subject to the super-affirmative procedure is not necessary, so I ask members to support amendment 313.

The Convener: No other member has indicated that they wish to contribute, so I call Jayne Baxter to wind up and to indicate whether she wishes to press or withdraw amendment 341.

Jayne Baxter: I will press amendment 341. The level of interest and the contributions that we have seen throughout the progress of the bill is a measure of the knowledge and expertise that are out there. Amendment 341 would provide an opportunity for them to be channelled and brought to bear on the issue.

The Convener: The question is, that amendment 341 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)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions

McArthur, Liam (Orkney Islands) (LD)

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

Amendment 341 disagreed to.

Sections 44 to 46 agreed to.

Section 47—Method of delivery of early learning and childcare

The Convener: Amendment 342, in the name of Liam McArthur, is grouped with amendment 343.

Liam McArthur: I am well aware that my track record on getting amendments passed so far has been less than impressive, and I put the blame for that squarely—if with a woeful lack of chivalry—at the door of the minister, but I shall try to break my ill-deserved duck.

Amendment 342 reflects the fact that, whether it is an increase in hours of early learning childcare for three and four-year-olds or an expansion in provision for two-year-olds from the most disadvantaged backgrounds, what matters most is the quality of what is provided—a point made by the minister in earlier remarks. As Children 1st pointed out,

“increasing the amount of early learning and childcare will do nothing to improve outcomes for children if this care is of a low quality”.

That is not a point on which there will be any dispute in the committee, and the minister has already signalled her agreement in that respect, yet it is not clear how the bill guards against the potential dilution of quality, so my amendment leaves open at least the option for minimum standards to be agreed and set by ministers, if and where appropriate.

Amendment 343 would allow Parliament a means of monitoring progress in delivery by local authorities of greater flexibility in the delivery of early learning and childcare services. The

committee heard at stage 1 that the current lack of flexibility in the way in which nursery provision is delivered is a problem, particularly for parents on lower incomes or without a wider network of family or friend support.

There are concerns that the bill has not delivered the improvements promised initially, and that the “have regard” duty on local authorities may provide less than adequate incentive for further change across the country, leading to the prospect—according to Save the Children and others—of

“more ‘postcode lotteries’ for childcare.”

In that context, it seems necessary and sensible to ensure that data is collected on the progress being made in subsequent years. In that way, ministers and Parliament can identify where barriers remain and can take a view on whether further action and the necessary resources are required.

I hope that the two amendments find favour with colleagues and with the minister. I move amendment 342.

The Convener: No other member has indicated that they wish to contribute, so I call the minister to speak to amendments 342 and 343.

Aileen Campbell: Unfortunately, we are not in a position to assist Liam McArthur in breaking his duck. However, I recognise the spirit in which he has moved many of his amendments, and I want to continue working with him and with other members to improve the bill. I shall outline why we cannot support the amendments in his name this morning.

Amendment 342 seeks to introduce minimum standards for early learning and childcare provision and to enable any provider who meets those standards to deliver the entitlement where a parent wishes it. It is important to note that the bill maintains local authorities’ key responsibility for the system in Scotland, including their duties to secure partnership places and improvement in the quality of provision.

10:15

That will ensure important joint working with partner providers at a local level in order to maintain and improve quality over and above the standards set by Education Scotland and the care inspectorate. Although local authorities can continue to use partner providers to provide capacity and flexibility, it is important that the expansion of provision and flexibility builds on the good quality that the local authorities deliver. That is why we are also asking local authorities to reconfigure their provision and, to enable that to happen, we are putting capital into the system to

support adaptations and improvements to the infrastructure.

We value highly partner providers' contribution to early learning and childcare and, in the past, we have called on them mainly to deliver flexibility for working parents. We should move away from debates about the providers to focus on where parents can access high-quality provision and the patterns of hours that meet their needs. We can secure diversity, high quality and flexibility from all sectors and it is for local authorities to manage that process.

We have put flexibility and choice on a statutory footing for the very first time. Local authorities will consult parents locally on patterns of hours that give a degree of choice and flexibility and will develop systems to deliver them. Funded early learning and childcare is part of our high-quality universal education system based on the national frameworks curriculum for excellence and "Pre-Birth to Three: Positive Outcomes for Scotland's Children and Families". By securing the expansion of that service through education authorities, we will protect education, quality and integration with other key areas of policy and practice for children such as, among many, getting it right for every child, additional support for learning and child protection. We will maintain a high-quality universal service that we can also seek to expand and build on to meet the needs of a wider range of children and families in the future.

Amendment 343 seeks to place a duty on Scottish ministers to report to Parliament on progress on delivering flexibility in early learning and childcare provision. When we consulted on the bill, respondents told us that placing duties on local authorities to offer a specific range of early learning and childcare flexible options would not be effective in ensuring more flexible delivery. As a result, we did not include that in the bill.

The bill now strengthens the original plans on flexibility proposed in the consultation by allowing far broader, more diverse and more locally based needs and options and being more reflective of them. In addition, each local authority will have to publish plans as a result of their consultations with representative populations of parents on patterns of provision that best meet their needs. Education authorities will also be under a duty to have regard to the desirability of ensuring that the method by which they make early learning and childcare available is flexible enough to allow parents an appropriate degree of choice over patterns of hours of provision when deciding how to access the service. The provisions on consulting, planning and flexibility are sufficient and transparency and local accountability will be key to the whole process. The requirement for Scottish ministers to

report to Parliament would represent disproportionate bureaucracy and centralisation.

As a result, we do not support amendments 342 and 343. However, I reiterate that we are happy to engage on and accept any amendments that seek to improve the bill. I think that my comments on these amendments demonstrate that we have considered them very carefully, but at this point we are not in a position to accept them.

Liam McArthur: I am grateful to the minister for at least attempting to let me down gently with regard to these amendments.

On amendment 342, I certainly recognise that delivering the quality and the flexibility that we want is and must remain the responsibility of local authorities. Inevitably, that will draw on what partner providers are able to deliver and I do not necessarily envisage any problems in that respect. Nevertheless, it would be remiss of us not to include in the bill the sort of safeguard that I have envisaged in amendment 342.

As for amendment 343, I cannot see how a requirement on ministers to report to Parliament can be seen as either bureaucratic or disproportionate. The danger is that, during our consideration of a bill, we focus a great deal of attention on its strengths and weaknesses and there is a tendency for us then to move on to the next piece of legislation or issue that we are required to deal with and not necessarily return to the previous matter. Given that, as we have acknowledged, flexibility will be delivered progressively over time, we need to keep a watching brief on the matter to establish what barriers might remain, what further action might be needed and what resources might help to deliver it.

For that reason, I will be moving amendment 343 and, for now, will press amendment 342.

The Convener: The question is, that amendment 342 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 342 disagreed to.

Section 47 agreed to.

Section 48—Flexibility in way in which early learning and childcare is made available

Amendment 343 moved—[Liam McArthur].

The Convener: The question is, that amendment 343 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 343 disagreed to.

Section 48 agreed to.

Section 49 agreed to.

After section 49

Amendments 301 and 302 moved—[Clare Adamson]—and agreed to.

Amendment 344 moved—[Neil Bibby].

The Convener: The question is, that amendment 344 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 344 disagreed to.

Amendment 345 moved—[Neil Bibby].

The Convener: The question is, that amendment 345 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 345 disagreed to.

Amendment 346 moved—[Neil Bibby].

The Convener: The question is, that amendment 346 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 346 disagreed to.

The Convener: As we have reached the end of part 6, I will suspend briefly for a short break.

10:23

Meeting suspended.

10:29

On resuming—

Section 50—Corporate parents

The Convener: Amendment 303, in the name of the minister, is grouped with amendments 304 to 307, 347, 310, and 315.

Aileen Campbell: Amendments 305, 306 and 307 remove the Scottish Court Service, the Scottish Further and Higher Education Funding Council and regional strategic bodies from the list of corporate parents that are contained in schedule 3. That is because, as administration and funding bodies respectively, those organisations do not have a key role to play in

direct decision making about children and young people and we are content that they do not have a corporate parenting role.

Amendment 303 retains Scotland's Commissioner for Children and Young People and post-16 education bodies but exempts them from the duty to comply with directions issued by Scottish ministers in section 58 because it conflicts with their established status as independent from ministers, the Scottish Government and the Scottish Parliament as set out in existing legislation.

Additionally, should Scottish ministers add a new body to the list of corporate parents in future using the order-making power in section 52, amendment 303 allows the orders to modify section 50 so that the same exemption from ministerial direction can be applied to that body should that be appropriate, if for example, that new body has a similar protection of independence from ministers.

Amendments 304, 310 and 315 give Scottish ministers the flexibility to adjust the list of corporate parenting duties in section 52 and also to modify their application to particular corporate parents by order. That will allow us to be flexible in future when certain duties might be more appropriate to apply to specific corporate parents. It is not intended that the power be used to reduce the baseline of duties; it will allow for the future adjustment of corporate parenting duties in light of experience of the evolution of the role, including, where necessary or desirable, the flexibility to apply specific duties to an appropriate group of corporate parents or, indeed, to individual ones.

We cannot support amendment 347, in the name of Jayne Baxter, because it introduces a duty that is too specific to apply to all corporate parents. Although we acknowledge the principle of what amendment 347 is trying to achieve, it is not appropriate or practical to require those organisations that quite rightly have a role as a corporate parent but are not in the front line of supporting children and young people to promote and facilitate contact arrangements between them and those who have parental responsibilities for them and their siblings. Having said that, we believe that the corporate parenting responsibilities in section 52 are quite clear and that they communicate the importance that we place on that role. Each corporate parent will plan and report individually and collaboratively on how they have exercised that role. In due course, if required, Scottish ministers may use the order-making powers set out in amendment 310 to adjust the list of corporate parenting duties and their application to particular corporate parents in light of the experience and evolution of the role.

In summary, I ask the committee to support my amendments in this group and to consider not supporting amendment 347, whose principles we acknowledge but which we cannot support.

I move amendment 303.

Jayne Baxter: I wish to highlight the responsibilities of corporate parents as raised by amendment 347. The amendment has two main functions. The first is to extend to all corporate parents the duty that section 17 of the Children (Scotland) Act 1995 places on local authorities in respect of personal relations and contact between looked-after children and their parents. The second is to place a duty on corporate parents to at least consider whether contact between separated siblings is practicable and appropriate in the circumstances of each case, consistent with promoting the child's interests, while providing a safeguard when it is not practicable or appropriate.

The community law advice network, which has extensive experience of representing children and young people, has highlighted the importance of amendment 347, as it has found that the relationships that looked-after children have with their siblings become all the more important to them when they are removed from their core family unit, and corporate parents often fail to consider the impact of sibling separation on children and young people or to promote the sibling relationship at all. Contact with siblings can be a reassuring link to the family home that might come without the pressures that parental contact can often bring, such as supervision and assessment.

Liam McArthur: On amendment 303, it would be helpful to get clarification from the minister in relation to a point that has been raised with me. I would certainly not argue against the removal of any power of direction from ministers over colleges or universities, as colleagues will recall from the Post-16 Education (Scotland) Bill process. Nevertheless, we are all aware of the concerns around educational attainment outcomes for those who are looked after in terms of their representation in further and higher education. It would therefore be helpful to know how—perhaps through outcome agreements and guidance to the funding council—the minister thinks that some of the objectives that we all want to be fulfilled for looked-after children might be attained without there necessarily being ministerial powers of direction over colleges and universities.

Aileen Campbell: I thank Jayne Baxter for lodging amendment 347 and for raising the points that she has made today in describing her intentions through that amendment. We do not support the introduction of duties that are too specific to apply to all corporate parents.

The corporate parenting responsibilities in section 52 clearly communicate the level of importance that we place on that role. If required in the light of experience and evolution of that role, Scottish ministers may use the order-making powers that are set out in amendment 310 to adjust the list of corporate parenting duties and their application to particular corporate parents. Amendment 347 is too specific to apply to all of them and to the different levels of interaction that corporate parents have. However, we appreciate Jayne Baxter raising the points that she has.

On the points that Liam McArthur has made, my officials engaged with all the relevant organisations before making a determination about whether to remove them from schedule 3. The aim is to balance their independence against the direction that ministers have, but we nevertheless feel that many organisations should have a corporate parenting responsibility, balanced with direction. That needs to be worked through and, through guidance, we will be able to provide that balance under this part of the bill.

We can work with all the stakeholders who may have remaining concerns, but the guidance will tidy up some of the issues. We are working with stakeholders to ensure that the bill does what we intend it to do to strengthen corporate parenting for children throughout Scotland.

Amendment 303 agreed to.

Amendment 304 moved—[Aileen Campbell]—and agreed to.

Section 50, as amended, agreed to.

Schedule 3—Corporate parents

Amendments 305 to 307 moved—[Aileen Campbell]—and agreed to.

Schedule 3, as amended, agreed to.

Section 51—Application of Part: children and young people

The Convener: Amendment 308, in the name of the minister, is grouped with amendments 309, 348, 394, 349, 395, 350 to 353, 381 to 385 and 314.

Aileen Campbell: This is a sizeable area of the bill and I will do my best to keep my comments as succinct as possible. However, there is an awful lot to get through and I want to give the committee as much information as I possibly can.

The committee will be aware that, on 6 January, I announced the Scottish Government's commitment to a number of measures to support care leavers over the next 10 to 12 years. All my amendments in the group form part of that wider package. As a result of the amendments, starting

in 2015, each new cohort of 16-year-olds in foster, kinship or residential care will have a right to stay in care until they are 21 years old. That means that, over the coming years, just as is the case with their non-looked-after peers, those who are not ready to leave home will be entitled to remain with their carers until the age of 21. Ultimately, we will put measures in place to enable care leavers to return to care if they need that support as they make their way towards independent living.

Just as important, this package of amendments provides that local authorities will be required to notify the Scottish ministers and the care inspectorate about the death of any care leaver in receipt of aftercare services. That is so that, where possible in such tragic circumstances, lessons are learned to ensure that, as far as possible, services are doing their utmost for all our young people who have been in care.

My amendments seek to clarify the eligibility of those care leavers who are entitled to corporate parenting and aftercare support, and they seek order-making powers to extend those types of support to further cohorts of formerly looked-after children, through secondary legislation.

During all stages of the development of the bill it has been our absolute priority to consult and to engage in some detail with young people and with all parts of the sector, so as to steer a path through the complex and emotive issues that are covered in various parts of the bill. We know that the bill is better as a result and we want that level of commitment to continue into the work of the expert group, which will be established very soon to work collaboratively to develop and deliver the next stage of measures.

This significant package of amendments represents a uniquely Scottish solution to tackle some of the most pressing issues that some of our most vulnerable young people face. Not only is it a huge step forward for Scottish teenagers in care, but it is groundbreaking in policy terms. I am very proud of these amendments and I want to record my thanks to the committee for its role in bringing to the fore many of the issues tackled in the bill, not least through the inquiry that we debated last year.

I would also like to acknowledge the effort and commitment shown by all the sectoral representatives, particularly Aberlour Child Care Trust, Barnardo's Scotland and Who Cares? Scotland. I also acknowledge the Centre for Excellence for Looked After Children in Scotland, local government contacts and our looked-after young people themselves, who collectively and separately worked with us to identify the most appropriate and realistic way forward in challenging financial circumstances.

I will set out specifically what my amendments seek to achieve. Amendments 308, 309 and 314 will clarify who is eligible for corporate parenting support by replacing references to being over school age or ceasing to be of school age with references to

“at least the age of 16”

and

“on the person’s 16th birthday”.

They will also add a new order-making power, subject to the affirmative procedure, for the Scottish ministers to specify descriptions of young people who were, but are no longer, looked after by a local authority. That is with the intention of extending the categories of young people who would be eligible for support.

Amendment 348 will remove the reference to persons being “over school age” and will convey eligibility for assessment for aftercare support to anyone who leaves care aged 16 or above. That will ensure that those who might enter care at a later age—15, for example—and leave care at 16 will be eligible. It will align corporate parenting eligibility in section 51 with section 60, on aftercare.

We also propose order-making powers for the Scottish ministers to specify additional descriptions of those who were but are no longer looked after by a local authority, who will then be eligible for aftercare support. That means that as soon as is practicable we will bring forward secondary legislation to extend the measures to additional cohorts of young people. It is appropriate to attach affirmative procedures to such orders, to give the Parliament the appropriate level of scrutiny to debate the merits and affirm any changes that are thought necessary.

As I mentioned, the expert group is still to work out details of any additional cohorts of those eligible for corporate parenting and aftercare support, but I want to emphasise the Government’s commitment to widen the groups of young people who are eligible. However, we cannot support Liam McArthur’s amendment 394, as it would introduce an entitlement for aftercare support that is too broad at this point: one that realistically could not be met with the current infrastructure. The expert group will provide ministers with realistic recommendations on the most appropriate timing and categories of additional cohorts of children who should be entitled to such support.

We acknowledge the need to immediately extend entitlement to stay in care to those who are 16 years old and wish to stay in their placement. Therefore, amendment 353 will insert a new section 26A into the 1995 act to specify who is

eligible for continuing care. It defines continuing care, sets out the conditions under which the duty would not apply and sets out the circumstances under which the duty might cease. The effect of that will be that any child who is in care at 16 years old and then ceases to be looked after will have the right to stay in their kinship care, foster care or residential placement, subject to certain exceptions.

We also propose order-making powers to allow the Scottish ministers to modify new section 26A to vary the situations in which the duty to provide continuing care either does not apply or ceases to apply. There are also order-making powers to specify the upper age limit of eligible persons and the period of time for which the local authority’s duty to provide care lasts.

The last two powers will enable us to roll out the continuing care entitlement to additional cohorts of young people in a measured way over the coming years. We have suggested that that be subject to the affirmative procedure, to give the Parliament the appropriate level of scrutiny to debate the merits and make changes that are deemed to be necessary.

Amendment 350 will provide for the notification of deaths of those persons to whom the local authority was providing aftercare support, under section 29 of the 1995 act, at the time of their death. As I said earlier, it is important that lessons are learned to ensure, as far as possible, that services do their utmost for all our young people who have been in care. That replicates a similar provision for the notifications of deaths of looked-after children that is contained in regulation 6 of the Looked After Children (Scotland) Regulations 2009.

We will also revise existing 2007 guidance to child protection committees to include the death of a young person receiving aftercare in the suggested criteria for child protection committees to consider when deciding whether to conduct a significant case review.

10:45

I hope that that gives the committee a helpful level of detail on the amendments, so that we can make commitments of the magnitude that is required, with enough flexibility to fully develop the policy. That will require extensive consultation with the care sector and care leavers about the precise parameters of the entitlements, working with local government on how best to fund the extension of that support.

I turn now to Liam McArthur’s remaining amendment, amendment 395. We do not feel that it is necessary, as a procedure is already in place to allow aggrieved persons to appeal against local

authority decisions under section 29 of the 1995 act. The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 already include provisions allowing people to appeal against local authority decisions. It is likely that those regulations will have to be amended in consequence of section 60 of the bill, which will provide an opportunity to ensure that all measures are clarified.

A review of the complaints procedures, as provided for by section 5B of the Social Work (Scotland) Act 1968, is currently under way. Regulation 16(2) of the 2003 regulations provides that:

“All complaints, representations or appeals not falling within paragraph (1) shall be dealt with in accordance with the procedure established under section 5B of the Social Work (Scotland) Act 1968”.

As such, although some stakeholders might wish us to go further, we feel that the existing appeals procedures and our post-bill review of the current regulations are sufficient to address the needs of care leavers in this regard.

In summary, I ask members to support the amendments in my name. I reiterate my thanks to the committee for the work that it did in helping us to set out the amendments, which have been described as making Scotland world leading.

I move amendment 308.

Liam McArthur: I am very pleased to see the changes that the Scottish Government is proposing for the provision of aftercare to those who have been through the care system. Although I was happy to welcome the original proposals in the bill, it was clear at that stage that a number of important deficiencies remained. Failure to address them would not have made the bill a bad bill in relation to aftercare, but it certainly would have represented a missed opportunity.

It is therefore encouraging to see that the Government has listened to the concerns that were raised by me and by committee colleagues at stage 1, and to the very powerful evidence from Barnardo's, the Aberlour Child Care Trust, Who Cares? Scotland and, crucially, care leavers themselves with regard to where improvements needed to be made. I note, however, that COSLA's submission points to the need to take great care to ensure that the measures that are being introduced are fully and properly funded.

Removing the arbitrary eligibility criteria for access to aftercare is particularly welcome. That will ensure that the provisions benefit more people who actually need them. I would, however, welcome the minister's view on how we might go about ensuring that those who are currently leaving the care system do not fall through the net. As I understand it, the number of people involved

is likely to be very small, but the expectations of those concerned will have been raised, and it would be nice to think that they will not be left on the wrong side of an arbitrary deadline.

Enabling a return to care up to the age of 26 is also very welcome. That more fairly reflects the opportunity that exists for other young adults, which will hopefully provide reassurance, confidence and support for those care leavers who need it.

It would be interesting to hear the minister set out how what is envisaged under the amendments might be tapered to ensure that we do not create another cliff edge, this time at the age of 26, and to reflect the fact that we are talking about young adults, whose rights and needs must be balanced with those of other young people and children within the care system.

In relation to my amendments in this group, amendment 394 seeks to address the point that I have already referred to regarding an arbitrary cut-off point for eligibility. Amendment 395 reflects another concern that was raised at stage 1, namely the absence of an adequate mechanism for allowing decisions made by local authorities regarding on-going care and aftercare to be effectively questioned or appealed.

The former amendment appears to be adequately covered by the minister's amendments in the group, so I will therefore not move it, but I am less sure that the point about appeals is covered. Despite the existing provisions, which the minister referred to, stakeholders clearly believe that what is in place at the moment is inadequate. If the minister were to indicate a willingness to discuss the matter further at stage 3, I would be minded not to move amendment 395.

I again thank Barnardo's, Aberlour, Who Cares? Scotland and of course the young care leavers who spoke so passionately and eloquently about what they feel needs to happen to improve care and outcomes for those who find themselves in care. I believe that we have gone a considerable way in responding to those pleas, and I congratulate the minister on her efforts in that regard.

Clare Adamson: When the committee carried out its inquiry into the educational attainment of young people in care, I think that members felt a shared frustration that the problems and poor outcomes were well recognised but no significant progress had been made on tackling some of the issues. For politicians, when we are involved in inquiries and make proposals, there is always a concern that they will not lead to significant change. However, in this case, when I look at the minister's amendments in the group, I have to agree with her term “groundbreaking”. I absolutely

believe that the amendments are groundbreaking and will make significant changes to the lives of young people in care.

I thank the minister for her words about the committee's work on the issue and I associate myself with Liam McArthur's comments about the stakeholders and young care leavers. The young care leavers' evidence has been absolutely key to me in my deliberation on much of the bill, not least the issues that we are now considering about support, but also those that we debated previously regarding continuing family relationships for young people. Along with Liam McArthur—and I am sure the rest of the committee—I thank them for their contribution to both our inquiries on the issues.

I am delighted to support the minister's amendments and I look forward to her summing-up comments regarding the issues that Liam McArthur raised.

Liz Smith: I add my whole-hearted support to the Government's amendments. Nobody who sat through the substantial and compelling evidence on the issue could possibly find any reason to disagree with them. I warmly welcome the Government's amendments and I am interested to hear the response to Mr McArthur's amendments. In principle, I agree that there are concerns among some stakeholders, although I think that the Government has taken them on board.

George Adam: I fully support the minister's amendments—it is great to see the changes come in. We have had two inquiries on the issues, during which, as Liam McArthur said, we heard compelling evidence from young people about their experience. As a politician, it is good to see the process working and moving things forward for people. At the end of the day, regardless of our political beliefs and disagreements, the reason why we all got involved was to try to make changes in our local communities and throughout the country. The minister's amendments will make that big difference. Obviously, they will provide the help and support that are needed. As Liam McArthur said, the charities that gave evidence and worked with us on the two inquiries—Who Cares? Scotland, Barnardo's and Aberlour—have to be congratulated on highlighting the issues. The process shows the many young people who have been involved, some of whom might be here today, that politics can work.

The Convener: Before I bring in the minister, I will add a few comments. I welcome the Government amendments, which perhaps show that parliamentary committees can work successfully. We have pushed the Government to where the committee agreed that we should be, so we are pleased about that. I think that I speak for all members in saying that the evidence that we received over two years and two inquiries led us to

believe that change is necessary. We are therefore delighted that the Government has agreed and lodged the amendments.

I join other members in thanking Barnardo's, Aberlour and Who Cares? Scotland for their effort and forbearance over the past couple of years in helping us to get to this point. The work of the two inquiries that the committee undertook has been shown to have been well worth while, given this outcome. As others have done, I particularly thank the young people who took part in the inquiries and, outside the committee's meetings, in some of our visits, during which we heard some of the most important and compelling evidence and discussion that took place during the inquiries. That helped us to come to the view that it was necessary for the Government to support such a change.

I welcomed the minister's announcement a week past Monday about this. It would have been helpful if it had been a week past Saturday, because I and a member of Who Cares? Scotland were on the radio that morning discussing that very issue, but I thank the minister for the announcement anyway. I know that the committee appreciates the work that has been done by the outside groups and the Government in this area.

Aileen Campbell: Again, I want to reiterate how proud we are of these amendments and thank the committee for its work, which, as George Adam said, has shown how politics can work when we all come together to maximise the impact of legislation and the opportunities that it presents. We also want to thank again the sectoral representatives—Barnardo's, Aberlour and Who Cares? Scotland, among a wider arena of representatives—who have done a great deal to ensure that we get this part of the bill absolutely right for young looked-after care leavers.

I want to put on record again my thanks to the young looked-after people who gave so much of their time and personal experience to help us to identify the most appropriate and realistic way forward with this bill. I think that some of them are in the committee room today. They have left an enormously positive legacy for future care leavers in Scotland.

We have been pleased with the feedback. We welcome the support that the committee has given to the amendments.

Liam McArthur talked about the possibility of the amendments leading to the creation of a new cliff edge. We do not want a new cliff edge for our looked-after children and this bill is also about changing culture to ensure that we are much more supportive of care leavers as they enter independent living. We want to ensure that they are supported as fully as possible and that no new cliff edge emerges, and our expert group—which

we announced at the time that you said, convener—will consider which other cohorts of children should be eligible for corporate parenting and aftercare. That should ensure that we get that right and that that support is there for them.

On Liam McArthur's amendment about appeals, the 2003 regulations that I outlined in my opening remarks already include appeals. Regulations 17 to 20 set out the procedures that are to be followed in that regard.

I hope that that gives some reassurance to Liam McArthur that we do not want a new cliff edge to emerge, that the expert group will consider new cohorts as they emerge through the progress of the legislation and that appeals are covered in the existing regulations.

Amendment 308 agreed to.

Amendment 309 moved—[Aileen Campbell]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Corporate parenting responsibilities

Amendments 328, 252, 329, 253 and 347 not moved.

Amendment 310 moved—[Aileen Campbell]—and agreed to.

Section 52, as amended, agreed to.

Sections 53 and 54 agreed to.

Section 55—Reports by corporate parents

Amendments 330 and 331 not moved.

Section 55 agreed to.

Section 56 agreed to.

11:00

Section 57—Guidance on corporate parenting

Amendment 115 moved—[Aileen Campbell]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Directions to corporate parents

Amendment 116 moved—[Aileen Campbell]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60—Provision of aftercare to young people

Amendment 348 moved—[Aileen Campbell]—and agreed to.

Amendment 394 not moved.

Amendment 349 moved—[Aileen Campbell]—and agreed to.

The Convener: Amendment 332, in the name of Liam McArthur, is grouped with amendments 333, 184, 390, 354, 354A, 185, 334, 186, 335, 187, 391, 355, 356, 188, 392, 189, 393, 357, 386 and 388. I point out that if amendment 354 is agreed to I cannot call amendments 185, 334, 186 and 335 because of pre-emption. I advise members that amendments 184, 187, 188 and 189 are direct alternatives for, respectively, amendments 390, 391, 392 and 393.

Liam McArthur: My amendments in this group cover a couple of general areas of concern that were highlighted at stage 1, to which I will turn shortly.

I am conscious that—as the convener pointed out—the minister's amendment 354 perhaps renders redundant a number of my proposed changes, and I am happy to accept that. Nevertheless, having concluded my remarks on the previous group by extolling the efforts of the minister, I once again find myself wondering why I bothered meeting her and her officials on two separate occasions to discuss possible amendments. The exchange of information seems to have been a rather one-way process.

Amendments 332 and 333 further reflect the excellent evidence that was provided to us by the broad coalition of experts behind the "Putting the Baby in the Bath Water" report. Amendment 333 reflects the reality that a disproportionately high percentage of care leavers become parents at an earlier age. Many of those who are intended to be beneficiaries of the bill's aftercare provisions will already have children of their own. It is therefore likely that they will need assistance and support beyond that which is provided for eligible individuals. It would also be good policy and good practice for care leavers who are still only prospective parents to be far better supported than is the norm now to understand their options and the implications of their choices about whether and/or when to have children of their own.

Evidence indicates that the children of care leavers are more likely to become looked after themselves and are more likely to have additional support needs. The bill's excellent aftercare provisions should therefore promote preventative spending and efforts to prevent current care leavers' needs from becoming intergenerational ones.

Although the main issues will—and should—be addressed by statutory guidance, it would help to have a reference point in the bill. That would improve planning for, and working with, care leavers holistically. I encourage the minister to make a commitment to work with the coalition that produced the report when preparing the regulations and guidance in due course.

My amendments 184 to 189 address a concern about the terminology as originally set out in the bill, which could create confusion about the support that is potentially available. Although the definition of “counselling services” appears, thankfully, to be fairly broad, it suffers from perceptions of what that means in practice. A change to a reference to “early intervention” services better reflects what is intended by the bill.

I note that Colin Beattie has lodged very similar amendments—perhaps his meetings with the minister were more of a two-way process than mine—and I will support his amendments in the event of mine falling. However, I draw the committee’s attention to the fact that Children 1st’s preference is for the term “early intervention” rather than the more ambiguous reference to “relevant services”.

I move amendment 332.

Colin Beattie: As Liam McArthur said, amendments 390, 391, 392 and 393 take out the word “counselling” and insert the word “relevant”. The purpose of the amendments is to address concerns that the term “counselling services” might be a bit restrictive and might not cover the range of services that local authorities might consider.

The issue of “counselling services” as a generic term has been raised by a number of stakeholders and there has been some discussion about what would be the most appropriate term. Obviously, circumstances and appropriate supports will vary from child to child and will change over time. It therefore seems appropriate to change the terminology to the wider term “relevant services”.

Amendment 354A adds to the minister’s amendment 354—which I welcome—in so far as it provides further definition of the term “relevant service”. I take on board the fact that Liam McArthur has sought to do something very similar in substituting “early intervention” for “counselling services” but that would probably not be as appropriate because, in order to receive the counselling services under the bill, the family would need to seek help and be willing to participate in the service that was provided. It is important that the services are seen as a form of support rather than a form of state intervention. By substituting “relevant” for “counselling”, my amendments create a better definition.

Aileen Campbell: We have listened to members and have taken on board the concerns that have been expressed in our meetings with them to shape and hone the bill. I am sorry that Liam McArthur did not find the meetings useful; I wonder whether that is more to do with the fact that he was 45 minutes late for the first meeting. We will continue to work with members as we progress through the stages of the bill.

We cannot support amendments 332 and 333. The Scottish Government aims to ensure that all care leavers have access to the most appropriate support according to their needs, such as other young people typically receive from their parents. Local authorities are under a duty in section 29(5) of the Children (Scotland) Act 1995 to carry out an assessment of the needs of each care leaver to whom they have a duty under section 29(1) of that act and also to assess the needs of all those who make an application to them for aftercare support under section 29(2) of the act, whether they are parents or prospective parents. That assessment will be conducted in accordance with GIRFEC principles and all services—both adult and child services—will co-operate in delivering the best aftercare support possible to safeguard the wellbeing of all vulnerable young care leavers.

Furthermore, we believe that including pregnancy and parenthood in part 8, on aftercare, has the potential to cause unnecessary confusion over who, within children’s services, is responsible for the child or care leaver. Crucially, by putting that in the text of the bill and requiring throughcare and aftercare teams to take responsibility for babies and very young children, we may create unintended consequences around the level of qualification and training that is required.

As a consequence of the bill, an extensive update will be required of all guidance relating to throughcare and aftercare. We will undertake to ensure that every effort is made to provide clarification of and more detailed guidance on the expected level of service that is required under the new provisions.

Amendments 184 to 189 replace the term “counselling” with “early intervention” throughout part 9, which requires local authorities to provide such services to eligible children and their families. Colin Beattie’s amendments 390, 354A, 391, 392 and 393 seek to replace the term “counselling services” with “relevant services” throughout part 9. I accept that there are concerns among stakeholders that the term “counselling services” may be too restrictive, and we therefore accept the need to change that term. We have genuinely considered both sets of competing amendments and consider that those that best reflect the policy intention are Mr Beattie’s. Accordingly, we support

Mr Beattie's amendments in favour of those lodged by Mr McArthur.

The term "early intervention", although universally accepted in public service terminology as a good thing, is not appropriate when used in this context as it could imply a statutory or compulsory intervention, which is not the purpose of this part of the bill. The aim is to secure the willing involvement of families in preventing a child from becoming unnecessarily looked after. Therefore we cannot support Liam McArthur's amendments in this group. The word "relevant", which Colin Beattie's amendment suggests, captures a wider range of services and is therefore much more appropriate.

A further Government amendment to section 61 will, if it is accepted, place the eligibility test for such services in the text of the bill and will make it clear that authorities are to provide such services as will help to prevent a child from becoming looked after. Further detail of the type of services that could be offered under that provision will be contained in secondary legislation, which we will consult on.

Taken together, the amendments will widen the term so that, where the child is at risk of becoming looked after, local authorities will be required to provide to eligible children and their families services that are not restricted to those that involve counselling or counsellors. The circumstances of individual families will vary greatly, and the type of service that they require will vary and may evolve over time. The proposed changes should mean that the provision will be wide enough to ensure that local authorities can provide a wide range of services to meet those needs and address those varying circumstances.

The amendments in my name do a number of things. They ensure that an eligible child and a qualifying person in relation to such a child are eligible for relevant services under part 9. That makes it clear that support can be provided to various members of the child's family or to the child themselves, not just to their parent or to a person with parental rights and responsibilities in relation to the child, in order to avoid the risk of the child becoming looked after.

In response to concerns about a lack of detail in that part of the bill, the amendments ensure that the term "eligible child" is defined in the text of the bill rather than in an order. A child will be eligible if they are at risk of becoming looked after if relevant services are not provided. That risk need not be imminent but may be some way in the future, as the support that is to be provided under part 9 is intended to involve early intervention to offset or reduce the risk of the child becoming looked after.

It will be for local authorities to judge, on a case-by-case basis, whether a child meets that test, and it is intended that ministers will issue guidance to assist local authorities in making that assessment. Furthermore, there is an order-making power in sections 62(1)(a) and 62(1)(b) to allow further provision to be made on how the test is to be applied. In addition, it will be possible to amend the eligibility test by order if that is required.

The amendments also ensure that an eligible pregnant woman and qualifying persons in relation to such a woman—such as the father of her child, a person to whom she is married or with whom she is in a civil partnership, someone to whom she is otherwise related or with whom she is living, or a person whom the local authority considers will, when the pregnant woman gives birth, become a qualifying person in relation to the child—are all eligible for services under that part of the bill.

A pregnant woman will be considered to be eligible if a local authority considers that she is going to give birth to a child who will be eligible. That provision is a direct response to the request from the coalition behind "Putting the Baby in the Bath Water". We agree that expectant parents would be a good target for an early intervention approach and have lodged our amendments accordingly.

Amendment 386 is a technical amendment that clarifies what is meant in parts 9 and 10 by a child becoming looked after. In summary, we cannot support Liam McArthur's amendments, but we support Colin Beattie's amendments and ask that members support the amendments in my name.

Liam McArthur: I thank Colin Beattie and the minister for their comments on my amendments on counselling services.

Colin Beattie is right to point to concerns about the rather restrictive nature of, and the potential lack of coverage that would arise from, the original wording in the bill. I note his comments on the potential for early intervention to be seen as too state interventionist rather than in the context of the support that will be provided.

I will certainly not wrestle Colin Beattie to the floor over our amendments, but I will press mine. As I indicated earlier, I will be happy to support his amendment 354A, which clearly indicates the benefits that are to be derived from turning up on time to meetings with ministers to the point at which one gets not only ministerial approval for one's own amendment but an invitation to amend the minister's amendments.

I note the minister's points about the genesis of amendments 332 and 333 with regard to the importance of the "Putting the Baby in the Bath Water" report and recommendations. However, I would welcome a commitment from her to work

with the experts behind that group in developing regulations and guidance.

Aileen Campbell: I intend to work with all expert groups and stakeholders in developing guidance—I give that commitment.

Liam McArthur: On that basis, I seek to withdraw amendment 332.

Amendment 332, by agreement, withdrawn.

Amendment 333 not moved.

11:15

Amendment 395 moved—[Liam McArthur].

The Convener: The question is, that amendment 395 be agreed to. Are we all 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 395 disagreed to.

Amendments 350 to 352 moved—[Aileen Campbell]—and agreed to.

Section 60, as amended, agreed to.

After section 60

Amendment 353 moved—[Aileen Campbell]—and agreed to.

Section 61—Provision of counselling services to parents and others

Amendment 184 moved—[Liam McArthur].

The Convener: The question is, that amendment 184 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 184 disagreed to.

Amendment 390 moved—[Colin Beattie]—and agreed to.

The Convener: I remind members that, if amendment 354 is agreed to, I will be unable to call amendments 185, 334, 186 and 335 because of pre-emption.

Amendment 354 moved—[Aileen Campbell].

Amendment 354A moved—[Colin Beattie]—and agreed to.

Amendment 354, as amended, agreed to.

Section 61, as amended, agreed to.

Section 62—Counselling services: further provision

Amendment 187 not moved.

Amendment 391 moved—[Colin Beattie]—and agreed to.

Amendments 355 and 356 moved—[Aileen Campbell]—and agreed to.

Amendment 188 not moved.

Amendment 392 moved—[Colin Beattie]—and agreed to.

Amendment 189 not moved.

Amendment 393 moved—[Colin Beattie]—and agreed to.

Section 62, as amended, agreed to.

Section 63—Interpretation of Part 9

Amendment 357 moved—[Aileen Campbell]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Assistance in relation to kinship care orders

The Convener: Amendment 396, in the name of Jayne Baxter, is grouped with amendments 397 and 400 to 404. Amendment 397 is pre-empted by amendment 363, which is in the next group, and which concerns persons who are eligible to receive kinship care assistance.

Jayne Baxter: By strengthening the commitment by the Scottish ministers to set out in

secondary legislation their expectations of local authorities, the amendments in this group provide a route by which Scottish ministers can ensure that kinship carers receive adequate support. As we know, secondary legislation will be vital in setting out in detail how kinship care orders and assistance will work. I seek stronger measures to ensure that they must, and not just may, be enacted.

There is wide variation in the allowances that are paid to formal kinship carers across the 32 local authorities, which results in a postcode lottery of support. I am keen to hear from the minister whether the Scottish Government will consider setting out at stage 3 specified rates of payment for the provision of financial support and require local authorities to pay at least that rate to all qualifying persons.

Many kinship carers embark on that role with little or no awareness of their rights in the benefits system. Accurate and timely advice regarding benefits entitlement is essential if kinship carers are not to be financially disadvantaged and are to be able to make informed decisions about their future. A consultation by Children 1st for the Scottish Government's financial review that involved more than 250 kinship carers found that they receive a range of different benefits and many do not know what they are entitled to or who to ask. If we ensure that financial support includes advice, it will help many kinship carers to maximise their income and thereby to mitigate any child poverty. Amendment 402 aims to do that.

Amendment 404 would ensure that local authorities review the kinship care assistance that is provided to kinship care families. At the moment, local authorities review the assistance that is provided only if an eligible child's status changes. If an eligible child is in kinship care for, for example, six years, their support needs may change over those years. It may be that it is not the eligibility that changes, but the qualifying person and the child's support needs. There is currently no right for a qualifying person who has obtained a kinship care order to ask for such a review of support. Amendment 404 enables ministers to provide for how or when a kinship carer who has obtained an order may request a review.

I move amendment 396.

Liz Smith: I have a lot of sympathy with the points that Jayne Baxter has raised, not least because we heard compelling evidence about kinship care. We must never forget that the issue has come back to the Parliament many times and that we are not yet doing the best possible job for kinship carers. However, I am a little concerned about the choice of wording in her amendments

and whether it articulates with other legislation, so I will be interested to hear the minister's response.

Aileen Campbell: Amendment 396 replaces "may" with "must" in section 64(2) to ensure that Scottish ministers must specify descriptions of kinship care assistance by order. Amendments 400 and 401 amend section 66(1) to remove the words "which may be" and replace "includes" with "must include" to require ministers, when making an order under section 64(2), to specify that kinship care assistance must include the categories of assistance that are specified in section 66(1). Amendment 403 replaces "may" with "must" in section 66(3) to ensure that Scottish ministers must by order make certain provisions about kinship care assistance, such as when or how it is to be provided.

We are aware that there is concern about the variation in the level of support that is offered to kinship carers across Scotland, and we believe that the amendments are intended to help to prevent that variation. However, we do not consider that they would result in local authorities providing a uniform level of support to kinship carers. Although we are sympathetic to Jayne Baxter's aims and absolutely sympathise with some of the issues that she has outlined, we are also aware that individuals' circumstances and the levels of assistance that they might require vary widely.

Given that, it is not appropriate to be so prescriptive in the bill about the type and level of support that is to be provided. The amendments would require ministers to exercise their order-making power in section 64(2) and require the assistance that they specify in doing so to include the categories of assistance that are specified in section 66(1). The amendments would also require ministers to exercise their order-making power in section 66(3) to make provision about when or how kinship care assistance is to be provided, for example.

The amendments are unnecessary. Ministers fully intend to exercise their powers under those sections to make orders that specify descriptions of the kinship care assistance that local authorities must make available to those who are eligible for that assistance. The orders will include the categories of assistance that are specified in section 66(1) and the provision that is specified in section 66(3).

As Liz Smith perhaps alluded to, the preference in legislation is to use the word "may" in relation to order-making powers, because the exercise of the power is ultimately and properly a matter for the Parliament. Using the word "must" would not necessarily ensure that any order that ministers made would become law; it would be for the

Parliament to decide whether to pass any secondary legislation that the Government made.

Amendment 397 would amend section 64(4) to provide that the Scottish ministers must, instead of may, by order specify a description of an eligible child. If the committee agrees to my amendment 363, it will place the description of an eligible child in the bill, so amendment 397 will not be necessary.

Amendment 402 would amend section 66(1) to provide that an order under section 64(2) must include the provision of

“advice or information about how financial support may be obtained”

as one of the categories of specified assistance. That is unnecessary. No other forms of kinship care assistance are specified in the bill. We intend to describe them in secondary legislation, and the order-making power in section 64(2) will allow us to do that. We will consult before making any such provision.

The intention is to issue guidance to local authorities on the kinship care assistance that they will be required to provide. We will consult widely on that. My reply to Jayne Baxter's points about financial consistency across Scotland is that we await the outcomes of a financial review.

Amendment 404 would insert a new paragraph into section 66(3) to make a mechanism available

“to review the kinship care assistance being made available to a person and when or how a person to whom ... assistance is being made available may request such a review”.

In practical terms, authorities would review the assistance that is being made available to a person in reviewing whether a child continues to be eligible under section 66(3)(c). Provision about that and about how a person can request a review of their assistance could be covered by section 66(3)(d), which enables ministers to make provision about

“such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.”

We will work with stakeholders to ensure that any provision that is made under section 66(3) is as comprehensive as is necessary.

For those reasons, we do not support the amendments in Jayne Baxter's name. I hope that it was helpful for me to explain the legislative preference and the choice of words in the bill and that that has given her clarity for when she considers how to proceed with her amendments.

Jayne Baxter: I thank the minister for her comments. The issue is not going away and I have heard nothing from her that reassures me about

the intentions. In the absence of the outcome of the financial review, I will press amendment 396.

The Convener: The question is, that amendment 396 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 396 disagreed to.

11:30

The Convener: Amendment 358, in the name of the minister, is grouped with amendments 359 to 364, 398, 399, 365 to 369 and 389.

Aileen Campbell: Amendments 358 to 361 clarify two things: first, that kinship care orders subsist only until the eligible child reaches the age of 16 and therefore that those persons specified in sections 64(3)(a) to 64(3)(c) are entitled to kinship care assistance only until the child attains the age of 16; and, secondly, that a child who was subject to a kinship care order prior to attaining the age of 16 is still eligible to receive assistance until they are 18. That is to be made clear in the bill for the avoidance of any misunderstanding.

Amendments 362, 364 and 365 will remove the exclusion on a guardian from being a qualifying person and therefore from being eligible to receive kinship care assistance under section 64. We have considered the views of stakeholders on the issue and agree that the status of guardians is not sufficiently different from that of kinship carers to justify their exclusion from being eligible for kinship care assistance. It is not our intention to discourage people from applying for a guardianship order where that would be in the interests of the child, but that could be an unintended consequence of exclusion. Therefore, I lodged amendments 362, 364 and 365 to ensure that guardians—whether they are court appointed or appointed by parents in a will, for example—and the children who are being cared for are not at a disadvantage compared with kinship carers and children who are in kinship care.

The bill provides that kinship care assistance can be provided to specific categories of people where there is an eligible child, as set out in section 64(3), and that the description of an eligible child will be specified by order, under section 64(4). Amendment 363 will put the definition of “eligible child” in the bill, rather than in an order. That is in response to concerns about a perceived lack of detail in the bill, despite the reassurances that we have given. The test will be whether a child is at risk of becoming looked after if kinship care assistance is not provided.

Amendment 363 also gives ministers an order-making power to specify other descriptions of a child as eligible if that is considered to be required at a later date. Amendment 389 will amend section 77 to provide that such an order will be subject to the affirmative procedure. It will be for local authorities to judge on a case-by-case basis whether a child meets that test. It is intended that guidance will be issued to help local authorities to make that assessment. The order-making power in sections 66(3)(a) and 66(3)(b) allows further provision to be made in relation to how the test would be applied.

Amendments 367 and 368 make minor technical amendments to section 66(3) that are required in consequence of amendment 363, which places the eligibility test in the bill. Amendment 366 provides that a civil partner of a person who is related to an eligible child can be a qualifying person for a kinship care order. That is a technical amendment to correct an oversight in the bill and to ensure compliance with equalities and human rights legislation.

Amendment 369 will insert a definition of “parent” into section 67 so that the term, when used in part 10 of the bill, has the same meaning as in part 1 of the Children (Scotland) Act 1995. That will remove a potential for misunderstanding. Parents will not be eligible for kinship care orders under section 65. However, kinship carers can have parental rights and responsibilities for a child, which might lead to confusion about their status. We must be clear that, despite having those rights and responsibilities, kinship carers are not considered to be parents in this context and are still therefore eligible to obtain a kinship care order if they are a qualifying person under section 65(2).

Jayne Baxter’s amendments 398 and 399 seek to add to the categories of person who can be a qualifying person for the purposes of obtaining a kinship care order those with a pre-existing relationship to or connection with the child, and to remove the order-making power that allows ministers to specify such other relationships to or connection with the child as is considered appropriate.

Section 65 is drafted in a way that ensures that we cover all eventualities and do not unnecessarily exclude people from being eligible to be kinship carers. We understand the concerns that section 65(2) is too wide and could result in someone with no effective relationship with a child becoming their kinship carer. However, section 65(2)(c) allows ministers to specify such other relationships to or connections with a child as are considered appropriate, and we intend to consult extensively before making such an order.

Also, it will be for a sheriff to determine whether it is appropriate to grant an order under section 11(1) of the Children (Scotland) Act 1995, a residence order or a guardianship order—in other words, a kinship care order—which we think is a sufficient safeguard and meets any concerns about the provision being too widely drawn. Therefore, we consider that amendments 398 and 399 are not necessary.

I ask the committee to support the amendments in my name and not to support amendments 398 and 399.

I move amendment 358.

Jayne Baxter: I am keen to ensure that we acknowledge the concern that the wording in section 65 is too wide and recognise the importance of a kinship carer being a person who knows the child. By stipulating a pre-existing relationship, amendment 398 highlights the importance of the child being accommodated with someone who understands their circumstances and background, is aware of their needs and is best placed to offer optimum care and support.

Aileen Campbell: Under the bill, ministers will be able to specify by order other relationships to or connections with a child that are considered appropriate for eligibility for a kinship care order. As I said, we intend to consult extensively with a wide range of interested parties before making such an order.

It will be for the sheriff to determine whether it is appropriate to grant an order under section 11(1) of the 1995 act, a residence order or a guardianship order. That is a sufficient safeguard, which meets any concerns about section 65(2) of the bill being too widely drawn. I therefore consider that Jayne Baxter’s amendments are unnecessary.

Amendment 358 agreed to.

Amendments 359 to 362 moved—[Aileen Campbell]—and agreed to.

The Convener: I remind members that, if amendment 363 is agreed to, amendment 397 will be pre-empted.

Amendment 363 moved—[Aileen Campbell]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Orders which are kinship care orders

Amendment 364 moved—[Aileen Campbell]—and agreed to.

Amendment 398 moved—[Jayne Baxter].

The Convener: The question is, that amendment 398 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 398 disagreed to.

Amendment 399 moved—[Jayne Baxter].

The Convener: The question is, that amendment 399 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 399 disagreed to.

Amendments 365 and 366 moved—[Aileen Campbell]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Kinship care assistance: further provision

Amendment 400 moved—[Jayne Baxter].

The Convener: The question is, that amendment 400 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 400 disagreed to.

Amendment 401 moved—[Jayne Baxter].

The Convener: The question is, that amendment 401 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 401 disagreed to.

Amendment 402 moved—[Jayne Baxter].

The Convener: The question is, that amendment 402 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 402 disagreed to.

Amendment 403 not moved.

Amendments 367 and 368 moved—[Aileen Campbell]—and agreed to.

Amendment 404 moved—[Jayne Baxter].

The Convener: The question is, that amendment 404 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 404 disagreed to.

Section 66, as amended, agreed to.

Section 67—Interpretation of Part 10

Amendment 369 moved—[Aileen Campbell]—and agreed to.

Section 67, as amended, agreed to.

Section 68—Scotland's Adoption Register

The Convener: Amendment 370, in the name of the minister, is grouped with amendments 371 to 380. As members have been advised, it has been determined that rule 9.12.6(b) of standing orders applies to amendment 380, which means that—depending on the amendments that are lodged for consideration at next week's meeting—it could contribute to the bill requiring a financial resolution under rule 9.12.4, which deals with powers to charge fees. Amendment 380 can be debated today, but I intend to end today's consideration of amendments before the decision on it. How we deal with it at next week's meeting will depend on whether any amendments to deal with powers to charge fees are lodged and whether a financial resolution is in place.

Aileen Campbell: Amendments 370 to 372 arose from the Delegated Powers and Law Reform Committee's stage 1 report, in which it asked the Scottish Government to consider lodging stage 2 amendments to proposed new section 13A of the Adoption and Children (Scotland) Act 2007, as inserted by section 68 of the bill, to

“make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain.”

Amendments 373, 374, 376, 379 and 380 also arose from the Delegated Powers and Law Reform Committee's stage 1 report. That committee was concerned that any arrangements that authorise the Scottish ministers' function in respect of Scotland's adoption register to be carried out by a registration organisation and which provide for payments to be made to such an organisation should be clear and accessible to those who are affected by them. That committee recommended that we include provisions in the bill to require ministers to publish details of any organisation that they have authorised to carry out their functions in respect of the register and details of payments to be made to that organisation other than those by the Scottish ministers. As a result, amendment 374 will require the Scottish ministers to publish any arrangements that they make to authorise an organisation to perform their functions in respect of the register.

The amendments go even further in addressing the concerns of the Delegated Powers and Law Reform Committee about the accessibility of arrangements to impose liability for payment on persons other than the Scottish ministers, by clarifying the payment provisions in respect of the register. Amendment 373 will make it clear that any arrangements that the Scottish ministers make to authorise a registration organisation to run the adoption register may include provision for payments to be made by the Scottish ministers to that organisation.

Amendment 380 will make new provision for regulations to prescribe the fees to be paid or other payments to be made by adoption agencies in relation to the register, which means that any payment made or fee paid by persons other than the Scottish ministers will be set out in subordinate legislation. Amendments 376, 379 and 380 will bring all the provisions about payments and fees in respect of the register together in one section for clarity. We consider that the amendments address the Delegated Powers and Law Reform Committee's concerns.

11:45

Amendments 375 and 377 address concerns that the British Association for Adoption and Fostering and others expressed and which were highlighted in the Education and Culture Committee's stage 1 report about the requirement in the bill for parental consent when information is provided about a child for Scotland's adoption register.

The amendments do two things: they remove from the bill the requirement for adoption agencies to obtain consent before disclosing certain information for the register and they allow regulations to specify circumstances in which adoption agencies are not to provide information for the register—for example, when consent might be an issue. We consider it best that any circumstances in which information is not to be put on the register, such as when consent might be an issue, should be set out in regulations.

Those regulations will be subject to the affirmative parliamentary procedure, which will ensure that this important issue receives the appropriate level of scrutiny. We will work in partnership with key stakeholders, including BAAF, when developing the regulations, to ensure that Scotland's adoption register can operate effectively and without unnecessary delays in finding permanent homes for some of our most vulnerable children.

Amendment 378 is a technical amendment that will ensure that a register that is maintained in respect of England, Wales or Northern Ireland—referred to in proposed new section 13D(2)(b)(ii) of the 2007 act, as inserted by section 68 of the bill—is correctly described as a register containing information about children who are suitable for adoption or prospective adopters instead of simply as a register containing

“information about children who are suitable for adoption”.

I hope that the committee will support the amendments. I move amendment 370.

Amendment 370 agreed to.

Amendments 371 to 379 moved—[Aileen Campbell]—and agreed to.

The Convener: That ends today's stage 2 consideration of the bill. At next week's meeting, we will consider amendments to the remainder of the bill. The final deadline for lodging amendments is noon this Thursday. I thank the minister and her officials for their attendance.

Meeting closed at 11:47.

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

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