OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 11 March 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

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CONTENTS

	Col.
INTERESTS	1
DECISION ON TAKING BUSINESS IN PRIVATE	2
DISCLOSURE (SCOTLAND) BILL: STAGE 2	3

EDUCATION AND SKILLS COMMITTEE
6th Meeting 2020, Session 5

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Daniel Johnson (Edinburgh Southern) (Lab)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*Iain Gray (East Lothian) (Lab)
*Jamie Greene (West Scotland) (Con)
*Ross Greer (West Scotland) (Green)
*Jamie Halcro Johnston (Highlands and Islands) (Con)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Alex Neil (Airdrie and Shotts) (SNP)
*Gail Ross (Caithness, Sutherland and Ross) (SNP)
*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alex Cole-Hamilton (Edinburgh Western) (LD)
Liz Smith (Mid Scotland and Fife) (Con)
Maree Todd (Minister for Children and Young People)

CLERK TO THE COMMITTEE

Roz Thomson

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education and Skills Committee

Wednesday 11 March 2020

[The Convener opened the meeting at 10:00]

Interests

The Convener (Clare Adamson): Good morning, and welcome to the sixth meeting in 2020 of the Education and Skills Committee. I remind everyone to turn their mobile phones and other devices to silent mode for the duration of the meeting.

Our first agenda item is a declaration of interests by our new committee member. We welcome Alex Neil to the committee and I invite him to declare any relevant interests.

Alex Neil (Airdrie and Shotts) (SNP): I have no special interests, other than those that are in my entry in the register of interests.

Decision on Taking Business in Private

10:00

The Convener: Our next agenda item is a decision on whether to take consideration of our work programme next week in private. Are members content to do so?

Members *indicated agreement.*

Disclosure (Scotland) Bill: Stage 2

10:00

The Convener: Agenda item 3 is stage 2 proceedings on the Disclosure (Scotland) Bill. I welcome to the committee Alex Cole-Hamilton MSP and Liz Smith MSP, who might contribute to the proceedings but will not have a vote. I also welcome Maree Todd, who is the Minister for Children and Young People, and her officials. Everyone should have a copy of the bill, the marshalled list of amendments, which sets out the amendments in the order in which they will be debated, and the groupings of amendments.

Section 71—Participation in Scheme

The Convener: The first group of amendments is on the Protection of Vulnerable Groups (Scotland) Act 2007: participation of persons ages 12 to 15 in the scheme. Amendment 209, in the name of Jamie Greene, is grouped with amendments 210 to 212.

Jamie Greene (West Scotland) (Con): I ask members to bear with me, because I did not participate in the stage 1 proceedings, but I have done my homework and I thank my colleague Liz Smith for working with me on handing over some of that work.

This group of amendments seeks to strike a balance on the evidence that was heard at stage 1 and the concerns that a number of stakeholders raised, including the third sector and voluntary organisations, which have been in touch since I joined the committee.

Members will recall that, during the stage 1 evidence, several witnesses raised concerns about the bill's proposal to implement a mandatory protection of vulnerable groups scheme membership for those aged 16 or over who "carry out regulated roles". Several witnesses were concerned that, under the current proposals, by setting 16 as the minimum age for obtaining disclosure, those who are under 16 might be unable to obtain a PVG, although they can currently get one. Members might be aware that around 300 people under the age of 16 are currently part of the scheme and undertake what might be considered as regulated roles.

To put together some evidence on that, I spoke to a number of organisations that got in touch and would like me to express the following comments from them. I will pass the quotes to the *Official Report* afterwards. The first is from Interest Link Borders, which said:

"Volunteering organisations like ourselves will not involve anyone who might have a criminal record in regulated roles, unless they have a PVG membership. So the actual result of the bill will be to prevent those under 16 being in regulated roles."

The Scottish Volunteering Forum, which a number of members work with, noted other concerns:

"Given that there is a proposal to make the PVG scheme membership legally mandatory for doing regulated roles, a lot of organisations would interpret that as meaning that people under the age of 16 would no longer be able to do any voluntary work with voluntary groups."

A third organisation, the Royal Yachting Association, which does a great deal of good work in my region, got in touch to say:

"There is a lack of clarity in the messages from the information being promoted. We believe the contradiction between a club being required to ensure that a volunteer is a scheme member, if the role is regulated, and an under-16-year-old undertaking a similar role not being permitted to join the scheme, will create confusion. This could well deter clubs like ours from involving young volunteers and as a consequence adversely affect the opportunities for young people instructing and coaching our club-based activities, as well as those of other sports with similar developmental roles."

When my colleagues and I approached the issue of the spectrum of possibilities for a mandatory scheme for those who are over 12 and under 16, we found a middle ground that would give ministers the ability to allow under-16s to carry out a regulated role if it appears to ministers

"from the information contained in the application that it is appropriate"

for them

"to participate in the Scheme."

That is the rationale behind amendment 209. It would give Disclosure Scotland the flexibility to allow under-16s to apply to participate in the PVG scheme in specific circumstances. It would not involve a blanket or mandatory reduction of the minimum age, but it would allow organisations some flexibility if they would like an extra level of vetting of their young volunteers, as is currently the case, and thereby give them the reassurance that under-16s can undertake regulated roles.

I move amendment 209.

Daniel Johnson (Edinburgh Southern) (Lab): I very much understand the reason for amendment 209. Voluntary work is hugely important, as is young people's involvement in voluntary work. However, I have a number of concerns about Jamie Greene's amendments. First and foremost, the bill is intended to deal with regulated roles and is structured as such. Roles that require to be regulated are those that permit, and necessarily require, unsupervised access to vulnerable adults and children. Therefore, the question that occurs

to me is whether it is ever appropriate for people who are under the age of 16 to have such unsupervised access, in particular to children.

Based on what Mr Greene said, we are mainly talking about coaching and other sporting and leisure activities. In those circumstances, the key question is who is providing the supervision of the activities? As the amendments are set out, my understanding is that the supervision would be provided by someone who is over the age of 16 and is a member of the PVG scheme, which would still permit people under the age of 16 to be involved. However, the reverse of that situation—permitting someone under the age of 16 who is not so supervised, whether or not they are in the PVG scheme—is questionable in my view. Although I understand the motivation for the amendments, they run contrary to the intention of the bill and potentially allow for a practice that I question the advisability of having in the first place. I hope that that makes sense.

Ross Greer (West Scotland) (Green): I echo much of what Daniel Johnson has said. I have a couple of questions for Jamie Greene and one for the minister.

I would appreciate further details, as I am still not entirely clear on the scenarios or roles for which Jamie Greene imagines that a minister would judge it appropriate that a 12 to 15 year-old should be a member of the PVG scheme. Why is the PVG scheme appropriate for those young people? We heard that proportionality is key to this debate. PVG is a system of on-going monitoring, so why not have another disclosure product rather than the PVG scheme?

Mr Greene very fairly mentioned the confusion around the participation of under-16s in what would otherwise be regulated work, and we took evidence on that issue. My concern is that, were Mr Greene's amendments to be agreed to and that system introduced, it would create further confusion. We would have some 12 to 15-year-olds who are in the PVG scheme and some who are not. Therefore, there would be further lack of clarity over who could and could not participate in that kind of work.

I would appreciate it if the minister could provide some absolute clarity around the committee's recommendation on the matter. The committee struggled to come to a clear conclusion, because the evidence was relatively finely balanced. However, we concluded that we would ask the Government to ensure that, after an initial period of operation of the new scheme, a review is conducted into the participation rate of under-16s. If the minister makes it clear that that will definitely take place, I urge Jamie Greene not to press his amendments.

The Minister for Children and Young People (Maree Todd): I understand the intention behind Jamie Greene's amendments, and I appreciate the committee's close scrutiny at stage 1 of the introduction of a minimum age. However, in response to Ross Greer's point, I say that I do not think that it is ever appropriate for children who are under 16 to be subject to on-going monitoring, and it is generally not appropriate to subject them to criminal record checks. The bill's approach to the disclosure of childhood behaviour will mean that very few disclosures will contain information on children in that age range, which will have direct consequences for disclosure applicants who are under 18.

As I previously highlighted to the committee, when children might pose a risk that could have led to disclosure there are other, more appropriate, measures available to manage that. Evidence from organisations such as the Convention of Scottish Local Authorities and Police Scotland echoed the view that bringing children back into the PVG scheme is not a suitable response to manage that risk. As has been repeatedly highlighted by stakeholders, care-experienced children are disproportionately represented in the justice and children's hearings systems. That means that any impact of children being asked to join the PVG scheme would fall hardest on that group. We have heard from Who Cares? Scotland that young people already self-exclude from opportunities due to disclosure requirements.

I share the committee's concern that children could be denied volunteering opportunities. However, it is already the case that voluntary organisations do not routinely allow children to undertake regulated roles without being supervised. My view is that introducing a minimum age for PVG scheme membership will encourage organisations to build on those good working practices, while also opening doors to children who might otherwise not participate. I want to stress that the perceived risk of organisations misinterpreting the change should be handled through training and guidance—not by continuing to subject children to on-going criminal record checks as part of the PVG scheme. Again, I am happy to provide my assurance that the Scottish Government will communicate on that to ensure that children are not disadvantaged in gaining volunteering opportunities.

Amendments 209 and 210 risk introducing uncertainty for children and organisations as to when they should or could seek PVG scheme membership for children, and they could create inconsistencies in approaches across the country. As the committee knows, a key element of the bill is to introduce a mandatory PVG scheme for those who are carrying out regulated roles. That means

that, unlike level 1 and level 2 disclosures, those aged 16 and over and doing regulated roles must be in the scheme. To suggest that some children, or some roles that are undertaken by children, should be in the PVG scheme but others should not risks creating confusion that some roles in the scheme are more regulated than others.

A two-tier scheme might also be created if adult scheme membership were mandatory and childhood scheme membership were discretionary. That undermines the policy aim of the mandatory scheme. It would also compromise the training and guidance that we can provide as part of the transition to the mandatory scheme, and it might result in more organisations requesting scheme membership for 12 to 15-year-olds than do at present, as a precautionary measure.

I am also concerned about the amendments to the offence provisions. The effect of amendment 211 is to amend section 45C(3) of the Protection of Vulnerable Groups (Scotland) Act 2007, which is inserted by section 74 of the bill, to apply the offence of doing a regulated role without being a scheme member to 12 to 15-year-olds in circumstances in which ministers have permitted them to be in the PVG scheme. However, as section 45C applies only to those who carry out or agree to carry out a regulated role while not a scheme member, and the 12 to 15-year-olds who would participate in the scheme under Jamie Greene's proposed new subsection (4) of section 45 would be scheme members, the amendment would have no effect. Under-16s still would not need to be scheme members to carry out regulated roles unless they had already been accepted into the scheme. That seems circular.

The effect of amendment 212, which amends section 45D(3) of the PVG act, which is inserted by section 74 of the bill, is to apply the offence of employing someone who is not a scheme member to do a regulated role to an organisation that offers a regulated role to a child aged 12 to 15, when ministers have permitted the child to be in the PVG scheme under section 45 participation in the scheme. However, as new section 45D will apply only to the offering of a regulated role without confirming scheme membership, and Jamie Greene's proposed new subsection (4) of section 45 would involve an organisation seeking scheme membership for a child aged 12 to 15, amendment 212 would have no effect in this respect.

10:15

I am proud that Scotland has the PVG scheme, which provides not only the snapshot disclosure of criminal record that is offered by Police Act disclosures but the on-going monitoring of people who come into contact with the most vulnerable in society. That is why the Scottish Government is ensuring that it can offer more robust support to safeguarding through the bill.

However, there is a reason why other countries have a minimum age for state disclosure. That is because, as we have frequently seen in the Scottish Parliament, it is appropriate to treat children differently from how adults are treated.

We are in the unusual situation in which a Conservative member is arguing for continued divergence from the rest of the United Kingdom and the Scottish Government is arguing for our remaining aligned with the rest of the UK. It is already the case in the rest of the UK that organisations cannot obtain standard and enhanced disclosures on children under 16. Those changes were made some time ago—back in 2012—in England and Wales by the Disclosure and Barring Service, and in 2015 in Northern Ireland. The changes were made in recognition of concerns about compatibility with the United Nations Convention on the Rights of the Child.

In response to Ross Greer's concerns, I can say that the Government is more than happy to work with bodies that represent volunteers in Scotland to see whether there is a change in the level of volunteering, as I said at stage 1. There has not been a detectable change in volunteering rates since the changes were made in the rest of the UK.

I understand the significance of children and young people's volunteering; indeed, children and young people volunteer at about twice the rate at which adults do. Volunteering is important not only for children but for Scotland and we must ensure that children continue to volunteer. We must not introduce barriers to children volunteering. As I said, I would not want any child to be denied the opportunity to volunteer because of the stigma associated with a disclosure, and I am concerned that subjecting children to the PVG scheme could present barriers.

I ask Jamie Greene not to press amendment 209 and not to move any other amendment in the group, for the reasons that I set out. If he presses amendment 209 and moves the other amendments, I ask the committee to resist the amendments.

Jamie Greene: I thank members for their helpful and constructive comments and feedback. I agree with Daniel Johnson that there are questions about whether it is appropriate for under-16s to be in unsupervised situations in regulated roles. However, the reality is that a number of young people who already participate in a form of PVG scheme membership might be in that situation—it is impossible to cover all scenarios. We often talk about the ideal world, in

which that would never happen, but it might happen. My point is that the volunteer organisations that got in touch said that they have young people under 16 in that situation, performing the same role as people over 16 perform. They asked what we are doing about such young people.

I thank Ross Greer for his feedback. He mentioned other disclosure schemes—he perhaps has the benefit of understanding such approaches better than I do. If there are other options for under-16s and organisations would like that additional comfort in relation to specific roles, so be it. It would be helpful to know what those options are and for that to be communicated to voluntary organisations, which might not be aware of them.

I thank the minister, who made some very helpful comments. I think that we all share the view that volunteering is extremely positive and we want to encourage it. The amendments in this group are not intended to create confusion; they are trying to address confusion that currently exists. If volunteer organisations are saying that they might interpret the bill as meaning that people under 16 can no longer do voluntary work with vulnerable groups, we need to listen.

The point of these amendments is not to create confusion but to provide clarification where confusion currently exists. In response to Ross Greer's question on what happens after the bill is passed, I say that this is stage 2 and we have an opportunity to better communicate with the voluntary sector about the consequences of the bill for them and those who are under 16 and currently volunteer for those organisations. If there is confusion, let us listen to their feedback and respond positively with clarification.

I do not want to create further confusion. On the basis that the minister is happy to work with me and other members to ensure that some progress is made before we get to stage 3 and to provide reassurance to those organisations, I will withdraw amendment 209 and will not move the other amendments.

Amendment 209, by agreement, withdrawn.

Amendment 210 not moved.

Section 71 agreed to.

Section 72—Duration of Scheme membership

The Convener: The next group is on the PVG act and the renewal of scheme membership. Amendment 127, in the name of the minister, is grouped with amendments 128 to 145.

Maree Todd: In written evidence to the committee, the Scottish Social Services Council highlighted its need to be notified of any change to a member's status in the PVG scheme. I am pleased to move several amendments that ensure that regulatory bodies are notified when a scheme member's membership is due to lapse and where they have failed to renew membership. Having reviewed the provisions, I have also lodged amendments that will further enhance safeguarding for individuals who employ PVG scheme members in the context of personal arrangements, where an organisation is not involved, such as an individual who is arranging their own personal care through self-directed support and employs a PVG scheme member to carry out a regulated role for them. The amendments allow ministers to notify individuals of changes to the membership status of their employee.

I move amendment 127.

Amendment 127 agreed to.

Amendments 128 to 134 moved—[Maree Todd]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Failure to apply for renewal of Scheme membership

Amendments 135 to 145 moved—[Maree Todd]—and agreed to.

Section 73, as amended, agreed to.

Section 74—Compulsory Scheme membership

Amendments 146 and 147 moved—[Maree Todd]—and agreed to.

Amendments 211 and 212 not moved.

Amendments 148 and 149 moved—[Maree Todd]—and agreed to.

Section 74, as amended, agreed to.

Section 75 agreed to.

Schedule 3—Schedule to be substituted for schedule 2 of the PVG Act

The Convener: The next group of amendments is on regulated roles with children or adults in relation to elected representatives and political activities. Amendment 222, in the name of Alex Cole-Hamilton, is grouped with amendments 223 to 231.

Alex Cole-Hamilton (Edinburgh Western) (LD): I am grateful for the opportunity to be here today to speak to amendments 222 to 231.

Before I start, I note that I am aware that discussions have been had about my motives for lodging the amendments. I assure the committee

that it is not about showboating, virtue signalling or weaponising the process to embarrass political parties into voting one way or the other. It comes from a deeply held belief in child protection that comes after working in children's services, children's rights and child protection for 13 years before my election to the Scottish Parliament.

I was heavily involved in the consideration of the original Protection of Vulnerable Groups (Scotland) Act 2007. I was recruited to the Government's voluntary sector issues unit, which met over the course of eight months to ascertain the practicalities of the implementation of the new scheme as it was rolled out. That politicians have an exemption was a loophole that I identified and raised at the time, but we were unable to close the political gap and change it. Now we have an opportunity to right that wrong.

I open my remarks on the amendments with specific reference to the policy memorandum, which states:

"The Scottish Ministers consider that roles for which PVG membership is a mandatory requirement should have at their core the capacity or opportunity to exert significant power or influence over a child or protected adult."

I agree, which is why, when the bill was first introduced to Parliament in June 2019, I asked whether the Government would extend the provisions to include elected representatives. The minister will remember that she answered my question with positivity and suggested that she would be happy to assess whether parliamentarians fell into that category. My task today is to persuade the committee that they do.

Whether politicians are elected or in senior party positions, they have the capacity to change lives. They can offer help and solve sometimes intimate problems through their casework. They dispense patronage through employment and mentorship, and can offer schoolchildren work placements that are unlike any other.

In today's personality-driven culture, politicians can sometimes seem like celebrities. There is no question but that they have power and influence. The recognition of that power and influence is almost universal outside this Parliament, so it is unsurprising that, with that recognition, comes a basic assumption that the PVG scheme already applies to politicians. That assumption turns to astonishment when people learn that politicians are exempted. One Edinburgh teacher recently said:

"The fact you have received several thousand votes isn't any sort of guarantee of somebody's suitability to be alone with or in the presence of vulnerable people".

Given the protections that are rightly in place for teachers and others, the fact that nothing should apply to powerful people who encounter the same young people is a double standard and has the potential for serious abuse.

I know that many elected members take steps to ensure that they are never alone with a vulnerable constituent or a child, which is to be commended. However, there is no requirement for members to take such steps. It is conceivable that an MSP might be alone with a protected adult. For example, that might happen if that adult specifically asks for a private meeting or if a staff member is suddenly unable to attend a home meeting—life gets in the way. An MSP could find themselves alone with a young person who is on work experience, driving them around the constituency. That might not be considered good practice and it would certainly expose the elected member to risk, but they are in no way prohibited from doing it.

My central point is that, because politicians have influence and access, should they wish to have it, they are at liberty to have that access unencumbered by safeguarding of any kind. Put simply, we are trusting that, because an individual has persuaded a body of people to elect them to office, their intentions and conduct will be assured. I am sorry, but I cannot accept that that is sufficient. As we know and as the committee has heard throughout stage 1 of the bill, PVG checks are not a magic bullet and do not flag everyone who needs to be flagged. The checks offer only one layer of safeguarding, but it is an important one.

The first draft of my amendment sought simply to remove the exemption for elected representatives, and the Government rightly pointed out the grave constitutional implications of making the entirety of an elected position a regulated role. It would have meant that, should a sitting MSP, for example, fail a PVG check, a minister could theoretically unseat that MSP.

10:30

My amendment 224 therefore seeks to regulate one aspect of the work of elected representatives—and one alone—which is the occasions when they might have cause to be alone and unsupervised with children or vulnerable adults. There is widespread precedent for elected representatives being put through PVG checks in recognition of certain aspects of their role. Local authorities currently require a PVG check for councillors who sit on children and families committees, because of the likelihood that they might inspect children's homes and have other unsupervised contact in that regard. Amendment 224 applies to that small but conceivable function of the role of an elected member, and it explicitly states that it is limited to such engagement.

To deal with the situation in which a sitting elected representative fails a PVG check and is found to have been barred from working with children or vulnerable adults, proposed paragraphs 32A and 32B, which would be inserted by amendment 226, would give ministers the power to work with elected institutions to build procedures so that such an elected representative could not undertake that specific kind of regulated work on an unsupervised basis. The person would continue to be an MSP and could continue to meet all the people that they would have done without a PVG check, but safeguards and protections that do not exist at present would be in place.

Jamie Greene: Will the member take an intervention?

Alex Cole-Hamilton: Yes.

The Convener: I am sorry. I will let Jamie Greene come in later, but we do not have interventions in this part of the debate.

Alex Cole-Hamilton: Okay. I am happy to come back to Jamie Greene later.

I cannot understand why we would not want to have that level of reassurance. PVG checks set a standard and, if people do not meet that standard, provision needs to be made to protect those who need to be safeguarded.

As with any other area of work, the knowledge that background checks reveal would be wholly restricted. The PVG scheme is rooted in privacy. The electorate or media would not know, and would not have the right to know, any details. Under data protection law, only the managing organisation is entitled to such information. However, the electorate and the media would at least have the knowledge that someone who did not have a PVG check would not be allowed to be alone with children, and safeguarding provision would be put in place. People can have no such confidence or reassurance of that at the moment.

My amendments cover every level of elected office in Scotland. The Scottish Government contends that that rides up against the Scotland Act 1998 in so far as it places requirements on Scottish MPs. To address those concerns, I say that child protection is entirely devolved. If we do not feel that we can put the same safeguarding requirements on Scottish MPs, no other democratic institution is empowered to do it for us. MPs do not have diplomatic immunity in Scotland and, when operating in Scotland, they have to abide by every law that is passed by the Scottish Parliament.

Amendments 225 and 227 stretch the provisions to cover people who hold positions of responsibility in political parties. The amendments are self-contained and stand alone. Right now, it is an offence for a political party to ask for a PVG check for anyone who is not undertaking regulated work, as it is currently defined. However, we know how things can be. A target-seat candidate is at the centre of everyone's attention for the seven or eight weeks of an election campaign. They might end up working long into the evening in campaign offices with a range of volunteers who might fall into either category. Influence in politics can be magnetic, and we need to recognise the combination of influence and access, wherever that might exist.

A PVG check is not a barrier or a bar to candidacy but, along with other safe recruitment practices, it would help political parties to make better-informed decisions about allowing candidacies to progress. My amendments have been drafted so that all the provisions stay within devolved competence in relation to child protection and the protection of vulnerable adults. The amendments exist primarily to change the culture of expectation around the checks that people have to undertake in pursuit of a political career. Some people have said that that might present a barrier to those seeking election, and that a PVG check costs money, which is certainly true. I agree with the principle that there should be no financial impediment to standing for election, but that can be sorted through regulations. There is precedent for fees to be waived—for example, that happens with Volunteer Scotland disclosure services. We could define political activity as a public service, and there are straightforward ways in which that could be arranged.

We all need to learn the lessons of the independent inquiry into child sexual abuse. There are painful lessons for every party—mine included—and a multitude of institutions. The IICSA warned about putting reputation above child protection and about what can happen when there is no robust safeguarding. Indeed, if we are to take anything at all from the inquiry, it should be a recognition of the aura that politicians can carry, the deference to them that can occur, the assumptions that people make about their probity and the idea that they will self-police. To assume that election to office is the only element of safeguarding that we need is an attitude that will unquestionably put our children in danger, and it is an attitude that history has shown us opens the door to people who are determined to abuse others. It is time to shut that door.

In recent years, we have made huge progress towards creating a safeguarding culture in every other workplace and sector. Many are significantly better than they once were. Why, therefore, are elected politicians exempt from that process of improvement, when history and inquiries show that they should not be?

Voting against the proposal would send an awful message to every profession and sector in which people are working diligently and putting safeguarding at the centre of everything that they do. If members have concerns about the structure of the amendments, I am happy to work with the committee to tighten them up so that we can offer reassurance on how the proposal will work.

However, it has been more than a decade since we last updated disclosure law and there is a risk that, if we put nothing in the bill in that regard at stage 2, the window for getting something appropriate into the bill at stage 3 reduces massively. It might be another decade before we look at the issue again and to miss this opportunity to amend the bill would be to extend the exemptions that politicians currently enjoy, unencumbered by safeguarding. We are talking about a simple check that already applies to more than 1 million people in Scotland and which would trigger straightforward safeguards if necessary.

There is a gaping loophole, and we must close it.

I move amendment 222.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I thank Alex Cole-Hamilton for bringing this extremely important topic to the committee. The fact that he spent so much time talking about the amendments tells us something about the gravity of the situation. I think that this is far too big an issue for our committee to deal with at this point. We have taken no evidence on it. If we were going to address the matter, we would have to spend a lot more time on it. It is an issue for the whole Parliament to discuss.

Alex Cole-Hamilton: Will the member take an intervention?

The Convener: We are not going to have interventions, Mr Cole-Hamilton. You will have an opportunity to sum up at the end of the debate.

Gail Ross: I agree that it is anomalous that people in positions such as ours, with the powers and responsibilities that we have, are not subject to PVG checks or something similar. However, having listened to what Mr Cole-Hamilton had to say, I am not any clearer about how the proposal would work in practice. He noted that, in councils, the test pertains to people who sit on committees that might deal with vulnerable groups. However, I do not agree that that relates to MSPs. Certainly, I would never put myself in a position in which I was alone with a child or vulnerable person in that way; I would always make sure that someone else was there. Life might get in the way, as Mr Cole-Hamilton said, but some adjustments have to be made to ensure that that never happens.

I sympathise with the intention behind the proposal, but the fact is that we need to go into the issues in a lot more depth. It is an issue of parliamentary standards and should therefore be discussed by the whole Parliament rather than dealt with by us in half an hour.

The Convener: Mr Greene, do you want to contribute?

Jamie Greene: Yes, and I apologise for any confusion about procedure.

I have a few questions for Mr Cole-Hamilton, which he can respond to in summing up. Would the proposed test take place before, during or after election periods? What would happen in the case of any snap elections such as the ones that we have had over the past few years? Would the test apply only to candidates who are standing in Scottish seats, even if they are members of other institutions?

Would the provisions apply to MPs who were elected in England and who were working in Scotland temporarily or otherwise? If a member of any elected body refused a PVG check at any point, would they be committing an offence? If they failed a PVG check, how would that affect their ability to carry on with their duties? Alex Cole-Hamilton said that they could not be unseated but would be restricted to undertaking certain types of role unless adjustments were made or they were supervised. I see gaping holes in that analysis.

I ask those questions in a positive spirit because, like Gail Ross, I think that there is a lot to be said for the member's approach, and his long-standing interest in the subject is obvious. We share the member's concerns, but the issue seems a much bigger one that will have ramifications outside this room and, indeed, the Parliament. To do the proposal full justice, therefore, it should go through a due process of scrutiny. We simply do not have time to do that in the short time that we have for scrutiny in stage 2 proceedings.

The Convener: A number of members want to speak. Mr Johnson is next.

Daniel Johnson: Mr Cole-Hamilton began by raising the question of his motives. I do not question those for a moment. Mr Cole-Hamilton's commitment to child protection and children's issues is beyond question. He should not be questioned or criticised for his attempt to shift the boundaries of what we attempt to do with the bill and generally with the legislative process. He is right that we must ensure that we have the highest levels of scrutiny and protection with regard to roles in which people have the opportunity to exert control over and influence children and young people.

However, he said a number of things about the nature of our role that I would question and, indeed, think are questionable and dangerous to state. He stated that, by virtue of our roles as MSPs, we can gain unsupervised access to children should we wish to have it—I think that that was how he put it. I categorically state that that is incorrect. Anyone who thinks that, by virtue of being an MSP, they have a right to have unsupervised access to children or an expectation of it is categorically wrong, and it is a dangerous assertion to make. We should be looking at what is an appropriate way for us to undertake our business. I do not think that we should conduct our business in a way that requires unsupervised access.

As I said in talking about Mr Greene's amendments, we need to look at why and when people are required to have a PVG check under the bill. The bill seeks to rationalise that around roles, which is correct. We do not want to have a situation whereby PVG checks are required whenever someone might happen to have fleeting contact with children. The bill seeks to structure its requirements around situations in which someone has necessary and unavoidable unsupervised contact with children or has the ability to manage and administer the systems in which such contact takes place.

I do not believe that that situation pertains to MSPs. What is more, I do not think that it is advisable for it to do so, and I would challenge a comment that Mr Cole-Hamilton and other members made in that regard. Whether we are talking about a child or a vulnerable adult, it is not sufficient simply to have a staff member present. For practical and communication purposes, we need someone present who is responsible and has caring duties for that individual. If we have a surgery meeting with a child or vulnerable adult, it is important that a responsible carer is present so that we can confirm that our understanding of the case is what was intended to be communicated. However, that is not always straightforward. Therefore, before we even get to the question of whether it is appropriate to have unsupervised access, I do not think that that is a sensible or good way to get information or to communicate. However, I also consider that it is not sensible or appropriate for us to have such access.

10:45

In that regard, our role is substantially different from the role of councillors. Councillors may require PVG checks not by virtue of their role as elected representatives or the fact that they may hold surgeries, such as we do, but because they are responsible for administering many of the social work and education institutions, organisations, systems and schemes that have direct responsibility for looking after, caring for and supervising children in local authority areas.

Ultimately, we need to consider what the PVG scheme is for. It is to inform employers and those organising the supervision of children. It is there not to be a system of vetoes or to debar people but to provide relevant information to those who administer the systems.

I cannot understand where the information on elected representatives would go in order to allow someone to make an informed choice. We are in an odd and unusual position, as we do not have a boss—we are not employed in that sense. We do not have an employer or manager who can use a PVG check to decide how to structure our role. A PVG check would therefore be used as a veto, in precisely the way that we do not want those checks to work.

It would be dangerous to use a PVG check as a passport that gives access to vulnerable people. Using it in those circumstances and in that way runs the risk of doing that. Furthermore, given that the scheme is administered formally by the Government, we would be placing ministers in an invidious position of presiding over and having access to information on fellow elected representatives that is provided in the PVG certificate as well as information that is not included in it. That has serious constitutional implications, which we should not take lightly.

I have spoken directly to a number of organisations that are interested in these matters and that have provided evidence to the committee on the bill. They agree with me that, although the motivations are worthy and understandable, the consequences and other considerations are serious, so they have significant concerns.

Moreover, it is not appropriate for us to expect to carry out unsupervised contact in that way, let alone to do so. The thought that somehow we expect that—if it exists—should be challenged. That is a matter for the Standards, Procedures and Public Appointments Committee. I strongly suggest that, if there is any question of that being the case, a rule that we are not to have unsupervised contact with vulnerable people should be added to the code of conduct for MSPs.

Mr Cole-Hamilton talked about work experience. That is the one other situation in which such contact could conceivably happen. Unfortunately, work—whether paid or unpaid—is excluded from the bill's provisions. There is a bigger question about whether work experience should be considered further. However, the consequences and the implications of requiring all those who are involved with people doing work experience in their businesses or organisations to have PVG

checks would be far beyond the scope of what we have taken evidence on or considered.

For those reasons, with regret, I cannot support the amendments at this time.

Rona Mackay (Strathkelvin and Bearsden) (SNP): My colleagues have covered much of what I was going to say. I support and agree with them. I have one question. Mr Cole-Hamilton said that he thought that not taking this action would be a lost opportunity for a decade. I do not believe that that would be the case. Will the minister, in summing up, confirm that that will not be the case?

Alex Neil: There is almost consensus among committee members. I, too, do not question Alex Cole-Hamilton's sincerity or motivation. I know that he has a long background in this area of activity, and it is quite right for him to air his concerns.

I have several points to make. First, I think that the proposal is alien to the purpose of the bill. If there is a case for registering elected members, there is almost a case for having the whole population on the PVG register. That would totally dilute and divert resources away from the areas in which we need to focus resources. It is contrary to the main purpose of the bill.

Secondly, if we include the provision in primary legislation, there is a real danger that it will become a political football for people to kick—not just against their political opponents, but perhaps even against people in their own party. That would do no service to children or other vulnerable people.

Thirdly, to pick up on Daniel Johnson's point, it is fair for us to ask the Standards, Procedures and Public Appointments Committee to review the code of conduct for MSPs and to establish whether there is any need to amend or add to it. The code of conduct is legally enforceable and we are all subject to the law; at the end of the day, if we do anything untoward or even if we are suspected of doing anything untoward in relation to children or other vulnerable people, the law can take care of that and I am absolutely sure that it would.

I totally respect Alex Cole-Hamilton's motivation and sincerity, but I think that this is the wrong way to tackle what might become an isolated incident. To the best of my knowledge, in 21 years in this place, no issue of this nature has arisen. That is not to say that it could not arise in the future, but that is a matter for the SPPA Committee to look at by reviewing the code of conduct and making sure that any loopholes are addressed. That would be a proportionate way of dealing with the issue rather than including the proposal in the bill.

Ross Greer: Like colleagues, I respect the work that Mr Cole-Hamilton has put into this. I am a PVG scheme member and, like Mr Cole-Hamilton, I have undergone safeguarding training for the purposes of youth work. I therefore appreciate what he is trying to achieve. I do not want to repeat points that colleagues have made, because I think that there is an area of consensus on the committee.

There are a couple of additional issues that are worth raising. The very short debate that has been had on the issue so far has essentially conflated the role of all elected representatives. However, these are all distinctly separate roles; the issue of MSPs' competence to legislate on the matter has already been touched on. I would like to distinguish between the role of an MSP and that of a councillor. The Parliament does not run schools; we do not run care homes; and we are not responsible for the inspection of such facilities. That is not to say that, for that reason alone, MSPs should not be required to undergo something similar to a PVG check. However, it comes back to the core point that a number of members have made. This is an incredibly complicated debate with significant repercussions and we have simply not had the opportunity to explore all the issues sufficiently.

I appreciate what Mr Cole-Hamilton is trying to do. Staff have raised concerns with me about what the implications might be for MSP staff. Again, such issues could be teased out and thrashed out. Those concerns included whether additional responsibility or expectation would be put on staff. Also, would additional resource be deployed if an MSP were to fail a PVG check? If additional resource had to be deployed, how could that possibly be kept confidential in the public environment that we work in? Those are all questions to which there might be entirely satisfactory answers, but this is not a setting in which we can satisfactorily thrash all that out.

If Mr Cole-Hamilton wants to pursue the proposal, I urge him not to press it now but to work on it with others. I would be particularly interested in hearing the position of the Children and Young People's Commissioner Scotland, the Law Society of Scotland and Clan Childlaw, but there also needs to be a much wider debate for Parliament and for our public institutions as a whole. Despite what I have said about a commitment to thorough safeguarding procedures, we should always be instinctively sceptical of anything that would create a barrier to elected office, even if it was a cultural barrier that came about as an unintended consequence of a valiant effort such as this.

As I said, I urge Mr Cole-Hamilton not to press his amendments today.

Iain Gray (East Lothian) (Lab): I agree with the comments that colleagues have made about application of the PVG scheme to elected members. I will not exercise those arguments again, but I want to focus for a moment on the amendments that would extend the requirement to cover political activities. In the first contribution to the debate on the group of amendments, Gail Ross made the point that, although the principle seems straightforward and worthy, the more we examine the amendments, the greater the consequences that flow from them appear to be. For that reason, they need careful consideration, which we will not be able to provide properly at this stage.

I have three questions for Mr Cole-Hamilton about the development of the amendments. First, what consultation has he undertaken with councillors, the Convention of Scottish Local Authorities, MPs, MSPs, the Electoral Commission and other bodies that will have an interest in a requirement being placed on candidates? Secondly, how would his proposed system operate for those who stand for election as independents and not as members of political parties? That is relatively unusual in parliamentary terms, but there are local authorities where almost all the contests are between independents.

My third question is on competence. I appreciate that Mr Cole-Hamilton has said that, in his view, this is an issue of child protection, which is devolved, but it seems to me that there is a strong counter-argument in that the amendments would place a requirement on candidates in UK elections, over which we do not have competence. What independent legal advice does Mr Cole-Hamilton have to support the position that he has put to us?

Liz Smith (Mid Scotland and Fife) (Con): I record my thanks to Alex Cole-Hamilton, who is, I believe, pursuing his proposal with the best intentions. I sat on the committee at the time—in 2008 or 2009—when he provided us with information on the subject as a witness, and I understand where he is coming from.

My concerns relate to where the responsibility and, by definition, the accountability of the Parliament and the political parties would stand. In that regard, I will cite my role: I have been in the job of chief whip for only three weeks, but I can see a lot of contradictions and concerns—and perhaps a conflict of interest—between the role that the Parliament would have and the role that political parties would have with respect to who was responsible for making decisions about PVG checks and how that information would be passed from one to the other. I foresee a lot of difficulties with that.

I agree with Iain Gray that it is incumbent on us all to ensure that there is legal advice. I am not sure whether Mr Cole-Hamilton has taken specific legal advice, as opposed to advice from the children's commissioner, on how his proposals would work. However, I am not convinced that they are workable. The issue for me is about the responsibility that people would have to take with regard to PVG checks and any information that was forthcoming from them, especially should someone not live up to the standard and fail the test. Would that come down to the political parties? In most cases, they are responsible for deciding whether people are fit to stand for office. Alternatively, would it be a decision for the Parliament, which would then report to the political party? I think that there are a lot of complex tensions there.

I agree with the points that have been made about the implications of the amendments for MPs and other jurisdictions. I am not in a position to vote on the amendments, but I have grave reservations about their workability. There are serious concerns that they could make this Parliament's workings more complex than they need to be, and they raise a lot of issues to do with how the proposal relates to political parties. That is my big concern.

The Convener: Before I bring in the minister, I will make a comment. Mr Cole-Hamilton gave the specific example of an elected representative travelling with someone who was on work experience. My local authority's guidelines make that impossible, because we are specifically instructed not to be alone with a young person who is on work experience. I highlight that to illustrate again that there is a lot of work to be done on the matter. We need to work with COSLA and other organisations to get it absolutely right. However, I thank Mr Cole-Hamilton for bringing the issue to the committee.

I invite the minister to comment.

11:00

Maree Todd: The amendments are well intentioned in their aim, and I thank Alex Cole-Hamilton for raising an important issue. I have listened very carefully to the debate and am grateful for the opportunity to explain the Scottish Government's position.

The amendments present a number of challenges that have very significant constitutional implications. They have not been subject to consultation with the public or with the Parliament, and I firmly believe that it would be better if Alex Cole-Hamilton raised the matter with the Standards, Procedures and Public Appointments Committee, or even with the Presiding Officer, so

that that committee or the Presiding Officer could look at it on behalf of the Parliament. I am absolutely prepared to work with the Parliament to find a solution, but I do not think that the provisions of the bill are the appropriate place to do that.

Criminal record checks are a vital tool to support and inform recruitment. For that reason, I am sympathetic to the rationale behind calls for including elected representatives in the PVG scheme. It is important to remember that the scheme is specifically for people who work with vulnerable groups and that there is no pass or fail to disclosure. The presence of disclosure information does not automatically mean that somebody is unsuitable to work with children and protected adults.

Committee members will be aware that there are non-PVG level 2 disclosures as well. In broad terms, the other forms of level 2 disclosure offer the same disclosure information that the PVG equivalent does. However, they do not bring people into the scheme, which requires ministers to bar an unsuitable person from regulatory roles. Non-PVG level 2 disclosures are used for judicial appointments, for instance.

If there is a desire in the Parliament to allow an identified body to have access to non-PVG level 2 disclosures for elected representatives, I am open to discussing how that can be implemented. To achieve that, we would in all likelihood change the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 to cover elected representatives. That could be done through secondary legislation instead of the bill, but it would require very careful consideration of who would be appropriate to receive a disclosure and make decisions about the suitability of elected representatives to hold office.

As I have previously said, criminal record checks can be only one aspect of safeguarding, and no organisation should ever be solely reliant on them in protecting vulnerable people. I agree with Mr Cole-Hamilton that there are very painful lessons to be learned from the independent inquiry into child sexual abuse.

It is worth while for us to take a moment to reflect on the lessons that we have learned from the case of Cyril Smith MP. That case clearly illustrates an inadequate institutional response to allegations of child abuse. As such, it shows us precisely the kind of problem that Alex Cole-Hamilton is trying to solve.

Cyril Smith was never convicted in his lifetime, but allegations of child abuse, including reports to the police, were made against him over four decades. It is possible that a criminal record check would have contained other relevant information relating to that, but it is also possible that it would not. When we reflect on his case, it is very clear that safeguarding children is about much more than a criminal record check. It is everyone's responsibility to protect children, and a key part of safeguarding is recognising and responding to allegations of abuse.

What are the responsibilities of all of us when allegations are made? In Cyril Smith's case, it is clear that people around him did not feel that it was their responsibility to respond to allegations. It is not at all clear that a criminal record check would have protected children in that case. A different response from those to whom allegations were made would have protected children.

That is why I would advocate a more holistic response to the problem than just a criminal record check. I agree with the members who have said that in most situations it is best practice to have at least two adults present when they are working with children and young people. I question whether there is ever any need for children to be unsupervised while with an elected representative and I advocate that we should work together as a Parliament to ensure that safer working practices are in place to avoid that.

I turn to Mr Cole-Hamilton's amendments. He said that he wants all elected representatives in Scotland to be subject to a PVG check and membership. The amendments also seek to bring into the PVG scheme people who hold positions of responsibility in political parties. However, the amendments will not achieve their aim for elected representatives, because they will not bring all elected representatives into the PVG scheme in relation to both the children's and adults' workforces.

In relation to children, some elected representatives may never carry out the activities that are described in proposed new paragraph 30A. They could organise their constituency and other business so as not to have unsupervised contact with children. Many of us have stated that that is what we currently do. Even if an elected member has contact with children, they must take steps to ensure that the session or event always takes place in the presence of a responsible person, meaning that the child would not be unsupervised. If contact with the child is not unsupervised, amendment 222 means that the activity is not within the scope of the PVG scheme.

Similarly, the amendments will not have the effect of bringing all elected representatives into the PVG scheme in relation to carrying out regulated roles with adults. Again, it is entirely possible that the elected representative will never engage in the activity described because they may choose not to run sessions or events involving protected adults. There is the completely

unacceptable risk that protected adults would have fewer opportunities to engage with their elected representatives—for instance, by being excluded from events run by elected representatives who were not scheme members and were concerned about the implications of inviting them. There is also the question of how the elected representative would know whether any given session or event included a protected adult, since the definition relies primarily on private and intangible characteristics.

With amendments 226 and 229, Alex Cole-Hamilton appears to recognise that there are constitutional problems with his proposals. The amendments propose that ministers should make regulations to disapply the offence provisions with regard to elected representatives so that the amendments could apply effectively to elected representatives. However, I have noted that those amendments do not extend to political activities, meaning that, for example, a decision by Scottish ministers exercising their barring functions under the PVG act could in effect prevent a barred individual from standing as a candidate for election in the first place.

The committee should note that the existing powers in the PVG act to disapply the offence provisions for particular types of regulated work have been used only once before. There are regulations that disapply the offence provisions in the context of permanence orders, so that an administrative decision by Disclosure Scotland's protection unit on behalf of Scottish ministers cannot override a court decision made in the best interests of a particular child by listing an individual who happens to be a foster carer of a child on a permanence order. That is to prevent the individual and the council from committing a serious offence by following the order of the court and allowing the child to remain with the individual beyond the date of the listing decision

That exception clearly applied to a particular situation that was entirely different from the proposed approach for elected officials. The amendment neither delivers PVG membership for all elected members as a certainty, nor necessarily covers the activities that a member might undertake with children as it is simply dependent on whether the children are unsupervised during those activities, making it ambiguous to an elected representative whether they were required to join the PVG scheme and, if so, in relation to which workforce.

Disapplying the offence provisions would remove the benefits of the barring arrangements under the PVG scheme. On that basis, there is no justification for requiring elected representatives to participate in the PVG scheme, because all we would be left with is the state issuing disclosure records. As I have said, if there is a desire in the Parliament for non-PVG level 2 disclosures to include representatives, I am open to discussing how that can happen.

Like other members, I am unclear to whom a disclosure should be made. The amendments make no comment on who would be an appropriate person to assess the suitability of MSPs for a regulated role. There are also difficulties with regard to the public's understandable expectation of transparency with respect to their elected representatives. The body that would receive the information would not be able to share the disclosure information, including information about listed status more widely.

I invite Mr Cole-Hamilton not to press his amendments but to take up the matter with the Standards, Procedures and Public Appointments Committee. I urge committee members to reject the amendments if they are pressed to a vote.

Alex Cole-Hamilton: I have been asked a lot of questions, and I have a lot to unpack, so forgive me if I take a bit of time.

At the start of my remarks, I referred to my time on the voluntary sector issues unit of the Government implementation group for the Protection of Vulnerable Groups (Scotland) Act 2007. We met weekly for eight months to iron out the kinks of the roll-out of what was a considerable bureaucratic exercise of retrospective checking.

A very charismatic chief executive of a voluntary sector organisation who was an expert in child protection was on that group. Half way through that process, he was convicted of being part of one of the most egregious paedophile rings in Scotland's history. The man would not have been flagged by the PVG scheme. I mention the case because it shows that with status comes an assumption of probity. He could have gone on to have a political career. Although the PVG scheme might not have caught him in that circumstance, it provides a level of assurance and safeguarding that we currently do not have for any elected member.

Most members have asked about self-policing and said that they would never put themselves in such a situation. I understand and respect that; I also applaud them for it, as it shows that they have safeguarding at the forefront of their minds. However, as politicians, we need to legislate for people as we may occasionally find them, not as we would wish them to be. As such, we have to accept that there are politicians who will not have that probity and that desire for safeguarding, because they might have nefarious intent—and we have heard examples of politicians who have been found wanting in that regard.

Jamie Greene asked several questions, including one about snap elections. My proposals—we have discussed the work around this—are that the checks would form part of the regular vetting process that parties employ in the selection of candidates. I would hope that parties already vet candidates. Under my proposals, someone who is to become a target-seat candidate—or any candidate—in an election, would go through a vetting process. It would be much the same as when someone joins a Scout group or works in a Sunday school, in as much as a PVG check would form part of the usual recruitment and selection process.

On the roll-out of my proposals, that is all open for discussion, and a lot of that could be swept up in that time.

Jamie Greene asked whether the requirement would apply only to Scottish seats. Yes, it would; we have the power to legislate only within Scotland. It would not apply to visiting members of Parliament from other jurisdictions. Why? Because it is not reasonable to expect that they would have cause, during a visit, to have unsupervised contact with either children or protected adults.

What would happen if somebody refused to undergo a PVG check? That is certainly possible; people might take umbrage at being subjected to that manner of check. I would hope that the culture would change such that they are seen as just being part of political life. However, if someone refused a check and went on to undertake regulated work—as we would define it through my amendments—they would be committing an offence and would be subject to the full force of the law.

If someone fails a PVG check, my amendments would allow ministers to make arrangements with the democratic institutions concerned. That is an important point, and several members have asked about it. We are not reinventing the wheel here. There are clear rules of engagement and strata in existing voluntary organisations, including large organisations, as to who receives the information about disclosures or barring certificates. In the Parliament, it would not be the Presiding Officer, because the Presiding Officer is a member of the Scottish Parliament and therefore one of our peers. The chief executive, who is the organ of the Scottish Parliament, would work with the Scottish Parliamentary Corporate Body, and possibly with the Standards, Procedures and Public Appointments Committee, to make provisions to cover the unlikely event that an MSP fails a check.

11:15

On Dan Johnson's remarks about protected adults, it is important that we are careful on that aspect, because the definition of a protected adult is a lot broader than one might think. Someone who is a protected adult does not automatically have a communication support need and they do not necessarily even have a carer. Somebody who is of advanced years and who has comorbidities or a range of conditions would be considered to be a vulnerable adult, but there might be no one else in their life, so it might not be appropriate to suggest that they should be supported by a carer or representative to help with their communications.

When we are elected, we are given no guidance on the rules of engagement that we should employ in the normal course of our work. For example, there is nothing to say that we should not be alone with people, whether we should have the door open or closed and who should sit by the door. No such information is given to MSPs—or, if it is, I have probably not seen it. We should have that information. However, even if there was guidance, there would be no prohibition on the access that we can enjoy. We all have power in our offices. We can all say, "This is going to be a sensitive meeting, so I should take this one alone," and our staff will not demur. We know the culture in which we find ourselves.

Alex Neil said that my amendments are

"alien to the purpose of the bill"

and would, in a sense, dilute it. He asked why, if we extend the scheme to elected members, we should not then extend it to the whole population. In response, I simply say that the whole population does not have the power and influence that we have as elected members. That is important. People come to us to receive a service—they want us to help them and they need us. Sometimes, they are in abject desperation. Other members of the public never have that leverage over vulnerable individuals, so I reject that argument.

Alex Neil and Dan Johnson suggested that the issue could be swept up by the Standards, Procedures and Public Appointments Committee or through the code of conduct. The code of conduct really only matters after the fact; it kicks in only if we breach it. Therefore, if a member is alone with somebody or has unscrupulous contact with a person, that will be dealt with through the code of conduct only if the code is breached. Using the protecting vulnerable groups scheme would give people confidence that those who serve them as their elected members had been through the check and that there was a level of safeguarding. It would not be foolproof, but it would be there, and it would be more than we currently have.

Ross Greer said that the difference between councillors and members is that we do not run schools or children's services. That is entirely

accurate. However, we visit schools regularly, and we do so with a bit of pageantry. There is quite a lot of excitement and we are made to feel the centre of attention. We have an influence in the rooms that we visit.

Ross Greer and other members said that the proposal is too big for the bill and that we have not consulted on it. It is not big. It would close a small loophole in the original act—the Protection of Vulnerable Groups (Scotland) Act 2007—that made an exemption for politicians and elected members. If the committee wants to take additional evidence on the issue, please do so. If the committee rejects my amendments, please open up evidence again between stages 2 and 3. If my amendments are not agreed to, as I rather suspect will happen, I will write formally to the committee to request that.

The committee still has the time and the necessary parliamentary levers to take the evidence that it needs to in order to test the proposal to get it right. We need to get this right. I get the point that we do not want to put up barriers to people being elected, but people already believe that this barrier exists and are really surprised and shocked to learn that it does not. People understandably assume that, because sports coaches and Sunday school teachers have to get a PVG check, the process already applies to MSPs.

Iain Gray asked me very specific questions. I have carried out a range of consultation activities in my party and I have spoken to council leaders, councillors, members and office bearers in the strata. I have not taken legal advice other than the discussions that I have had with Parliament clerks. Amendment 222 comes from a good place—from my experience, as someone who has done work in the field for a good number of years.

On the question about independent candidates, I understand that there are loopholes and problems, but if we define regulated work as having specific criteria—as I do in my amendments—independent candidates who did not have a PVG certificate and undertook such work would also be committing an offence and so would be subject to the full force of the law. I am certain that there would very quickly be an expectation that such candidates would have a PVG check—if everyone else has gone through a PVG check it would become the norm. Even someone who was running as an independent candidate could expect to undertake that, too—perhaps with guidance from the returning officer. However, I accept that there is a question mark over that one.

Several people have asked about competence. I say it again: Scottish MPs operating in Scotland do not have diplomatic immunity. If, as a Parliament, we say that we cannot impose a requirement on Scottish MPs to have PVG checks, they shall forever have no PVG checks, because no one else is empowered to insist it of them. The House of Commons cannot insist on child protection measures for their MPs that are different from the ones that we have in Scotland. That would be an offence right now because we have not defined their activities as regulated work in a Scottish context. As I say, we are not reinventing the wheel—it is not as complex as some people suggest.

Finally, the minister suggested that my proposal comes out of the blue and that there had been no consultation. However, I raised the issue in Parliament in June 2019, and I raised it subsequently, at the turn of the year, as we started consideration of the drafting of amendments to the bill. The minister brought up Cyril Smith and I understand why she did. As I said at the top of my remarks, this issue affects every party—and, on the basis of that case, my party more than most. Cyril Smith would not have been caught by the PVG scheme, but a PVG check would be one more layer than we have right now. Other relevant information might have tipped off the authorities in his political party that he was an unfit person to field as a candidate.

The minister also asked what would happen if a member had accidental unsupervised contact—if they did not have a reason to believe that there was a protected adult or child and suddenly found themselves in what we have defined as regulated work. The bill already covers that. Section 74 introduces the new section 45C, which provides a defence for when someone did not have a reason to believe that they would be in the proximity of children or a protected adult.

If, in a few years, something happens in a car park at a constituency surgery or behind closed doors in a council office and there was prior evidence that the elected representative concerned posed a threat to vulnerable adults, it would be utterly indefensible for the Parliament to have said, “We don’t need to do that check”—a check that would have raised a red flag to say that that person should not be alone with children or protected adults; it is hard to imagine the fury that would rain down on this place in such circumstances.

We are talking about a simple check that, as I have said previously, is applied to millions of our fellow countrymen and women. It should apply to elected members. I press amendment 222.

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

Members: No.

The Convener: There will be a division.

For

Wishart, Beatrice (Shetland Islands) (LD)

Against

Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Greer, Ross (West Scotland) (Green)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

The Convener: The result of the division is: For 1, Against 10, Abstentions 0.

Amendment 222 disagreed to.

Amendment 223 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Wishart, Beatrice (Shetland Islands) (LD)

Against

Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Greer, Ross (West Scotland) (Green)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

The Convener: The result of the division is: For 1, Against 10, Abstentions 0.

Amendment 223 disagreed to.

11:25

Meeting suspended.

11:31

On resuming—

The Convener: The next group of amendments is on miscellaneous provisions in relation to regulated roles with children or adults. Amendment 150, in the name of the minister, is grouped with amendments 151 to 162, 213, 163, 214, 164 to 176, 215, 216, 177 to 179, 217, 180 and 218 to 220.

If amendment 213 is agreed to, amendment 163 is pre-empted, and if amendment 217 is agreed to, amendment 180 is pre-empted.

Maree Todd: One of the key reforms that the bill makes to the PVG scheme is to replace the concept of "regulated work" as the eligibility criterion for scheme membership with "regulated roles" as a trigger for mandatory membership of the PVG scheme. The shift to "regulated roles" addresses the complexity within the current system and offers certainty about who needs to be in the scheme. It also contributes to the aim of refocusing the scheme on roles that give the postholder an opportunity to exert power or influence over children or protected adults. These amendments have been lodged to ensure that schedules 3 and 4 of the bill are appropriately scoped and that they draw people into the PVG scheme when it is necessary and appropriate. In the main, the same amendments have been lodged for both schedules. To avoid repetition, I will discuss the amendments that occur first in the group, which are mostly in relation to schedule 3 for children; I will highlight the corresponding amendments that relate to schedule 4 for adults.

Amendments 150 to 154 narrow the scope of the exceptions to regulated roles with children

"in the course of a personal relationship".

In the bill as it was introduced, there is an exclusion for activities that are

"carried out in the course of a family or personal relationship."

That would mean that a friend who provides paid adult personal care services to another friend would not have to be in the scheme. That is wider than the existing exclusions in the PVG act, which require that, for the family or personal relationship exclusion to apply, there should be no "commercial benefit". The amendments ensure that the provisions are consistent with the existing exceptions in the PVG act and prevent a potential gap that could be exploited to circumvent the mandatory PVG scheme.

Amendments 164 to 170 make the same adjustments to the exceptions for regulated roles with adults. As I mentioned at the outset, a key driver of the shift from "regulated work" to "regulated roles" is to draw into the PVG scheme those roles where power or influence is exercised over vulnerable groups. Amendments 155 to 157 and 171 to 173 insert into the bill a definition of "exercising power or influence over" children or protected adults. That definition is inserted into the meaning of "contact", in place of existing references to making decisions that affect children; in conjunction with the activities in schedules 3 and 4 of the bill, it will make it easier to identify whether a role is within the scope of the scheme.

Amendment 158 removes the word "employability" and references to "health or wellbeing" from paragraph 11 of schedule 3 and inserts the word "education". That refocuses the

activities in paragraph 11 to those that are more relevant to services for children. That will ensure that we do not inadvertently bring jobcentre staff into the PVG scheme.

Amendment 174 amends schedule 4 in a similar fashion in relation to protected adults.

Amendment 159 removes "exclusively" from paragraph 20 of schedule 3. The purpose of that is to ensure that, where the premises listed are used by vulnerable groups and non-vulnerable groups, individuals carrying out domestic services in them would still need to join the scheme. Under the bill as introduced, it is only where the premises in paragraph 20 are used exclusively by children that an individual would be required to join the scheme. Where they are used by adults as well as children, an individual would not be required to participate in the scheme. Amendments 159 and 175 address that anomaly.

Amendments 160 and 161 modify paragraph 24 of schedule 3, removing "support services" and replacing those words with a reference to

"advice or guidance in relation to health or wellbeing"

to prevent a wide interpretation of paragraph 24 drawing administrative or backroom staff into the mandatory scheme. Amendments 177 and 178 make the same adjustment in schedule 4.

To address a similar concern around administrative staff, amendments 162 and 163 amend schedule 3, and amendments 179 and 180 amend schedule 4. Those amendments bring in more direct language around providing the various types of activities and services described. That will ensure that the regulated roles are those that are directly involved with children and protected adults rather than those that are involved in making payment arrangements to allow those activities to take place. At present, it could be argued that "contact" includes written communication, if people in such administrative roles sent letters to children or protected adults. Those amendments will avoid drawing such roles into the scheme where that is not necessary or appropriate.

I thank Dr Allan for lodging amendments 213, 214, 217 and 218, as they point to an important observation with regard to schedules 3 and 4. I agree that the insertion of a separate heading for religious activities is helpful. I also note that Dr Allan's amendments 214 and 218 will, apart from the insertion of the new heading, have the same effect as amendments 163 and 180 in my name. I am not opposed in principle to Dr Allan's amendments. My officials brought the matter to my attention after Dr Allan raised it with them at the evidence session prior to the stage 2 proceedings, and it was our intention to ask the parliamentary clerks to arrange for headings and italics to be inserted into the schedules administratively, as printing changes to the bill. That would have allowed us to insert a heading and italics above paragraph 27 of schedule 3 and paragraph 19 of schedule 4, creating a separate category of religious activities as distinct from leisure activities. However, Dr Allan's amendments pre-empt and are consistent with our plans. For further clarity, we can request a new italic heading before paragraph 28 of schedule 3 and paragraph 20 of schedule 4 to denote that they concern sports activities.

I thank Iain Gray for amendments 215, 216, 219 and 220. Amendment 215 will make it explicit in the bill that individuals providing support to a protected adult under a shared lives scheme are carrying out a regulated role. Amendment 220 provides definitions of "shared lives agreement", "shared lives carer" and "shared lives scheme" for the purpose of amendment 215. In his evidence before the committee, Ben Hall from Shared Lives Plus drew parallels between shared lives carers and foster carers. Mr Hall acknowledged that shared lives carers will be brought into the mandatory PVG scheme by some of the other activities in schedule 4. I agree with that position, but I recognise that Iain Gray's amendments offer a helpful addition that captures the uniqueness of the shared lives model of care. Accordingly, I have no objections to amendments 215 and 220.

Amendments 216 and 219 will bring other individuals aged 18 or over into the mandatory PVG scheme by dint of who they live with. Under the current legislation, an enhanced disclosure with suitability checks—that is, a check of the barred list—can be required for an individual over the age of 16 who resides in the same household as an individual who is being assessed as to their suitability to be a foster carer within the meaning of section 96 of the Protection of Vulnerable Groups (Scotland) Act 2007. Amendments 216 and 219 go much further than that. They would have the effect of bringing individuals aged 18 or over into the PVG scheme due to who they live with rather than as a result of the role that they actively carry out. Therefore, I do not consider amendment 216 to be appropriate.

I agree that there should be parity between individuals who reside in the same household as a foster carer or a shared lives carer, and that the latter should be eligible to receive a level 2 disclosure. Eligibility for level 2 disclosures without PVG membership is not set out in the bill; instead, it will be a matter for secondary legislation and will be achieved through an amendment to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 as part of the implementation process for the bill. I would be happy to speak further to Iain Gray if he would like to discuss how that work might be progressed.

If Dr Allan moves his amendments 213, 214, 217 and 218, I ask committee members to support them.

If Iain Gray moves his amendments 215 and 220, I ask committee members to support them.

I urge Iain Gray not to move his amendments 216 and 219. However, if those are pressed to a vote, I ask committee members to reject them.

I move amendment 150.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Amendments 213, 214, 217 and 218 in my name deal with two relatively minor but nevertheless important issues. As the minister said, the amendments are to schedules 3 and 4 to the bill, where, at present, religion is classed under leisure activities. I am attempting through my amendments to address, first, an equalities issue, in that members of faith groups are unlikely to think of their activities as being in the same bracket as, say, a golf club, so the term "leisure activities" is probably unhelpful. Secondly, and more practically, a number of faith communities have contacted me to say that that classification risks causing confusion when people engage with the legislation in future and that it would be easier to correct the categorisation of religious activities.

With that in mind, my amendment 213 would strike the religious activities paragraph under the leisure activities section of schedule 3, which is at line 21 on page 82 of the bill. Amendment 214 would add a new religious activities section at the end of schedule 3, at line 22 on page 82. Amendment 217 would strike the religious activities paragraph under the leisure activities section of schedule 4, at line 22 on page 87. Amendment 218 would add a new religious activities section at the end of schedule 4, at line 24 on page 87.

By adopting my amendments, I hope that we can simplify and make more efficient the process of disclosure within our faith communities. As I said, those are small points, but I hope that my amendments will be helpful. If nothing else, minister, I think that we have learned about the importance of italics in legislation and will watch out for them in future.

Iain Gray: The minister has largely already covered the purpose of amendments 215 and 220, which, as she indicated, arose from evidence given by Ben Hall of Shared Lives Plus in the course of the stage 1 scrutiny of the bill. Shared Lives Plus's concern was that the care model that it pursued should be properly caught by the legislation. It saw that as largely paralleling the arrangements for foster families, with the difference being that, in its model, on which 15 schemes now operate in Scotland—the number grows each year—those who live with families are not children but are often adults with learning disabilities or, increasingly, adults who suffer from dementia in their later years.

I have listened carefully to the minister's comments, on the basis of which I am prepared to not move amendments 216 and 219 when the time comes. I am also prepared to work with her and with Shared Lives Plus, prior to stage 3, to ensure that we achieve that objective. If the minister thinks that that could be done better through regulations, I am sure that the organisation would be prepared to discuss that.

The Convener: As it appears that no other member wishes to comment, I ask the minister whether she wishes to wind up.

Maree Todd: No, convener—other than to say that I would be very willing to work with Iain Gray, Shared Lives Plus and other stakeholders to ensure that we get those amendments right.

Amendment 150 agreed to.

Amendments 151 to 162 moved—[Maree Todd]—and agreed to.

11:45

The Convener: I remind members that if amendment 213, in the name of Dr Allan, is agreed to, amendment 163 is pre-empted.

Amendments 213 and 214 moved—[Dr Alasdair Allan]—and agreed to.

Amendment 224 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Wishart, Beatrice (Shetland Islands) (LD)

Against

Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Greer, Ross (West Scotland) (Green)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

The Convener: The result of the division is: For 1, Against 10.

Amendment 224 disagreed to.

Amendment 225 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Wishart, Beatrice (Shetland Islands) (LD)

Against

Adamson, Clare (Motherwell and Wishaw) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Gray, Iain (East Lothian) (Lab)
Greene, Jamie (West Scotland) (Con)
Greer, Ross (West Scotland) (Green)
Halcro Johnston, Jamie (Highlands and Islands) (Con)
Johnson, Daniel (Edinburgh Southern) (Lab)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

The Convener: The result of the division is: For 1, Against 10.

Amendment 225 disagreed to.

Amendment 226 not moved.

Schedule 3, as amended, agreed to.

Schedule 4—Schedule to be substituted for schedule 3 of the PVG Act

Amendments 164 to 176 moved—[Maree Todd]—and agreed to.

Amendment 215 moved—[Iain Gray]—and agreed to.

Amendment 216 not moved.

Amendments 177 to 179 moved—[Maree Todd]—and agreed to.

The Convener: I remind members that if amendment 217 is agreed to, amendment 180 is pre-empted.

Amendments 217 and 218 moved—[Dr Alasdair Allan]—and agreed to.

Amendments 227, 228, and 219 not moved.

Amendment 220 moved—[Iain Gray]—and agreed to.

Amendment 229 not moved.

Schedule 4, as amended, agreed to.

Section 76—Meaning of "protected adult"

The Convener: Group 5 is on the meaning of "protected adult" in the PVG act. Amendment 181, in the name of the minister, is grouped with amendments 182 to 185.

Maree Todd: The existing definition of "protected adult" in the PVG act relies on a person being in receipt of a particular type of service, which can be a health, social, community or welfare service. Experience of operating the PVG scheme has shown that that definition is challenging in practice. Accordingly, when the policy for the bill was being developed and consulted on, it was proposed to amend the definition of "protected adult" in section 94 of the PVG act and insert a new schedule 3 to the PVG act. That will allow the new definition of "protected adult" to tie in with the new concept of regulated roles, which will replace regulated work.

However, stakeholders' responses to the bill have indicated that the move away from references to specific types of services and replacing those with references to the characteristics of the individual who is in receipt of them—illness, old age, physical or mental disability and a resulting impaired ability to protect oneself from harm, or a requirement for assistance with the activities of daily life—may lead to some people falling outside the definition in the amended section 94 who would have been caught by the current section 94.

Amendment 181 replaces the words "old age" with "infirmity or ageing" as a factor that, if it results in an individual having an impaired ability to protect themselves from physical or psychological harm, or in an individual requiring assistance with the activities of daily living, will mean that they meet the definition of "protected adult". Stakeholders reported concerns about the adverse connotations of the term "old age". The revised wording of "infirmity or ageing" clarifies who may be brought into the scope of being a protected adult.

Amendment 182 removes the word "significantly" from the test of whether the person's ability to protect themselves from physical or psychological harm is impaired. Scottish Women's Aid raised concerns that reference to a significant impairment would lead to vulnerable people being excluded from protection. Amendment 182 responds to that concern.

Similarly, amendment 183 responds to feedback that individuals who are homeless or affected by domestic abuse should be included in the definition of "protected adult". Amendment 183 brings such individuals within the meaning of "protected adult", but in relation only to a regulated role that involves the carrying out of the activities that are mentioned in paragraph 16 in schedule 4 to the bill, which include provision to protected adults of counselling, therapy and advice or guidance in relation to health or wellbeing. That restriction is necessary to ensure that we do not disproportionately draw people into the scheme.

As noted, the definition of "protected adult" is complicated and has been difficult for PVG users to navigate in practice. Amendment 184 affords ministers a degree of flexibility and future proofs the bill so that amendments can be made to the definition of "protected adult" to ensure that sufficient coverage is provided by the PVG

scheme. The amendment lists the same types of services that are currently provided for under section 94 of the PVG act.

Amendment 185, which is technical, provides a meaning for "domestic abuse" and, as such, is consequential on amendment 183. It also contains consequential amendments to provisions in section 94 of the PVG act that define certain terms, to ensure that those definitions continue to work in the light of amendment 184. The definitions themselves would not be altered in any way. However, we have listened carefully to the views of stakeholders and I am aware that there are still some concerns about the amendment. I am interested in hearing members' views and I am happy to work with members to find a solution before stage 3. I will not move amendment 185.

I move amendment 181.

Beatrice Wishart (Shetland Islands) (LD): I note that the minister has said that she will not move amendment 185. I am a trustee of Shetland Women's Aid, which comes under the umbrella of Scottish Women's Aid. On amendment 185, there is still concern about the definition of domestic abuse, so I am encouraged by the minister's comments that work will continue on that issue.

Jamie Greene: I echo Beatrice Wishart's comments, and I thank Scottish Women's Aid for its submission to members, which I found helpful. Originally, the Scottish Conservatives had planned to support amendment 185 if it was moved by the minister but, in light of the comments that have been made, it feels as though there is still some work to be done.

That raises a wider issue on the redefinition of vulnerable individuals. For example, after my initial glance at amendment 185, I had questions about proposed new section 94(2A)(a) in the PVG act, which refers to an individual who "has experienced" abuse. I was asked a question about a person who had, historically, unfortunately been the victim of abuse, as defined in the amendment, being caught under the current definition of a vulnerable person, even if the abuse took place many years or decades ago and the person wished to move on in life and not to be defined as a vulnerable person.

I wonder whether amendment 185 as drafted encompasses all scenarios, although I appreciate that it is difficult to encompass all individual circumstances in legislation. We all want to get this right, but we do not want to catch people under the definition in legislation of those who are vulnerable or need to be protected simply by default due to historical circumstances. I ask the minister to reflect on that.

The minister mentioned flexibility, specifically in relation to amendment 184. I appreciate that flexibility seems to be required, but what scrutiny will be afforded to the committee or the Parliament if ministers seek to use that flexibility to redefine any of the definitions that she detailed?

Maree Todd: Officials have discussed this group of amendments with Scottish Women's Aid. I am aware of its comments, and I acknowledge its concerns that the drafting of amendment 185 could be unduly narrow compared with people's common understanding of what might amount to domestic abuse. It is important for us to provide a definition in the bill because, without that, there would be uncertainty about who is covered by amendment 183.

On amendment 185, we sought to tap into definitions that are used in existing legislation to help to define the term, and such definitions are intended to be broad. In view of stakeholder feedback and today's debate, I will not move amendment 185. I will instruct my officials to continue to engage with relevant stakeholders, including Scottish Women's Aid, ahead of stage 3 to see whether we can lodge a revised amendment. As ever, I am more than happy to work with any committee member who wishes to be involved in finding an appropriate solution that addresses the concerns that stakeholders have raised.

Amendment 181 agreed to.

Amendments 182 to 184 moved—[Maree Todd]—and agreed to.

Amendment 185 not moved.

Section 76, as amended, agreed to.

Section 77—Conditions imposed on scheme members under consideration for listing

The Convener: The next group is on consideration for listing. Amendment 186, in the name of the minister, is grouped with amendments 187 to 195.

12:00

Maree Todd: Section 30 of the PVG act provides that ministers must inform certain persons of a decision to consider someone for listing, to list someone or, as the case may be, not to list someone. Those persons are the individual concerned, organisations for which the individual undertakes regulated roles and relevant regulatory bodies.

As it stands, the bill will allow ministers to notify an individual who employs others but not in the course of business that a scheme member is being considered for listing and has standard conditions imposed. Those personal employers, as they are known, are typically individuals who,

for example, pay for their child's music tutor or employ a carer in the context of self-directed support. However, the bill and the PVG act, as they stand, do not provide for ministers to notify those same personal employers of the final outcome of the consideration process; that is, whether someone carrying out a regulated role for them has been listed.

The amendments address what I consider to be a potential safeguarding loophole and improve the protections for private individuals who employ PVG scheme members. On a related issue, the amendments make it clear that personnel suppliers are covered by the section 30 notification provisions in the PVG act.

There are technical amendments in the group to ensure that personal employers are not criminalised under the bill in relation to a failure to ensure that a scheme member complies with the conditions that are imposed on them. The amendments make it clear that personal employers are not covered by those offences, which is consistent with the other offence provisions for employers under the PVG act that apply only to organisational employers and personnel suppliers.

I move amendment 186.

Amendment 186 agreed to.

Amendments 187 to 190 moved—[Maree Todd]—and agreed to.

Section 77, as amended, agreed to.

Section 78—Notice of consideration for listing

Amendments 191 to 193 moved—[Maree Todd]—and agreed to.

Section 78, as amended, agreed to.

Section 79—Withdrawal from Scheme when under consideration for listing

Amendments 194 and 195 moved—[Maree Todd]—and agreed to.

Section 79, as amended, agreed to.

Sections 80 to 83 agreed to.

After section 83

The Convener: The next group is on the PVG act and removal from the lists. Amendment 196, in the name of the minister, is grouped with amendments 197 and 198.

Maree Todd: The amendments concern elements of the PVG act barring service and how they can be improved. The amendments are principally concerned with ensuring that the right people remain on or are removed from the barred lists.

Amendment 196 changes the test in section 25 of the PVG act relating to applications for removal from the lists, so that it more explicitly reflects the filtering nature of the provision. Disclosure Scotland's experience of applying the competence test under section 25(3)(b) of the PVG act is that the threshold for when ministers should consider the application is insufficiently clear. That is because there can be changes in circumstance that would not be relevant to a determination by ministers about whether the applicant was no longer unsuitable to carry out regulated roles with children or adults.

For instance, if an individual changes their career, that is a change of circumstances, but not one that is relevant to the decision that ministers must make under section 26 of the PVG act on whether the individual is no longer unsuitable to carry out a regulated role with children or adults. An application that includes details of such a change in circumstances would be incompetent, as it would not meet the threshold test under section 25(3)(b). On the other hand, where a change of circumstances is relevant to the test applicable under section 26, the threshold is cleared, and that application should be properly determined under section 26 on the merits of the specific change. Amendment 196 makes it clearer that a change in circumstances must be relevant to the determination that is to be made under section 26 of the PVG act.

Subsection (4) of the new section introduced by amendment 196 repeals sections 25(5) and 25(6) of the PVG act. Disclosure Scotland's experience is that sections 25(5) and 25(6) might serve to confuse applicants and that they create a false impression that a conviction being quashed will automatically lead to a person's removal from the list. That is not the case, since there are different standards of proof for a criminal finding of guilt beyond reasonable doubt and the civil standard for listing decisions, which is the balance of probabilities. Therefore, although a conviction being quashed might be a relevant change in circumstances that would lead to a competent application for determination under section 26 of the PVG act, it would not always be relevant. The revised explanatory notes will make that clear.

Amendment 197 expands the possibility of late representations or additional information being used after a listing decision is made, so that ministers will have the option to remove that person from the list if they are satisfied that they are not unsuitable to carry out regulated roles of the type that they were listed for. That addresses our concern that some people fall into the gap in the removal provisions in the PVG act and that

there is no way for them to be removed from the list, even if Disclosure Scotland thinks that they should be.

For instance, an individual who is invited to make representations, but who did not do so for whatever reason, has no basis for asking ministers to remove them unless they can establish a change in circumstances and make an application for removal under section 25. That is because the test under section 29(1)(b) of the PVG act is that ministers must be

"satisfied that the individual should not have been listed."

The test of whether someone "should" not have been listed is not necessarily the same as a test of whether they "would" not have been listed if the information had been available at the time of the original decision. As it stands, the only remedy for someone in such a situation would be to appeal against listing, under section 21 or section 22 of the PVG act. We are seeking to eliminate that step so that, should late representations or additional information become available subsequently, ministers have the discretion to remove that person from the list if they are satisfied that they are no longer unsuitable to carry out regulated roles of the type that they were listed for.

Amendment 198 relates to the information-gathering powers that are available to ministers under sections 18, 19 and 20 of the PVG act. The power to obtain information ends when the initial listing decision has been taken, except where there is a formal application for removal from the list under sections 25 and 26 of the PVG act. In other circumstances where there is any future consideration by ministers regarding whether an individual ought to be removed from the list, including under new powers that are provided for in amendment 197, ministers have no power to obtain information from the police or any other bodies.

The new provision broadens the powers to obtain information to apply in relation to all decisions that are to be made by ministers, including decisions about whether someone should stay on the list at a later date. It is appropriate for ministers to have information-gathering powers when they are making a decision at a later date—when considering, for instance, an appeal against listing, an application for removal from one of the lists or whether to remove an individual from one of the lists. Ministers' role at those subsequent stages of decision making is the same in substance as it is when the original decision to list an individual is made. The information-gathering powers are necessary and appropriate in the context of ministers' statutory functions to operate the PVG scheme and barring service.

Amendments 196 to 198 should therefore be seen as a package of changes that ensure that the right people remain on the barred lists and the right people are removed from those lists.

I move amendment 196.

The Convener: Jamie Greene has a question.

Jamie Greene: Thank you for affording me some time to briefly ask the minister a question. There was quite a lot to take in. Members would probably benefit from reading the minister's comments, rather than listening to them, because they were so technically intense. However, any time I spot the words "ministers' powers" in legislation, they jump out at me. Are the powers to remove people from the lists ones that the minister can exercise already under the existing legislation, or are they additional ministerial powers?

Using phrases like "where ministers consider it appropriate" or "at ministers' discretion" injects an element of subjectivity into the process by default. I would have assumed that Disclosure Scotland is fairly watertight. What are the additional powers and why do you need them?

Maree Todd: They are additional powers that align with the powers available to ministers to gather information at the time when the original barring decision is made. We think that it is appropriate for ministers to also be able to gather information when decisions are made whether to remove someone from the list.

I think that that answers your question, but if you have a concern, I am more than happy to consider that between now and stage 3. The powers are simply those required to operate the system as we hope that it should operate.

Amendment 196 agreed to.

Amendments 197 and 198 moved—[Maree Todd]—and agreed to.

Sections 84 and 85 agreed to.

After section 85

The Convener: Group 8 is on offences outside Scotland. Amendment 199, in the name of the minister, is the only amendment in the group.

Maree Todd: Amendment 199 is a technical amendment to ensure that jurisdiction for the new extraterritorial offences in the bill is conferred on the sheriff courts. The policy intent of the provisions in the bill is to bring overseas work that would have been a regulated role if done in Scotland into the PVG scheme where there is a relevant connection to Scotland—for instance, if the employing organisation sending the individual overseas is based in Scotland. It is intended to address situations in which, for instance, a

Scottish charity sends aid workers to another country to do what would be considered a regulated role here. The Scottish Government's intention is that those people should have to be scheme members.

The current drafting is such that the general rules on scheme membership, including the offence provisions, should automatically apply to such overseas roles. They would also apply when an organisation based outside Scotland sends someone to do a regulated role in Scotland. It is necessary to ensure that offences committed outside Scotland can be prosecuted here, to give full force to the new provisions. The amendment ensures that Scottish courts have clear jurisdiction over offences under the PVG act whether the behaviour giving rise to the offence takes place in Scotland or elsewhere.

I move amendment 199.

Amendment 199 agreed to.

Amendment 200 moved—[Maree Todd]—and agreed to.

Section 86 agreed to.

Section 87—Regulations

Amendment 221 not moved.

Sections 87 to 89 agreed to.

Schedule 5—Consequential and minor modifications

Amendments 201 to 203 moved—[Maree Todd]—and agreed to.

The Convener: Group 9 is on consequential amendments to the Age of Criminal Responsibility (Scotland) Act 2019. Amendment 204, in the name of the minister, is grouped with amendment 207.

Maree Todd: Amendments 204 and 207 make amendments to the Age of Criminal Responsibility (Scotland) Act 2019 that are consequential to parts 1 and 2 of the bill respectively. The Age of Criminal Responsibility (Scotland) Act 2019 makes reference to the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 and disclosures issued under those acts, mainly enhanced disclosures and scheme record disclosures.

The bill repeals some sections of the PVG act and part 5 of the 1997 act in its entirety. Amendment 204 replaces those repealed and superseded references with references to the new form of level 2 disclosures that are to be issued under the bill. The amendment also ensures that there is symmetry between the content of a level 2 disclosure and a PVG scheme record. Finally, where relevant behaviour information was originally provided as vetting information by the chief constable, but the independent reviewer determined that it ought not be included in a level 2 disclosure, that no longer amounts to vetting information for the purposes of the PVG act such that it could trigger consideration of listing.

12:15

Members will recall that amendments 112 and 202, which were in a previous grouping, introduced a codified set of principles to apply to decisions that are made in applying the two-part test of whether something is relevant and ought to be included in a disclosure certificate. Amendment 204 applies the same decision-making principles to decisions that are made under the Age of Criminal Responsibility (Scotland) Act 2019.

Amendment 207 makes a consequential amendment to section 26 of the 2019 act, so that the definition of "regulated work" is substituted with a definition of "regulated role", in the light of the new terminology in the bill.

I move amendment 204.

Amendment 204 agreed to.

Amendments 205 and 206 moved—[Maree Todd]—and agreed to.

Amendments 230 and 231 not moved.

Amendment 207 moved—[Maree Todd]—and agreed to.

Schedule 5, as amended, agreed to.

Sections 90 to 94 agreed to.

Long title agreed to.

The Convener: I thank the minister and her officials for attending, and I thank the committee and all members who took part in our scrutiny of the bill at stage 2.

Given a lot of the discussion of amendments that we have had during today's proceedings, we will be sending a copy of the *Official Report* to the Standards, Procedures and Public Appointments Committee.

Meeting closed at 12:18.

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