OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 23 June 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 23 June 2020

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JUSTICE COMMITTEE
16th Meeting 2020, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*John Finnie (Highlands and Islands) (Green)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeremy Balfour (Lothian) (Con)
Martin Brown (Scottish Government)
Alex Cole-Hamilton (Edinburgh Western) (LD)
Ash Denham (Minister for Community Safety)
Bob Doris (Glasgow Maryhill and Springburn) (SNP)
Neil Findlay (Lothian) (Lab)
Rhoda Grant (Highlands and Islands) (Lab)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Tuesday 23 June 2020

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 [Draft]

The Convener (Margaret Mitchell): Good morning and welcome to the 16th meeting in 2020 of the Justice Committee.

Item 1 is consideration of a draft affirmative instrument. I welcome Ash Denham, Minister for Community Safety, and her officials from the Scottish Government: Kieran Burke, bill team leader on access to justice; and Martin Brown, solicitor in the legal directorate.

I refer members to paper 1, which is a note by the clerk. I invite the minister to make a short opening statement.

The Minister for Community Safety (Ash Denham): Good morning and thank you, convener. The regulations will introduce temporary amendments to existing legal aid legislation to help to support legal aid providers during the coronavirus pandemic.

I am sure that committee members are aware of the important role of legal aid providers in supporting their clients and the Scottish justice system, and of the Scottish Government's stated aim of finding ways to support cash flow for legal aid lawyers. The Coronavirus (Scotland) Act 2020 therefore included in primary legislation changes to the Legal Aid (Scotland) Act 1986 to extend so-called interim fee arrangements to facilitate cash flow for legal aid providers. It was right that, with uncertainty as to when cases could conclude, payment should be accessed for services that had been provided to date.

Residual barriers exist in secondary legislation that prevent payment of interim fees for aspects of legally aided work, and the regulations will remove those barriers. Regulation 2 will do so for work in respect of civil legal aid at the sheriff court and regulation 3 will do so for criminal legal aid work undertaken by advocates.

Regulation 4 will enable payment of interim fees in advice and assistance matters, despite there being a possibility that property may be recovered or preserved, or expenses obtained. In such cases, there is normally recourse to the legal aid fund only if payment for the legal services provided cannot be met through those other means. The change will align advice and assistance matters with other aid types in terms of arrangements for accessing interim fees. To safeguard the legal aid fund, there are recovery provisions. In the event that, ultimately, property is recovered or preserved or expenses are obtained, there will be repayment to the fund to reflect the moneys that it would not otherwise have made available. My officials have worked closely with the Scottish Legal Aid Board. It is understood that involved system development is required to give effect to that change, so a later coming-into-force date of 5 August 2020 is set.

Given the expectations to adhere to social distancing arrangements and travel restrictions, not to mention self-isolation, provisions have been developed to facilitate greater delegation by solicitors. The Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 prohibit delegation to a duty solicitor by a nominated solicitor, although the services of another solicitor may be sought if a personal appearance cannot be given effect under certain circumstances. Regulation 7 will extend that provision to all solicitors, including duty solicitors, during the emergency period. In the interests of the health of individual solicitors and wider public health, it is appropriate to facilitate such delegation, where necessary.

Regulation 5 makes provision for payment of a full fee in the event that a duty solicitor is instructed, when otherwise a half fee would have been payable, in cases where a duty solicitor makes an initial plea of not guilty on the instruction of another solicitor, and that solicitor later tenders a plea of guilty prior to trial. During the emergency period, a solicitor with a pre-existing solicitor-client relationship will receive the full fee, even when they do not make the initial plea on their client's behalf in person.

Finally, the regulations will enable non-means tested assistance by way of representation to be made available to individuals, with a right of appeal to a sheriff where special requirements or restrictions have been imposed as a consequence of coronavirus legislation. That will help facilitate access to justice and align with the policy of non-means tested ABWOR being available in other areas where civil liberties are subject to restriction, such as detention under mental health law. ABWOR is solicitor granted, without determination by the Scottish Legal Aid Board.

I hope that that has been a useful overview for the committee.

The Convener: Thank you, minister. Do members have any questions or comments?

Liam Kerr (North East Scotland) (Con): That was indeed useful, minister.

This Scottish statutory instrument temporarily amends the existing legal aid regulations. As I read it, the intention is that the regulations will expire in line with the Coronavirus (Scotland) Act 2020.

Looking through the regulations, I see that each regulation has a definition of the emergency period, with one exception at regulation 6. I suspect I know why that is, but, to relax me, will you explain why regulation 6 does not have an expiry date but every other regulation does?

Ash Denham: The member is quite right. The regulations expire in accordance with the 2020 act, and, as I have already explained, in most of the regulations, the emergency period starts from 1 July, but in one regulation it begins from 5 August. One of my officials will give a fuller explanation.

Martin Brown (Scottish Government): The regulation in question provides for an appeal where there are measures taken under the United Kingdom's Coronavirus Act 2020. When that act expires, the provisions will no longer be required, so there is no need to make them available for only a certain time.

The Convener: Does that answer Liam Kerr's question?

Liam Kerr: Possibly—I think that I know the answer. If I understand Martin Brown correctly, he is saying that it is that, perhaps unlike for the other regulations, there is a natural expiry date for that regulation by virtue of the matters that it deals with. I ask him to confirm that that is what he is saying and that there is no need for a bespoke expiry date because, by definition, there will be a natural expiry date by virtue of there being a finite point, with measures under the Coronavirus Act 2020 no longer hanging over.

Martin Brown: Exactly. The regulation will be in effect only for the period during which the UK act has effect. The measures for which it will provide legal aid will be possible only while that act has effect. Therefore, on the expiry of the UK act, the regulation will no longer be required. It has, in effect, a natural expiry date. If that is what you are saying, you are correct.

The Convener: I think that we have resolved that one.

As no other member has asked to speak, we move to agenda item 2, which is formal consideration of the motion on the affirmative instrument. The Delegated Powers and Law Reform Committee has considered and reported on the instrument and has no comments on it. The motion will be moved with an opportunity for formal debate, if necessary. I ask the minister to move motion S5M-21964.

Motion moved,

That the Justice Committee recommends that the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 [draft] be approved.—[*Ash Denham*]

The Convener: Members have no questions or comments.

Do members agree to the motion? I see that we are all agreed.

Motion agreed to.

The Convener: Is the committee content to delegate to me the publication of a short, factual report on our deliberations? I see that members are content. Thank you.

Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2020 (SSI 2020/175)

The Convener: Agenda item 3 is consideration of SSI 2020/175, which is subject to the negative procedure. I refer members to paper 2, which is a note by the clerk. Do members wish to make any comments on the instrument? No member has indicated that they have comments to make.

Are members content for the committee not to make any comments to the Parliament on the instrument? I see that members are content.

Children (Scotland) Bill: Stage 2

09:10

The Convener: We move to our main item of business. Agenda item 4 is stage 2 proceedings on the Children (Scotland) Bill. I welcome back the Minister for Community Safety, Ash Denham, and her officials. I also welcome a number of members of the Scottish Parliament who are not members of the Justice Committee but who have lodged amendments to the bill.

We have a lot of amendments to consider this morning, and the process will work well if we take it slowly and steadily. When I call a member to speak, they should take a moment to allow their microphone to be switched on.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment, and to speak to all the other amendments in the group.

I remind members who have not lodged amendments in the group but who wish to speak to request to speak by typing "R" in the BlueJeans chat box function. I ask members to do that as soon as I have called the relevant group and to speak only when their name is called.

I will invite the minister to contribute to the debate just before I move to the winding-up speech. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Only committee members are eligible to vote, and voting will take place using the BlueJeans chat function. Once I have read out the result of the vote, if any member considers that their vote has been incorrectly recorded, I ask them to let me know as soon as possible. I will pause to provide time for that.

Depending on how long proceedings take, I will suspend the meeting for five-minute comfort breaks at suitable points. Given the time constraints, I encourage everyone who speaks today to make short, succinct contributions.

Section 1—Proceedings under Children (Scotland) Act 1995

The Convener: Group 1 is on having regard to the voice of the child. Amendment 1, in the name of the minister, is grouped with amendments 47, 2 to 4, 48, 5, 6, 49, 7, 8, 50, 9, 51, 10, 37 and 38. I point out that if amendment 47 is agreed to, I will not be able to call amendment 2.

Ash Denham: The amendments in my name seek to strengthen the bill to ensure that a child's views are heard in family court cases and children's hearings. That is one of the key aims of the bill.

Amendments 1, 3, 5, 7, 9 and 10 give effect to the recommendation in the committee's stage 1 report that the provisions in sections 1 to 3 of the bill should be strengthened to ensure that all children who are capable and who wish to do so have the right to give their views about important matters that affect their lives.

Amendment 4 removes from section 11 of the Children (Scotland) Act 1995 the presumption that a child who is aged 12 or over is mature enough to make a decision as to whether to instruct a lawyer. That was called for by the committee in its stage 1 report. It was not the intention in the 1995 act that the presumption should operate as a barrier to children who are under the age of 12 making decisions on legal representation but, as the committee has heard, there is a perception that it has had that effect.

Amendments 37 and 38 will ensure that the views of the child are heard when the court is investigating the reasons for non-compliance with an order under section 11 of the 1995 act, such as a contact or residence order. The Scottish Government's intention is that all children who are capable and who wish to do so should be able to give their views on matters such as who they live with or have contact with. I stress that there will, of course, be circumstances in which a child does not want to give their views on those issues, and they should not be forced to do so.

09:15

The Scottish Government's view is that the majority of children are capable of forming a view, but there may be exceptions to that—for instance, if a child is very young or has severe learning difficulties. For that reason, the bill provides that decision makers are not required to seek or have regard to the views of a child if the decision maker is satisfied that the child is not capable of forming a view. We would expect that exception to be used very infrequently.

I listened carefully to the arguments that were put forward about those provisions at stage 1. The amendments address concerns that the capacity exception may be used excessively, by making the starting point for decision makers that all children are to be presumed to be capable of forming a view.

I cannot support amendments 47 to 51, in the name of James Kelly, but I would be willing to work with him ahead of stage 3. The intention behind his amendments is to ensure that children can, where practicable, express their views in their preferred manner. As Mr Kelly's amendments go

some way towards recognising, it will not be reasonable in every case to allow a child to express views in their preferred manner—for example, where that would significantly delay proceedings to the detriment of the child's best interests.

The difficulty that I have with Mr Kelly's amendments is that, in order to achieve their result, they would remove the text from the bill that says that the court must

"give the child an opportunity to express the child's views"

and replace it with the weaker requirement that courts merely

"seek to make reasonable arrangement for the child to express the child's views".

I am sure that Mr Kelly does not want to weaken the duty on courts to have regard to children's views, and I hope that he will agree not to press his amendments 47 to 51, so that we can work together on amendments that would not have that effect.

I move amendment 1.

James Kelly (Glasgow) (Lab): I will speak to my amendments 47 to 51.

Section 1 deals with proceedings in court and in children's hearings. The bill's primary objective is to place the child's views at the centre of those proceedings.

The bill as introduced is not strong enough, in that it seeks to give children "an opportunity" to express their views. My amendments are stronger, because they are more specific in two regards. They seek to set out arrangements for the child to give their views; they also have regard to the manner in which the child will want to put their views across. We should bear it in mind that that will be a pressured experience for children, and many children in that situation will be vulnerable. It is important that proper regard is given to the arrangements for children to give their views and the manner in which they will give them. The objective of the amendments is to place a duty on the court to do that. The amendments have to be aligned with proper resources to ensure that that can happen.

The amendments, which seek to strengthen the bill, have the support of Children 1st and Scottish Women's Aid.

Ash Denham: I do not agree with James Kelly's argument, but my offer stands: I am happy to work with him ahead of stage 3 if he thinks that that would help to address his concerns. I reiterate that the bill's drafting follows the wording of article 12 of the United Nations Convention on the Rights of the Child by providing that decision makers must

"give the child an opportunity to express the child's views in a manner suitable to the child".

Amendment 1 agreed to.

The Convener: We move to group 2. Amendment 60, in the name of Rhoda Grant, is grouped with amendments 61, 62, 45, 46, 63, 79 and 81 to 83.

Rhoda Grant (Highlands and Islands) (Lab): I will speak to amendments 60 to 63. Amendment 61 makes it clear that abuse does not stop with the breakdown of a relationship. Abusive partners will try to continue to control and abuse, and they will use every avenue that is available to them to do that. Therefore, abuse can continue from a relationship into the arrangements that are put in place for children after a relationship has broken down.

Amendments 60, 61 and 63 do not introduce something new; rather, they reunite a list that was split by the bill. Scottish Women's Aid tells us that the reunification of the list is important for the protection of survivors of domestic abuse. When the list was introduced, the Parliament's intention was that it should be considered as a whole to ensure adequate protection of women, children and young people who have experienced domestic abuse. It places a duty on the court to consider the wider impact of continuing abuse that can be perpetrated as a result of enforced parental co-operation. That consideration is required for the protection of women, children and young people who have experienced domestic abuse.

Children often experience abuse through the abuse of their mother, and that has a huge effect on their wellbeing, resilience and self-esteem. In turn, that can impact on their life chances. The law must recognise that in such cases an order for parental co-operation is likely to have a hugely negative impact on a child's welfare as well as on that of their mother. In my casework, I constantly see cases in which contact and shared parenting are used to continue to perpetrate abuse. That can sometimes have devastating consequences.

Taking the subsection to which my amendment 62 relates out of the context of domestic abuse does not underline to the court that the issue impacts on the safety and welfare of the child. A perpetrator of abuse could continue to use coercive control over financial issues and the health and nutrition of a child by making unrealistic demands. All those things compromise the child's wellbeing. There is a risk to the care, protection and safety of the child by the perpetrator misusing child contact or residence as a means of coercively controlling the other parent. In turn, that disrupts the child's enjoyment and the security of their home and family life. That is not covered by sections 11(7B) or 11(7C) of the 1995 act, which is

why the Parliament introduced section 11(7D) to the list. I seek the committee's support for continuing that connection.

I move amendment 60.

Jeremy Balfour (Lothian) (Con): I will speak to amendments 45 and 46, which are in my name. We have started the meeting very helpfully by putting children at the centre of what we are trying to achieve and ensuring that the child's voice is heard when proceedings go to court.

My amendments deal with grandparents' rights and where grandparents fit into contact with their grandchildren. I know that the committee took evidence on that at stage 1 and that a debate has been going on for a number of years on what should happen with regard to grandparents. I believe that grandparents often have an important role in their grandchildren's lives, and amendment 45 states that clearly. Grandparents often offer stability when a marriage or relationship is breaking down, and many of them offer childcare.

Under amendment 45, when sheriffs are considering such matters, there would be a presumption that grandparents should have access to their grandchildren. The amendment would not give that as an absolute right. Clearly, as we have heard from the minister, the child's rights should always be taken into account and should be heard by the court. My amendment would simply say to sheriffs that the presumption is that grandparents should have the right and that sheriffs would need to give a reason for going against that in any judgment.

Amendment 46 would simply mean that a definition of the term "grandparents" would be set out in regulations at another time.

Amendment 45 would be a positive step forward. It recognises that grandparents have a different role from that of other relatives in a child's life, and I hope that the committee will support it.

The Convener: I call Alex Cole-Hamilton to speak to amendment 79 and the other amendments in the group.

Alex Cole-Hamilton (Edinburgh Western) (LD): Thank you for the opportunity to speak to the committee—it is a great pleasure to join you today.

My remarks will cover amendments 79, 81 and 82, which are in my name, as well as amendment 76, which is a consequential amendment that will be dealt with later. I am grateful to Liam McArthur, who will move the amendments for me when we reach that point, because I have been called away by unavoidable business in another part of the Parliament.

I pay tribute to Gordon and Shonia-Maree Mason, who are constituents of mine and who came to see me soon after I was elected to tell me about their estrangement from their son and, by extension, from their grandson, which was not through any fault of theirs; it was through a coercive relationship. They have worked hard to re-establish contact and they have done a lot of work on the rights of grandchildren to maintain contact with their grandparents.

It does the Masons credit that that is the perspective that they have chosen. It would be very easy for them to try to fight for a legal right for grandparents to see their grandchildren. They have that to an extent through a contact resolution through the courts, but their work is more about children's rights. In their argument for why we need to make the proposed amendments to the bill, they point first to the consultation on the review of the Children (Scotland) Act 1995, in which 97 per cent of 225 children who responded came out in support of grandchildren having contact with their grandparents.

What the Masons propose, which I have given voice to in my amendments 79, 81 and 82, has great synergy with what the French have already done. Article 371-4 of the French civil code states that the child has the right to maintain personal relationships with his ancestors and that only the interests of the child can hinder that right. The right is enshrined for children, although the best interests principle under the UNCRC exerts its pre-eminence.

In this country, the non-statutory charter for grandchildren states that grandchildren can expect

"To know and maintain relationships with their family (except in very exceptional circumstances) and other people who are important to them",

and

"To know that their grandparents still love them, even if they are not able to see them at the present time."

Children in this country have a right to inheritance from their grandparents if their parent predeceases their grandparents, but they have no right to have contact with them. That can have a mental health impact on children who discover the existence of grandparents.

The intentions of my amendments are severalfold. First, they intend to create a basic right to have contact with grandparents and other lineal ancestors, as defined in the text of my amendments, at any time and in any circumstances in their joint lifetimes. The child should have that right whether or not their parents' marriage or relationship still exists, there has been any break-up, the child is in care and so on.

09:30

The right of the child should override any coercion by parents—I hope that we would all agree on that. If the child is afforded that right by the act, parents could deny it only by going to court to justify why the right should not be exercised, with justifiable reasons that the court would accept for why it would not be in the child's best interests to have contact with their lineal ancestors. The court would not accept mere whims or bias.

Fundamentally, my amendment 79 would give children a right to access their lineal ancestors, subject to their best interests. It reflects what the French have already enacted, and it represents international good practice.

Liam McArthur (Orkney Islands) (LD): First, I remind the committee of my interest in this area, as my wife works for Relationships Scotland Orkney and will be taking on a director role next month. I appreciate that that is not so relevant to my amendment 83 or to this group of amendments, but it is certainly relevant to other groups of amendments and to the bill as a whole.

Given the time available, I will speak only to my amendment 83. It seeks to make equally shared parenting the starting basis for custody orders, from which courts can move towards the most appropriate split. The intention is not to make shared parenting mandatory or to be prescriptive with regard to any particular arithmetical share of time. It is simply to tell the court to start with that option when one of the parents requests it, and then to consider any reasons why a different pattern is better for the child or children who are involved.

The general benefits for children of shared parenting are reflected in international research, whether that relates to their social and psychological wellbeing, educational attainment or avoidance of adverse experiences. Those benefits apply not only in the short term but well into adulthood.

I recognise—indeed, I went so far as to state explicitly during the stage 1 debate—that care should be taken to do nothing that might dilute the primacy of the consideration of the best interests of the child. That firmly remains my view. However, the presumption of shared parenting need not cut across that. In countries where such a presumption already exists, the best interests of the child are no less central to the process of deciding residency and contact.

It may well be that a shared parenting arrangement is neither desirable nor practical. The reasons for that could be many and varied, and the court must be left to make that decision, based on the views of the child and relevant expert advice. However, given how rarely courts appear to rule in favour of an equal split in parenting responsibility, it would seem that there is already a presumption inherent in the system. Our society rightly expects more of a shared parenting model in relationships in general, recognising the benefits for the child or children involved. Why should we not work from a similar starting point in the event that a relationship breaks down? I therefore intend to move amendment 83.

The Convener: We move to contributions from members on this group of amendments, starting with Liam Kerr.

Liam Kerr: I have a brief question for Rhoda Grant on her amendment 63. The wording broadly looks fine, but I do not quite understand the motivation behind the amendment. What is the practical impact of setting up a definition for one subsection? Can she reassure me on that point?

The Convener: I call Rhoda Grant.

Rhoda Grant: Thank you, convener—will I get a chance to sum up after I respond to Liam Kerr's question?

The Convener: Yes, you will.

Rhoda Grant: Okay—thank you. The wording of amendment 63 is lifted from what was split away from the original section when it was replicated in the bill. The bill replicates section 11(7A) and (7B) of the Children (Scotland) Act 1995 but leaves out (7D). Basically, I have lifted that subsection from the original legislation. It was obviously seen as important to define what a "person" is, and that has worked well; there have been no concerns about that. Amendment 63 therefore seeks to include that definition and not make any change to a law that has worked well.

The Convener: Does that answer Liam Kerr's question?

Liam Kerr: Yes. I am grateful to Rhoda Grant for that explanation.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I will not support amendments 45 and 46 or Alex Cole-Hamilton's amendments on grandparents' rights. Of course I agree with the members that grandparents play a hugely important part in a child's life and that that bond is special. I think that we all understand that; as a grandparent, I certainly do, and every effort should be made to nurture that relationship.

However, I do not consider that including such a presumption in the bill would be correct or desirable. The circumstances surrounding family break-ups are different and individual to each case, and it might not always be in the child's best interests to have court-ordered contact with their grandparents. The child may not want that contact,

or may not feel particularly close to the grandparents. They may feel vulnerable, particularly in instances where domestic abuse has played a part in the break-up. Contact could cause added stress to the child at a particularly difficult time in their life. If the child wants contact with their grandparents, each family should be able to facilitate that without court intervention.

By their very nature, such cases will be high conflict, and the child could be stuck in the middle. Furthermore, by specifying grandparents only, the legislation could exclude other adults who are important to the child.

The minister said that she will promote the grandparents charter heavily. That is a good thing, and I look forward to that.

In essence, I will not support those amendments because they fundamentally cut across the rights of the child.

I will not support Liam McArthur's amendment 83 on shared parenting, because I think that that could have adverse consequences for a child's safety. Of course it is preferable for a child to have a happy relationship with both parents where possible—in an ideal world, that is how it would always be. However, putting that provision in the bill would be unwise and possibly dangerous for a number of children.

I will highlight the key points against amendment 83. The majority of contact cases that end up in court concern reports of domestic abuse; even those cases that do not are still likely to involve high conflict. All research on the matter suggests that a presumption of shared parenting in any high-conflict case is likely to be harmful to the child. Being caught between warring parents is without doubt an adverse childhood experience, which we would risk causing if the provision were to be included in the bill.

Inclusion in the bill of any presumption of shared parenting could have harmful consequences for children and young people who are experiencing domestic abuse, and for their mothers. A presumption along those lines would, in effect, prioritise the interests of the adults, thereby weakening the child rights-based approach, which is entirely contrary to the purpose of the bill.

Recent research showed that children and young people who have experienced domestic abuse did not fare well under the discussed shared parenting arrangements or imposed contact.

Dr Sue Whitcombe has suggested that, when safeguarding concerns are raised, contact should continue while they are investigated. I consider that to be a deeply dangerous approach, and there are many case histories to highlight that that is the case.

Scottish Women's Aid and children's organisations are strongly opposed to the amendment. "Parental alienation" is a term that is often used to mitigate allegations of domestic abuse that cannot be excused, and any effort to justify the use of that theory undermines the safety of children.

To conclude, I consider that inclusion in the bill of provisions on shared parenting is a risk that is definitely not worth taking.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I offer my support for Rhoda Grant's amendments 60, 62 and 63.

Like Rona Mackay, I have considerable sympathy with the amendments on grandparents' rights. I am a parent, and I think that other parents will agree that, during this period more than ever, we have understood the true value of grandparents. I have a lot of sympathy with the approach in those amendments, which recognise the special relationship between children and grandparents. However, I think that it runs the risk of prioritising that relationship over other relationships in modern Scotland. We need to be careful about that.

I have heard the arguments for and against the proposed approach and I will be interested to hear what the minister says about the grandparents charter, which Rona Mackay mentioned. The minister talked about the charter during the stage 1 debate, and if she makes a similar argument at this stage, I will be inclined not to vote for the amendments on grandparents' rights. However, let us hear out the debate.

I have looked closely at amendment 83, on shared parenting, and I have a lot of sympathy with what is proposed. As Rona Mackay said, the potential for domestic violence and coercive control is a real issue. Again, we need to be careful.

In general, there are similarities between what is proposed in amendment 83 and the campaign, in which I have long been involved, to encourage more fathers to take parental leave. It is about breaking down gender stereotypes that see it as the woman's job to be the primary carer and do all the childcare. That, along with what is proposed in amendment 83, is all part of a package that might not be deliverable in the bill, because it is about the cultural and societal change that is needed if we are to break down the gender stereotypes that still exist.

Again, it depends on how the rest of the debate goes and what the minister says, but at this point

in stage 2, I think that voting for amendment 83 carries too much risk.

Liam McArthur: I thank Rona Mackay and Fulton MacGregor for their comments, and I particularly thank Fulton for his comments about shared parental leave. In my earlier comments I tried to make the link with our expectations of a shared parenting model in relationships.

Rona Mackay is absolutely right about issues of high conflict. Where there is any suggestion of domestic abuse, the courts absolutely should take that into consideration and act accordingly. However, we surely cannot start from an assumption that there is domestic abuse if there is a conflict and matters are brought before the court.

There are many examples of fathers finding that there is simply an assumption that it is best for the child to spend more time with the mother. A presumption of shared parenting as a starting point, from which the court can move away very quickly, particularly if there are concerns about domestic abuse, seems a more equitable basis on which to proceed. As I said, I entirely recognise the concerns that Rona Mackay expressed, but we need to move away from an automatic assumption that if a case is brought before the court there is a risk of domestic abuse.

The Convener: No other member wants to speak, so I will bring in the minister to comment on the amendments in this group. In doing so, minister, will you say how the Scottish Government will promote the grandparents charter, which I think you undertook to do when we debated the bill at stage 1?

Ash Denham: I am pleased to support amendments 60, 62 and 63, in the name of Rhoda Grant, subject to some minor issues being addressed before stage 3. The amendments will ensure that the requirement to consider the risk of abuse before making an order remains positioned in the 1995 act next to the requirement to consider the ability of parties to co-operate. As has been discussed today, it is important that victims of domestic abuse who have children are protected in family court cases, and it is a main aim of the bill.

09:45

However, although I agree with the intention behind amendment 61, I cannot support it because it would require the court to consider the need to protect the child from "continuing abuse" when making a section 11 order. The court is already required to consider the need to protect a child from "abuse" and from "the risk of abuse". I am in no doubt that that includes continuing abuse, in particular the offence of an abusive course of behaviour under section 1 of the Domestic Abuse (Scotland) Act 2018. The amendment suggests that "abuse" generally does not include continuing abuse. I do not agree with that and I hope that the member will agree not to press amendment 61.

Amendments 45 and 46, in Jeremy Balfour's name, and amendments 79 and 81, in Alex Cole-Hamilton's name, seek to do broadly the same thing and I do not support them. I assure members that I agree that grandparents and great-grandparents can often play an important part in children's lives. In my response to the Justice Committee's stage 1 report, I committed to further promoting the charter for grandchildren. I have also had a conversation in the past week or so with stakeholders in the grandparent area, who have given good suggestions about how to do that. I will work with them to make sure that we cover as much ground as possible with the promotion.

The bill requires the court to take account of the child's important relationships with people other than the parents, which certainly includes grandparents and great-grandparents in many cases. Grandparents can currently apply to the court for contact rights, and a decision will be made taking account of the child's views and according to the best interests of the child. I believe that that is the correct position.

The amendments are problematic for a number of reasons. The relationships that are important must be assessed for each child individually. One size does not fit all, so requiring the court in every case to consider grandparents in particular could be inappropriate and unnecessary, or cause delay or devalue other relationships.

There is no explanation of how the amendments are intended to work in the current system, based on responsibilities that are owed by adults towards children and accompanying rights to fulfil those responsibilities. Is the court required to grant contact rights to grandparents in every case, or only where it has been requested by the child? What happens if the contact is not requested or it is not in the child's best interests?

What the amendments describe as a "child's right" appears to amount to a right for grandparents. An automatic right would give grandparents greater legal rights than many other family members, including parents, have. That risks the focus on the wellbeing of the child being lost among the competing rights of different adults. The UNCRC avoids rights to relationships with particular family members for that reason.

Instead of ranking the importance of family members, the focus should be on the welfare of the child and the views of the child. That is the approach in the UNCRC, the 1995 act and the bill,

but, unfortunately, it is not the approach that has been taken in the amendments. I hope for the reasons that I have put forward that the members will not push the amendments further.

For similar reasons, I do not support amendment 81, in Alex Cole-Hamilton's name. The amendment would require the court in every case to identify every lineal ancestor and to assess the implications of a contact and residence order on those relationships. That applies where nothing would point towards those relationships being important to the child, where contact between child and grandparent does not exist, where it is not wanted by either side and where contact may not be in the best interests of the child. That could elongate the court process, which is unlikely to be in the child's best interests.

The amendment goes further still, instructing the court to treat relationships with lineal ancestors as important in every case, and that would be regardless of the nature of those relationships or anything that the child has to say on the subject. General rules determining what is important in every case do not allow the court to simply consider the child's best interests in the individual circumstances of each case, taking the views of the child into account. The better approach is that taken in the bill, in which the relationships that are important to a child must be assessed individually for each child and not decided here by us.

As I have said, I recognise the important role that grandparents can play. I am committed to further work in relation to children's contact with grandparents. However, for the reasons given, I am unable to support amendment 81 and I ask the member not to press it.

On amendment 83, in the name of Liam McArthur, I can reassure members that my view is that both parents should be fully involved in their child's upbringing, as long as that is in the best interests of the child concerned. Parents can currently ask the court for residence on an equal basis. A decision will be made in which the welfare of the child is paramount. That will take account of the views of the child and full consideration will be given to the arguments for and against shared residence, with regard to the particular circumstances of that case.

Amendment 83 would turn that process on its head by proposing residence on an equal basis as the answer in every case and before the question of the child's best interests has even been considered. Amendment 83 does not advance the child's interests. The amendment refers only to parents. Although most cases of this nature are between parents, they do not have to be. An application for an order under section 11 could be made by others, for example by grandparents.

The courts already apply a general principle that it will normally be beneficial for children to have an on-going relationship with both parents. The bill strengthens that position by requiring the court to consider, in every case, the effect of an order on the involvement of the child's parents in bringing up the child.

Therefore, I do not consider that amendment 83 is desirable, as the amendment would cut across the general principle of section 11 of the 1995 act that the welfare of the child is the paramount consideration.

For the reasons given, I ask the member not to press amendment 83.

The Convener: I ask Rhoda Grant to wind up, and to press or withdraw amendment 60.

Rhoda Grant: I wish to press amendment 60.

I am grateful for the minister's support for amendments 60, 62 and 63. I hear what she says about amendment 61. Many parents come to me with their concern that the courts are being used to continue abuse. The parents feel that they have to choose between contempt of court, which threatens their liberty, and the safety of their child, because there is a court order forcing them to send a child to an abusive partner. That is continuing abuse.

I listened to what the minister said about that, and I take her assurance, so I do not think that I will move amendment 61 at this stage. I will consider whether I should bring it back at stage 3, or whether there is sufficient protection in what the minister has said in her response.

Amendment 60 agreed to.

Amendment 61 not moved.

Amendment 62 moved—[Rhoda Grant]—and agreed to.

Amendments 45 and 46 not moved.

Amendment 63 moved—[Rhoda Grant]—and agreed to.

Amendment 47 moved—[James Kelly].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

The Convener: I regret to say that I may have voted incorrectly, but perhaps that will not matter because my casting vote will be in favour. We could also retake the vote. I apologise as I had meant to vote in favour of amendment 47.

Stephen Imrie (Clerk): Convener, could we suspend briefly so that I can telephone you?

The Convener: Yes.

09:59

Meeting suspended.

10:01

On resuming—

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

Amendment 47 disagreed to.

Amendments 2 to 4 moved—[Ash Denham]—and agreed to.

Amendment 48 moved—[James Kelly].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 48 agreed to.

Amendment 5 moved—[Ash Denham]—and agreed to.

Section 1, as amended, agreed to.

After section 1

The Convener: Group 3 is on disclosure of information. Amendment 64, in the name of Liam McArthur, is grouped with amendments 33 and 33A.

Liam McArthur: My amendment 64 deals with an issue that we wrestled with quite a bit during our stage 1 evidence gathering. A number of colleagues have taken a close interest in it, and I am grateful to John Finnie for adding his name to my amendment, and to James Kelly and Liam Kerr, who raised their concerns during the stage 1 debate.

As colleagues will recall, intimate and highly sensitive information that is shared by a child with a third sector organisation can, at present, be drawn into court proceedings, even if doing so goes against the interests of that child. More concerning still is that there are occasions when that happens without the child even knowing.

I am grateful to Children 1st and Scottish Women's Aid for the work that they have done, not just in highlighting the issue and providing examples of how and where such things are happening, but in helping to draft amendment 64, in the hope of improving the situation.

The loophole has the potential to undermine the trust and confidence of children who engage with third-party organisations. At the same time, in seeking to amend the bill, we need to bear in mind the rights of others who are involved in court process. Various witnesses explained robustly and fairly the risks in preventing sharing of information that is relevant to proceedings.

We need to tread carefully in balancing the various rights. I believe that that can be done, and that my amendment 64 would do it. It would do so by making disclosure of such information possible, but only when doing so is necessary and proportionate, and in cases in which the court had given consideration to the welfare and—which is important—to the best interests of the child.

The child should also, as far as is practicable, have the opportunity to express their views about such disclosure. The two latter points are the distinguishing feature between my amendment and the amendments in the names of the minister and Rona Mackay which, although I welcome them, do not go far enough.

I appreciate that the minister might have some concerns about use of the word "paramount" in subsection (2)(a) of proposed new section 11ZC of the Children (Scotland) Act 1995. I am happy to discuss with her how that might be phrased in order to address those concerns. However, I believe that amendment 64 will help to strengthen the bill's ability to safeguard the best interests of the child, and I look forward to hearing the views of colleagues and the minister.

I move amendment 64.

Ash Denham: Amendment 33, in my name, provides that

"where the court

(a) is considering making an order under section 11(1), and

(b) has to decide whether a person should have access to ... information relating to a child",

the court

"must regard the welfare of that child as a primary consideration".

Amendment 64, in the name of Liam McArthur and supported by John Finnie, is on the same issue, as is amendment 33A, which is in the name of Rona Mackay. In some respects, the Scottish Government and Liam, John and Rona are not far apart. If amendment 33 is agreed to, I will work with them to come to an agreed position ahead of stage 3, and to agree whether any further amendments are required.

The issue is that the court might hold sensitive information about a child. For example, the child at the centre of a section 11 case might have provided views on how the case should be decided. In other instances, a party to the case might argue that a document that is generated outwith the court case should be disclosed because the contents have a direct bearing on the case.

First, a child has a protected right to privacy. However, that cannot be absolute because it would not be possible to guarantee to a child that their views will remain confidential. For example, their views might turn a case, and parties to that case might expect to understand the reasons behind a decision that will affect their family life.

Secondly, people other than the child who is at the centre of a section 11 case might have a legitimate interest in a document and in whether it should be disclosed. If, for example, a document has been generated outwith the court case, it might contain information about another child. The aim of amendment 33 is to ensure that the welfare of the child is taken into account in all cases.

Amendment 64 differs from mine in a couple of areas. It would require the court, in deciding whether to allow disclosure of information, to have regard to the welfare of the child as its "paramount consideration", which, as a matter of law, goes too far. The word "paramount" has a clear meaning in the 1995 act and, although it is appropriate in other contexts, cannot be applied to decisions about disclosure of information, because to do so would not allow the court to take account adequately of the human rights of other people, including those of other children. One person's interests cannot be made to prevail over those of others in every case.

Let me give the committee an example of how that would work. One child could provide information that could identify a risk of abuse of a second child, but protection of that second child from abuse cannot depend entirely on whether the first child agrees to the information being used, or on it being in the first child's interests.

Information might also need to be disclosed because people, including children, have the right to understand the reasons behind court decisions. How else could they be challenged? That is particularly important for decisions that alter the parent-child relationship, and is why amendment 33 will make a child's welfare a "primary consideration" rather than a "paramount consideration". That difference is important, because "primary consideration" is the wording that the Supreme Court has set down.

Amendment 64 refers to the "best interests" of the child as well as to their "welfare", which appears to be duplication. I do not consider the choice of the word to be a major issue, but I prefer "welfare" because that is the language that is generally used in the 1995 act and it is understood well. More important is that the issue cannot be determined according to the best interests of one person alone.

Amendment 64 would protect only the child who is at the centre of section 11 proceedings, but provides no protection to any other child whose information might be used, such as a sibling. By contrast, amendment 33 would protect children more widely.

10:15

Amendment 64 also refers to obtaining the child's views on whether the information should be disclosed. I have two concerns in relation to that, the first of which is practical, in that the child might already have expressed views when providing information to the court about how, for example, the case should be decided. We should, of course, wish to avoid the child being asked the same question twice.

My second concern is that others may have a legitimate interest in some documents, and the court might need to ask them for views, as well as asking the child. It is therefore best, in this case, to leave the detail of how children are consulted to the rules of court.

On amendment 33A, I recognise the need to consult the child in appropriate cases. However, that should also be dealt with through the rules of court.

More fundamentally, the court must be able to balance the rights of all the people who would be affected. Such issues cannot be determined purely by the consent, or according to the interests, of just one person. We need to ensure that any

amendment in that area would strike the appropriate balance of rights.

If amendment 33 is agreed to, I will work with key stakeholders on preparing a policy paper on the rule changes for the family law committee of the Scottish Civil Justice Council.

Rona Mackay: I lodged amendment 33A because, during evidence, we heard a very moving account about—I think—a youngster's diary that had been shared around officials without her knowledge. As you can imagine, the distress that she suffered was terrible. I want to highlight what can happen when the best interests of the child are overlooked or disregarded.

However, I will not move amendment 33A, because I have since thought about the unintended consequences that it could have on individual cases, including causing delays and causing a lack of information that would be necessary for the correct decision to be made. That might also put extra pressure on the child when they are feeling at their most vulnerable.

I am also content that the minister's amendment 33 will protect children more widely, prevent unnecessary sharing, and promote court awareness, which has previously often been lacking around the matter. I am therefore happy to support the minister's amendment 33.

I will not support Liam McArthur's amendment 64, which is supported by John Finnie. Although it is well intentioned and I agree with its principles, the reasons why I will not support it are similar to the reasons why I will not move my amendment 33A: the Government amendment 33 covers the matter without placing restrictions on court procedure and without the unintended consequences that could result for the child.

In addition to that, I believe that a policy paper for the family law committee of the Scottish Civil Justice Council will be produced, and I note that the Government has committed to working with Children 1st and Scottish Women's Aid on that, which I am pleased about. Guidance on information sharing and confidentiality for everyone involved in the court procedure has been proposed, which could be done in advance.

For those reasons, I will not support amendment 64. I am perfectly content with the minister's amendment 33.

John Finnie (Highlands and Islands) (Green): First and foremost, I thank my colleague Liam McArthur for lodging amendment 64. He was quicker off the mark than I was.

From what we have heard throughout the debate—and I hear exactly what the minister is saying—I do not think that anyone disputes the intentions regarding where we all want to go. It is important that the decisions that are made about those who are often the most vulnerable people are informed decisions, and that will, on occasion, require the disclosure of information. The issue is about access to that information.

After hearing all that has been said, I certainly take some reassurance from the amendment's wording for subparagraph (2)(b)(i) of the proposed new section to be inserted in the 1995 act, which specifically alludes to competing rights and how they are weighed against each other. It says:

> "the likely benefit to the welfare of the child arising in consequence of disclosing the information outweighs any likely adverse effect on any other person arising from disclosure".

As is often the case with rights, there are competing rights in this area. Privacy is important—Rona Mackay referred to the evidence that the committee took in camera from young people, which included the compelling and harrowing story of the young girl whose diary was disclosed to someone with whom she most certainly would not have wished that information to be shared.

I hear what the minister says about all cases and individual cases. In some respects, members wrestle with confidentiality in our daily work with constituents. Confidentiality applies except if there are adverse effects on other people, or if we are disclosing a crime.

I hear a lot of consensus on the issue. Although the decision on whether to press amendment 64 is for my colleague Liam McArthur, I think that we all want the best possible outcome, which would ensure that there is informed decision making. I would hope that discussions would continue, but—as I said—I do not hear any conflict, as I think that we want to get to the same place.

Liam Kerr: John Finnie made a good point. The minister's amendment 33 is a good one, but I am also minded to support Liam McArthur's amendment 64 if he chooses to press it.

As Liam McArthur will know from our committee sessions and the stage 1 debate, I was concerned about this area, as I think we all were, and I was glad that he decided to lodge amendment 64. However, he will also know that I—along with the rest of the committee, I am sure—found the evidence to which the minister alluded, on the rights of others in this area, pretty persuasive and just as important. It would be helpful if Liam McArthur could, in summing up, reassure me on the balance that has been struck. He did so to some extent in his opening comments, but I would like a bit more reassurance.

Given that the minister set up a legal argument in favour of her wording—members will know that I immensely enjoy listening to such arguments—

can Liam McArthur respond specifically to that and tell me whether he has any legal advice that would persuade me to favour his wording rather than the minister's wording?

The Convener: No other members have indicated that they want to speak, but I will comment briefly. There is a fundamental issue of trust here, and the potential for betrayal of a young person's trust. That came through loud and clear when the committee heard evidence from young people.

Confidentiality could obviously be proportionate, but any abuse in that regard—as per the example that Rona Mackay quoted, in which a young person's diary was handed over—must be avoided at all costs. I am minded to support Liam McArthur's amendment 64. I look forward to his winding-up comments, and ask him whether he intends to press or withdraw his amendment.

Liam McArthur: I am minded to clip John Finnie's contribution and share it with all those with whom I have played football over the years, who will be astonished to hear that I am somehow quicker off the mark. I am grateful to him for his support. As I acknowledged previously, there is an issue that a number of members sought to address at stage 2. I am grateful to Rona Mackay, Liam Kerr and the convener for their contributions to the discussion. I am also grateful to the minister, who was right to say that our amendments are not very far apart.

In addressing Liam Kerr's specific point on the legalities, I am tempted to adopt the minister's approach and say that I cannot share any legal advice with him. What I can do is quote from a briefing that has been provided to members by Children 1st and Scottish Women's Aid. Liam Kerr is absolutely right that the issue was a real concern, and those of us who wanted to see the bill amended needed to square it away. Children 1st and Scottish Women's Aid say:

"This amendment will not prevent information from being shared where it is proportionate and relevant to the court. Indeed, our organisations strongly believe that proportionate and relevant information-sharing is in a child's best interests to keep them safe and ensure the courts are equipped with all the details at their disposal to make informed decisions."

In terms of distinguishing between the amendments, I listened carefully to what the minister said and I appreciate that Rona Mackay shares some of her concerns, but Children 1st and Scottish Women's Aid have suggested that my amendment is stronger precisely because it

"Includes specific reference to the 'best interests' of the child, in line with the UNCRC",

and

"Ensures that children's views are taken into account when decisions are made about sharing their information."

For those two reasons, I urge the committee to support my amendment instead of the Government's amendment. I acknowledge the minister's concern about the use of the word "paramount", although the word "paramountcy" is used in the bill, so it would appear to be consistent with that. Taking on board that concern, if the committee supports amendment 64, I will be happy to work with the minister and her officials ahead of stage 3 to address her concerns.

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 64 agreed to.

Section 2—Proceedings under Adoption and Children (Scotland) Act 2007

10:30

Amendment 6 moved—[Ash Denham]—and agreed to.

Amendment 49 moved—[James Kelly].

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 49 agreed to.

Amendments 7 and 8 moved—[Ash Denham]—and agreed to.

Amendment 50 moved—[James Kelly].

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

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 50 agreed to.

Amendment 9 moved—[Ash Denham]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Proceedings under Children's Hearings (Scotland) Act 2011

Amendment 51 moved—[James Kelly].

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 51 agreed to.

Amendment 10 moved—[Ash Denham]—and agreed to.

Section 3, as amended, agreed to.

Section 4—Vulnerable witnesses: prohibition of personal conduct of case

The Convener: Group 4 is on vulnerable witnesses: relevant offences and special measures. Amendment 11, in the name of the minister, is grouped with amendments 12 to 14.

Ash Denham: Amendments 11 to 14 strengthen the provision that section 4 makes on the prohibition of personal conduct of a case.

One of the aims of the bill is to further protect victims of abuse and domestic abuse in family court cases and children's hearings. The prohibition of personal conduct of a case is one of the bill's key provisions on that.

The bill creates a presumption that a party who is convicted or prosecuted for committing certain offences against a witness should not be able to conduct their case themselves. Amendments 11 to 13 expand the offences that trigger that protection.

At the moment, the list of offences includes sexual offences, domestic abuse offences and other serious violent offences. Those are the same offences that trigger the prohibition on personal conduct in the criminal context. The amendments strengthen the provision by adding the following offences: an offence of female genital mutilation, as set out in sections 1(1) and 3(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005; an offence of stalking, as set out under section 39 of the Criminal Justice and Licensing (Scotland) Act 2010; and forced marriage offences under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014. That last offence will include a forced civil partnership if the Civil Partnership (Scotland) Bill is enacted.

In many cases, the offences that I have mentioned would already be covered if there was an accompanying domestic abuse aggravation, or the witness might already be protected as a child witness. In cases in which the presumption does not apply, the court still has a broad discretion to authorise the prohibition of personal conduct when that is the most appropriate way to hear the evidence of a vulnerable witness. However, I am keen to ensure that, in all cases in which a party has committed the offences that I have mentioned against a witness, there is a presumption in favour of prohibition of personal conduct of a case.

Amendment 14 aims to ensure that, in children's hearings court proceedings in which there is a child witness, there should be a mandatory prohibition of personal conduct of the case by a party. The bill inserts a new special measure into the Vulnerable Witnesses (Scotland) Act 2004. Section 12(1)(b) of that act provides that the court may make an order that a child witness is to give evidence without the benefit of any special measure. If there is a child witness, the bill

requires the court to assume that the prohibition of personal conduct of a case is the most appropriate special measure. Amendment 14 will mean that, in all children's hearings court proceedings, if a child is attending as a vulnerable witness, there will be a mandatory prohibition of personal conduct of the case by a party.

I move amendment 11.

Amendment 11 agreed to.

Amendments 12 to 14 moved—[Ash Denham]—and agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7 agreed to.

Section 8—Establishment of register

The Convener: Group 5 is on child welfare reporters: qualifications and experience. Amendment 65, in the name of Liam McArthur, is grouped with amendments 66 and 67.

Liam McArthur: Amendment 65 would ensure that, as in other parts of the United Kingdom, the role of the child welfare reporter is carried out by appropriately qualified and registered social workers. As we heard during stage 1 evidence, the role is performed by lawyers in 90 per cent of cases. However, if we were constructing a system from first principles with the intention of putting the welfare of the child at the centre of the process, can we honestly say that we would envisage lawyers taking on such a key role?

If the welfare of the child is paramount, we must begin with the obvious question of whether the child is at risk of harm. It is not simply about living arrangements or rules about contact time. Planning reports often requires assessment of child protection, development and mental health. Although social workers are trained, qualified and statutorily regulated in matters of child welfare and risk, lawyers are not, nor do they have any associated professional duties to report risk.

10:45

As the committee heard, many lawyers have built up a wealth of experience in this area, and I have no doubt that they provide a good service to those whom they support. Certainly in the gathering of evidence and in having an understanding of the court process, they will be more than adequately skilled. However, the assessment of a child's welfare is complex and requires different skills. Dr Sue Whitcombe and Dr Nick Child have noted that other professionals who work with children are required to undertake several years of training. Children 1st and Scottish Women's Aid also suggest that four days of training, which is what the financial memorandum makes allowance for, is insufficient.

In the past, the minister has expressed concerns about the capacity of qualified social workers to take on the role and the potential for increased delays if they do. On the first concern, it is important to stress that this is not about just council social work departments. Dr Whitcombe has set out figures that suggest that there will be ample capacity across the sector in Scotland. As for delays, cases that involve more specialist input can take longer; that is a reflection of complexity. The evidence from elsewhere in the UK rebuts any notion of delay—it is quite the reverse. We need to acknowledge that there are professionals who already have the training that child welfare reporters need and who already work within a regulatory regime that develops and maintains the right skill set.

I look forward to hearing comments from the minister and other committee members, and I urge members to support amendment 65.

I move amendment 65.

The Convener: I call Neil Findlay to speak to amendment 66 and the other amendments in the group.

Neil Findlay (Lothian) (Lab): I welcome the opportunity to speak to the committee. First, I pay tribute to my former constituent Emma McDonald, who lodged petition PE1635 with the Public Petitions Committee. That petition was very powerful, and I do not think that we would be where we are today in relation to contact centres had it not been lodged.

With regard to amendments 65, 66 and 67, it is important that the person who writes child welfare reports knows the child and the circumstances that the child has experienced, so that they can write reports in an informed way. It is not acceptable for people to write reports if they do not know, or barely know, or have not met the child involved. Child welfare reports should be done by professionals with appropriate training and qualifications.

If we want to change a system, it is important to establish what is wrong with it in the first place. Speaking to those who have experienced the worst of the system can offer a way forward and show how far we have to go to make improvements. We have to consider it from the perspective of the people who are involved in the system, particularly the children and the parents.

Children often offer real clarity about what is going on. Their perspective can be overlooked and dismissed because of their age and inexperience but, as we know, they are very perceptive. They know what and who they like and what and who

they do not like, and they know who and what scares and upsets them. It is essential that children and adults who have experienced domestic abuse and court-ordered contact are involved at all stages in drawing up regulations, to ensure that the system is made as user friendly and child friendly as possible for all who use it and that it does not continue to persecute or punish parents or cause fear and alarm to those who use contact centres.

I think that we all agree that the child should be at the centre of the system. The three amendments in the group absolutely follow that principle.

Fulton MacGregor: This would seem an appropriate time to make my declaration of interests, in relation to the group of amendments and for the rest of today's debate on the bill. I am a registered social worker. It will therefore be no surprise to members that I have significant sympathy with amendment 65 and that I considered it when Dr Whitcombe got in touch with the committee.

I agree with the overall principle and the direction that the Government is taking on the issue, and I will be interested to hear what the minister says. If we were starting from scratch and the bill was addressing an area that had not already been covered, the amendment might be exactly what we would do.

However, there are two major issues that we did not take enough evidence on, and that concerns me. The first is the impact on social work services. Liam McArthur addressed that a bit, but I can say from personal experience that, as we would expect, the reports that we are talking about are not easy bits of work. They can involve several visits as well as hours of phone calls and follow-up work. We need to take that into account. We might believe that the work could be spread across the board, but a lot of it would fall to local authority social workers to undertake. I am not against the idea by any means, but we need to consider its impact. As the Government has outlined, the proposals could end up having an unintended consequence in other areas of social work, including the reports, that would not be in the interests of children.

The second area in which we would need to have more understanding of the impact is the legal profession, where there might be an impact on jobs. We need to understand exactly what skills lawyers bring to the table. It is unfair to say that there are no lawyers who are particularly skilled in the area. In my experience, I had good working relationships with many lawyers who were very child centred. We need a wee bit more understanding of that.

As I said, I agree with the general principle, which will not come as a surprise to anyone. However, I am interested to hear what the minister says about the direction that the Government is moving in. Although I am not inclined to vote for amendment 65, it will be interesting to see whether it can be brought back at stage 3 when the issues have been worked through a bit more.

Rona Mackay: I agree with Fulton MacGregor in many ways and I have great sympathy with all the amendments in the group. However, amendment 65 is just a bit too narrow. We should consider psychologists and other people who have relevant skills and experience and who could be trained to do the job of child welfare reporter. Lawyers primarily do it at present, so the amendment would undoubtedly be detrimental to them, although that is not my primary concern. Amendment 65 is too narrow and could prevent other professionals who have good skills in the area from coming forward. Also, some social workers are not trained in dealing and engaging with children and young people and are more focused on older age groups. For those reasons, I do not support amendment 65.

I have huge sympathy with Neil Findlay's amendments 66 and 67. I agree with him on many aspects, and I have expressed my concerns about contact centres previously. However, Neil Findlay's amendments are a bit too vague and restrictive. I am confident that, after stage 3, the bill will address the issues with contact centres relating to welfare reports and so on. I hope that the bill is tightened up at stage 3 in that respect, but I cannot support Mr Findlay's amendments today.

John Finnie: I am supportive of my colleague Neil Findlay's amendments 66 and 67—he has outlined the rationale for them very well. However, I will not support Liam McArthur's amendment 65, because it approaches things from entirely the wrong direction. We need to look clinically and systematically at things such as post and person specifications and a skills profile. There is undoubtedly a requirement for child welfare reporters to have an understanding of child protection issues—that is absolutely fundamental—and likewise there will be benefits in their understanding child development.

However, my concern is about losing a level of expertise from the legal profession and the potential to harness relevant expertise in the third sector. We know from the committee's visit and consideration of the barnahus model, for example, that the issue is the skills, not the professional designation of the individual involved.

For those reasons, I will not support amendment 65 but will support amendment 66.

The Convener: Thank you. No other member has indicated that they wish to contribute to the debate on the amendments.

I appreciate the sentiment and motivation behind amendment 65, but I am concerned about the vagueness of its proposal, so I look forward to the minister's comments. Amendment 66 appears to be overly restrictive but, again, I will be interested to hear the minister's view.

Ash Denham: The Scottish Government does not support the amendments in this group. Section 8 establishes a register of child welfare reporters, and individuals would be eligible to apply to be on the register if they met the relevant training and qualification requirements, which will be set down in regulations. There will be a full public consultation on them, which will be developed by keeping in mind that the welfare of the child is at the heart of the proceedings.

Amendment 65 would allow only social workers to be child welfare reporters. I understand where the member is coming from with that proposal, as approximately 90 per cent of child welfare reporters are lawyers, but I am not convinced that there is a justification for losing that pool of expertise by limiting the role to only social workers. My view is that the most important factor for a child welfare reporter is that they meet the required standards regardless of their professional background.

Liam McArthur attempted to address the point about capacity, but I am not clear whether there is sufficient capacity in the social work sector to take on the role of child welfare reporter. There might be such capacity, but we do not know that for certain at this point, so that would require further detailed consideration. Obviously, not having enough capacity to undertake the necessary number of reports would put us in a bad situation.

I am keen to encourage non-lawyers to become child welfare reporters because I believe that diverse experience in the role of child welfare reporter would be beneficial for the process. Rona Mackay, John Finnie and Fulton MacGregor made good points about that. What we are looking for, which I think sums up what those members said, is not necessarily a job title but people who have the right skills, experience and expertise. Such people might be social workers, but they could equally be child psychologists or lawyers. In my response to the Justice Committee in advance of stage 2, I set out how I plan to encourage social workers to apply to be child welfare reporters. For all those reasons, I hope that Liam McArthur will not press amendment 65.

When I first looked at Neil Findlay's amendment 66, I was not entirely clear what it was intended to do. Section 8 already says that if a person has the requisite skills and experience to allow them to be included on the register, they can apply to be included. I am therefore not entirely clear how a person's professional knowledge of a particular child would be relevant to the general question of whether the person could be on the register.

I take Neil Findlay's point that a professional person might have already worked with a certain child and could be in a good position to write a child welfare report on them. However, section 8 does not deal with who will write a report on a specific child; it is much wider than that. I would be happy to discuss the matter further with Neil Findlay before stage 3 to ensure that I have understood his concerns about the issue. However, I ask him not to move amendment 66.

I see the point of amendment 67. When drafting regulations, we need to ensure that people with personal experience give us their views. I agree that people who have experienced court-ordered contact and domestic abuse have valuable insights. I assure the member that we will obtain views from people in those categories, as I have done throughout the bill process, which has taken place over the past couple of years. We will do that through the formal consultation process or by meetings and discussions, or by both. Given that assurance, I ask Neil Findlay not to move amendment 67.

11:00

The Convener: Thank you. Neil Findlay has a question for the minister.

Neil Findlay: Thank you, convener. In the phone discussions about the bill that Liam Kerr was party to, the minister said that establishing any system would take three years. Is that still the case? It seems an extraordinary length of time to bring forward regulations and set up a system. We were recently told that we could set up a new state in 18 months, yet we cannot set up such a system in three years.

Ash Denham: The projected timeline for when parts of the bill will be enacted has already been set out to the committee. I undertook to Neil Findlay that I would ask officials to look at it again to see whether there was a possibility of things being done more quickly. He and the committee will have to accept that, with the health pandemic and Covid-19, we have had to move staff from various directorates to the health department, so I would not be confident that the system could be delivered more quickly, but I have undertaken to ask officials to see whether there is that possibility.

The Convener: Is Neil Findlay content?

Neil Findlay: I am not content at all, convener. [*Laughter.*]

The Convener: I appreciate that.

I ask Liam McArthur to wind up and to press or withdraw amendment 65.

Liam McArthur: I thank the convener, Rona Mackay, Fulton MacGregor, John Finnie and the minister for their contributions on amendment 65. I remind the committee that, until changes in legislation in 1984, social workers predominantly carried out welfare reports.

I understand the capacity issue, on which Fulton MacGregor speaks with particular insight. Dr Whitcombe is clear that capacity should not be a problem, if people who are no longer active in practice are drawn on and put themselves forward as welfare reporters. Therefore, there appears to be a wider pool from which to draw; it would not simply be council social work departments that would shoulder the responsibility.

I understand the anxieties that colleagues have expressed about limiting the role solely to social workers. I am not calling into question the skills that lawyers bring to bear, as some of them have become specialists in the field. However, it seems excessive that 90 per cent of the work is carried out by lawyers. The complexity of the work of putting together welfare reports and the judgments that need to be made in the assessments means that the role is likely to fall far more readily into social workers' skill set and training and social work regulations.

I will reflect on the concerns that have been raised, specifically in relation to the amendment being overly restrictive, and I will look at bringing something back at stage 3 that will take those concerns into consideration. For the time being, I will seek to withdraw amendment 65.

Amendment 65, by agreement, withdrawn.

Amendment 66 moved—[Neil Findlay].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 66 disagreed to.

Amendment 67 moved—[Neil Findlay].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 67 disagreed to.

Section 8 agreed to.

Section 9—Regulation of provision of contact services

The Convener: Group 6 is on responsibility of contact centres. Amendment 68, in the name of Neil Findlay, is grouped with amendment 69. If amendment 15, which is in the next group, on regulation of contact services, is agreed to, I cannot call amendment 69.

Neil Findlay: Contact centres currently do not assume responsibility for children on their premises; that responsibility always lies with the parent. That begs the question: how can it be reasonable or, indeed, safe for that responsibility to lie with a parent who might themselves be subject to supervision? My view is that those who run the contact centre and their staff must be responsible for a child's safety at all times when the child is on the premises and that that should be a condition of a child being in a contact centre. If a court requires a child to attend a contact centre, the staff of the contact centre and the company or organisation that runs it must take responsibility.

My former constituent who lodged the initial petition on contact centres was told that a contact centre could not guarantee her safety or that of her children while on the premises. She was told that the contact centre was not responsible for her children because the other parent, who was subject to a supervision order, was there. That does not make any sense, and it appears to be a way of passing the buck and avoiding liability should something happen. My amendments would make contact centre staff and the company or

organisation that runs a contact centre responsible for the health, safety and wellbeing of any child on the premises.

I move amendment 68.

John Finnie: Will Neil Findlay outline how that squares with the obligation on every property owner to have regard to the welfare of people on their premises, not least because we would imagine that their liabilities would have had to be underpinned by a risk assessment anyway?

Neil Findlay: Mr Finnie raises a very good point. However, that was certainly not the experience of my constituent Emma McDonald when she raised serious concerns about her children being left in the premises. The contact centre could not ensure that the children were safe, and there were obvious risks to the children—for example, there was no closed-circuit television on the premises, and there was a low window that was open at a height that meant that a child could easily have climbed out and fallen. Those issues were raised with the person and the company running the contact centre, but Emma was told that the safety and wellbeing of children in a contact centre are the responsibility of the parent. As I mentioned, that parent can often be subject to supervision. That was a domestic violence case, which in itself raises serious concerns.

The Convener: Is John Finnie content with that?

John Finnie: Yes.

The Convener: On the face of it, amendment 68 seems entirely reasonable, but I would be interested in the minister's comments.

Ash Denham: I want to ensure that all cases of contact at a contact centre are facilitated safely and appropriately. That is why section 9 of the bill gives the Scottish ministers powers to set minimum standards for contact centres in regulations.

I cannot support amendments 68 and 69, and I urge members to vote against them if Mr Findlay chooses to press them, because it is entirely unclear which responsibilities they seek to impose on contact centres. Do they deal with responsibility as a matter of the law of delict? Contact centres already have liability on their premises under the normal mechanism of the law. That was John Finnie's point. It is also not clear what the intended effect of the amendments would be on those with parental rights and responsibilities in relation to a child.

The amendments contain quite vague and unspecified legal duties. I urge Mr Findlay not to press them, but if he wants to discuss the issue further with a view to bringing the amendments back at stage 3, I would be happy to work with him so that he is able to do that.

Neil Findlay: I would normally press my amendments but, given the minister's offer, I will engage with her. If we do not make progress, I will bring them back at stage 3. I will wait for the minister's office to make contact with me, so that we can have a discussion.

Amendment 68, by agreement, withdrawn.

The Convener: This is an opportune time for a comfort break. I suspend the meeting for five minutes.

11:15

Meeting suspended.

11:22

On resuming—

The Convener: We move to the seventh group of amendments. Amendment 15, in the name of the minister, is grouped with amendments 52, 53, 16, 17, 70, 18 to 21, 71, 22, 72, 23 to 25, 73, 26 to 28 and 74.

If amendment 15 is agreed to, it will pre-empt amendment 69, which was debated in the previous group, and amendments 52 and 53 in this group.

Ash Denham: I recognise the important role that child contact centre services play, and I want to ensure that, in all cases, contact at such centres is safe and appropriate for children. Section 9 gives ministers the power to set, by regulations, minimum standards for contact service providers that they must meet, and continue to meet, in order to be registered as a provider entitled to take court referrals.

The point has been raised with the Government that a provider can operate multiple centres and so deregistering the provider for a failure to meet the minimum standards at one centre may be a disproportionate response. If the other centres are operating well, there is no reason why their work should be interrupted. Amendments 15 to 28 address the point by providing for individual contact centres, as well as service providers, to be registered so that, if there is a problem with an individual centre, it can be deregistered without affecting the work of any other centre that is operated by the same provider. However, if the problems encountered at one centre indicate a problem that is endemic to everything that a particular provider does, the option of deregistering the provider entirely will still be available.

In order to facilitate contact for families in remote areas where there are no permanent contact centres, rural service providers use alternative premises on an ad hoc basis. In that context, requiring the registration of premises would not be practicable. The amendments therefore also allow for regulations to specify circumstances in which a provider may use unregistered premises, subject to those premises still meeting the minimum standards that are laid down in the regulations. There will be a full public consultation on the detail of the standards as the secondary legislation is developed.

Amendments 52 and 53, in the name of James Kelly, would require that all referrals to a contact centre would be to a regulated centre. That would include solicitors who refer clients, social workers and other agencies that refer families, and individuals who self-refer.

Currently, the bill provides that court-ordered contact must take place at a contact centre that is operated by a regulated contact service provider. I would expect that, once regulations are in place for court referrals, solicitors and others would, in practice, refer families to a regulated contact centre. However, concerns were raised at stage 1, and the committee recommended that the Scottish Government should amend the bill at stage 2 so that referrals to contact centres from solicitors and others must be made to a regulated centre.

I am not inclined to introduce mandatory measures that might impose a duty or require enforcement measures if that is unnecessary. For that reason, I made a commitment in the "Family Justice Modernisation Strategy" to discuss with the Law Society of Scotland and the Faculty of Advocates whether guidance could be issued to encourage solicitors to refer clients to regulated contact centres.

However, in light of concerns that have been raised by my officials, we are now engaging with the Law Society to consider whether we can go further in relation to solicitor referrals and whether a legislative duty could work in practice. If our conclusion is that such a duty would be workable, I will lodge amendments to that effect at stage 3, and I would be willing to work with James Kelly on that.

On referrals made to contact centres from other persons, including individual parents who self-refer, I still have a concern about how a duty or a mandatory provision in that area would work out in practical terms. However, given the commitment that I have made to look further at solicitor referrals in advance of stage 3, I ask James Kelly not to press that amendment.

Amendment 70 would require contact centre regulations to include provision for staff to be trained and to hold recognised professional qualifications in relation to issues that concern children. I agree that staff who work in contact centres should have the right professional qualifications. The bill already provides an appropriate mechanism for addressing staff training and qualifications in regulations, so amendment 70 is not necessary.

Because of the way in which amendment 70 is framed, it could place an undue burden on services by requiring them to ensure that all their staff and their volunteers have those professional qualifications, irrespective of their individual roles. For example, some staff might work in reception and not have direct contact with the children.

I would be happy to discuss staff training and qualifications further with Neil Findlay as the regulations are developed, but I cannot support amendment 70, and I ask him not to press it.

Amendment 71 would require contact centre regulations to make provision about access to, and facilities at, contact centres for disabled children. I assure Bob Doris that I fully recognise the seriousness of that issue. I want to ensure that all children have access to a contact centre service and that all contact is facilitated safely.

The bill already provides a mechanism for addressing accommodation and staff training issues. Addressing those by regulation allows us time to consider in more detail what standards are required and how to undertake a full assessment of the existing laws on issues such as disability access.

In this instance, we need to ensure that we do not cut across or duplicate existing provision. There may also be implications for the law on equal opportunities that would require detailed consideration. We will explore those issues fully as part of the process for developing the regulations.

There will be a full public consultation on the draft regulations next year. I give my commitment to Bob Doris that the issue of disabled access will be considered as part of the consultation, and I am happy to discuss that further with him at any time. We will also ensure that the consultation includes disability organisations and the Equality and Human Rights Commission.

In short, I understand Bob Doris's concerns and the intentions behind amendment 71, but I cannot support it at this point for the reasons that I have given, so I ask him not to press it.

I would like to touch on a couple of other amendments, if that is okay.

Amendment 72, in the name of Neil Findlay, would add a function for the body appointed to oversee contact centre regulation to undertake risk assessments, and for those to be carried out by

staff who are trained in undertaking such assessments.

11:30

I expect that the body that is appointed to oversee contact centres will undertake risk assessments as part of the inspection process, and I also expect persons who carry out the risk assessments to have the necessary training. The functions of the regulatory body will be set out in regulations, and I will work with the Care Inspectorate to consider the matters that it has set out in its feasibility study report as the regulations are developed.

Although I understand the intention behind amendment 72, I do not think that it is necessary, for the reasons that I have set out, so I ask Neil Findlay not to move it.

On amendment 73, I agree with Neil Findlay that we need to ensure that people with relevant lived experience give us their views when we consult. I have done that throughout the bill process, and I intend to continue to do that, so I ask Neil Findlay not to move amendment 73.

Amendment 74 would require regulated contact centres to be

"publicly provided and accountable to the Scottish Ministers".

I am not clear what the amendment is supposed to cover, and I have concerns that it could exclude third sector organisations, public sector bodies, private sector bodies and even local authorities. If the intention behind the amendment is to address concerns that were raised at stage 1, including by the committee, about the long-term funding of contact centres, I point out that I have lodged an amendment to allow the Scottish ministers to enter into arrangements for the provision of contact services. That would pave the way for the Scottish ministers to let a contract for contact services and ensure that contact services are funded on a secure and sustainable footing.

For the reasons that I have stated, I cannot support amendment 74, so I ask Neil Findlay not to move it.

I move amendment 15.

James Kelly: I will speak to amendments 52 and 53, in my name. The committee heard substantial evidence about the conditions at contact centres. There were concerns that children are being placed in unsafe situations because of the conditions and the lack of training of those who work in contact centres. Those concerns were also raised in the stage 1 debate. If we are serious about ensuring that a child is properly safe in such situations, we need to achieve that by having strong regulations in the bill.

Amendments 52 and 53 seek to ensure that, when a referral is made to a contact centre, that contact centre should be regulated by a recognised service provider. I note the minister's caution about making such provisions mandatory but, if we are to take on board the evidence that we heard and the comments in the stage 1 debate, we need them to be mandatory. That would ensure the safety of the child, give parents confidence when they bring their children to contact centres and address the shortcomings that we have heard.

Amendments 52 and 53, in combination with amendments 70 and 72 to 74, in the name of Neil Findlay, would provide a stronger network around contact centres, which would give greater primacy to the safety of the child and give parents greater confidence when they take their children to those centres.

Neil Findlay: When dealing with vulnerable children, it must be in the child's best interests to surround them with people who are competent, knowledgeable and professionally qualified, and who are able to understand and react to a child's response to any situation and record it based on their professional experience and knowledge. Without such training and qualifications, the work is left to well-meaning individuals—often volunteers—who do not know how best to respond to different situations and behaviours that might arise in contact centres. If people are not basing their observations on training, qualifications and experience in a role, what are decisions being based on? The matter needs to be dealt with urgently.

No volunteer without the appropriate qualification or training and/or relevant experience should be involved with vulnerable children in such a situation. Court reports often come from notes that were taken at the time by unqualified volunteers and collated into a report by someone else working for the organisation at a later date. That surely makes them open to interpretation and mistakes.

Amendment 70 seeks to remedy that situation by ensuring that staff are trained and hold recognised professional qualifications. The minister put forward a red herring when she said that other staff, such as the plumber unblocking the toilet, would need to be qualified on issues relating to children if they were working at the contact centre. That is simply not the case.

On amendment 72, it must be best practice to employ the services of someone who is suitably qualified to carry out a risk assessment of the danger to children of other adults on the premises, including staff. Some of the people attending contact centres may have serious criminal convictions, which could be for violence or

domestic abuse. Given the inherent risk that some individuals may bring to a situation involving children, it is best practice for someone with specific risk assessment qualifications and knowledge of the criminal justice system in relation to domestic abuse, coercion and control to make such a risk assessment. It is currently done by contact centre staff, whereas qualifications and professional knowledge should inform such decision making.

On amendment 73, it is essential that we include people with lived experience, because they bring a unique perspective to the situation. They must be listened to prior to the implementation of any regulations. To take the example of a former constituent of mine, her sons' lived experience of contact centres was that they were places where they were forced to go against their will, and where the staff would not listen to them and coaxed them into seeing someone they did not want to see. They were scared, and a physical change in their behaviour was noted by their school. They felt physically sick before going and would struggle and undress so as not to have to leave the house on days when contact took place. That is real lived experience that we should listen to.

On amendment 74, if the state, via the court, requires a safe environment for children to attend the contact centre, the service has to retain public confidence. Children must come first, not finance. Therefore, it is my view that such a system should be publicly run and publicly accountable. We can see what has happened in the asylum system, in which organisations such as Serco and Capita have won tenders for providing services. Those services do not retain public confidence and have been pretty disastrous.

We are reforming the current system of contact centres, which is already a tendered system, because of the failings within it, yet we want to repeat that failure by putting the service out to tender again. Amendment 74 is based on practicality and accountability. When we first raised the issue of contact centres, we found it very difficult to find out who was accountable for them and oversaw them to get answers about their practices.

A publicly run and accountable service has to be the way to go in such a vital area of children's welfare. It is not just about funding but about the whole ethos underpinning the system. We are at this stage only because of the failings of the existing system, so my final amendment in the group would provide a robust foundation for a system in which people can have confidence. I hope that members will support all my amendments.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): In speaking to amendment 71, I want to outline a situation that constituents of mine found themselves in. They have a teenage son with cerebral palsy, and around two years ago they were awarded supervised contact with their son by the court. However, the contact centre did not have a suitably adapted disabled toilet. Over a number of months, adaptations were made.

Subsequently, a hoist was deemed to be required, and funding was secured for it. After that, bizarrely, it was decided that a changing mat was not available, so one had to be purchased. Then, just as my constituent thought that contact would go ahead imminently, they were advised that staff would have to be identified and trained to operate the hoist and that funding would have to be found for that. I spoke to my constituent yesterday and, thankfully, that now appears to have been done. They are hopeful that they will see their son soon, post-lockdown. However, it is two years since the initial contact was awarded by a court.

In the stage 1 debate on the bill, I raised the matter of disabled children at contact centres. I have corresponded with the minister on the matter, and I welcome her comments today. I have also raised the matter at First Minister's question time and with the contact centre in question on several occasions. I have raised it with the Glasgow sheriff principal and the Lord Advocate, in the hope that the court system would ensure that, where a court orders contact with a young person who has a disability, any contact centre that is used is suitably adapted. None of those representations bore any fruit or had any success.

The current situation is surely a scandal and amendment 71 can start to address that. I hope that, by placing in the bill a requirement for contact centres to make

"the relevant adjustments necessary for a disabled child to access a contact centre and use its facilities including toilets",

we can drive the required change, and quickly.

The amendment states:

"'relevant adjustments' means, in relation to a disabled child, alterations or additions which are likely to avoid a substantial disadvantage to which the disabled child is put in using the contact centre in comparison with children who are not disabled".

That is surely the right thing to do. In using the expressions "relevant adjustments" and "substantial disadvantage", I have sought to give legal consistency, as that is the language that is used in the Equality Act 2010. Likewise, the amendment defines "disabled child" as

"a child with a disability within the meaning of section 6 of the Equality Act 2010."

Again, that offers consistency and certainty.

I know that the minister wishes the matter to be dealt with in guidance. The details of the delivery of ensuring adequate disabled access can of course be placed in guidance, but guidance can be ignored or can be open to interpretation. Placing the disability requirements in the bill would give any subsequent guidance teeth. I am concerned that, if the requirements are not in the bill, little may change for disabled children and for non-resident parents. Their rights could be enshrined in the bill.

I listened carefully to the reassurances that the minister gave, which were substantial and welcome, but I have to know the direct connection between those reassurances and what will eventually end up in guidance. On the issue of a crossover with minimum standards for accommodation and training and other things that are going on, I suspect that there would be little overlap, given that, from what I can see, those standards currently simply do not exist.

I welcome the reassurances that have been given, but I need to know that it is a bottom line for the Scottish Government in consulting on the guidance that the guidance will enshrine mandatory and enforceable guarantees in relation to access for disabled people to buildings and training of staff to use items such as hoists. That will mean that other constituents do not have to wait for two years to see their child, as my constituent has done. That is unacceptable.

I will wait to hear what the minister says, but I want to work with her to get the reassurances that I desire. I would rather work in partnership with the Government.

Ash Denham: I agree with what James Kelly seeks to achieve with amendments 52 and 53, regarding non-court referrals, and I am exploring how that can be done. The Law Society of Scotland is consulting its practitioners, and we are looking into the issue. It is not entirely straightforward, and the enforcement part needs to be worked out in detail. I am sure that the committee will agree that there is no point in enacting something and putting it into law if it cannot be enforced. I am exploring that issue and I agree with the intention behind the amendments.

I honestly think that many of Neil Findlay's points are already addressed by the bill with the ability to set training standards for the staff of contact centres and to regulate them. I am seeking to regulate contact centres because, obviously, they are not currently regulated; I am seeking to regulate them to ensure that they meet certain standards, which will be fully consulted on publicly.

11:45

On Bob Doris's amendment, the legal situation needs to be considered. We need to consider that amendment further. Contact centres may already be required to make those minimum adjustments for disabled persons to access their facilities under the public sector equality duty in the Equality Act 2010. Making provision on that could relate to an equal opportunities reserved matter. We need to further consider the legal situation. I ask Bob Doris to work with me on the issue while I take some further legal advice. Obviously, he will be able to bring the amendment back at stage 3.

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Finnie, John (Highlands and Islands) (Green)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)

Against

Kelly, James (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Amendment 15 agreed to.

Amendments 16 and 17 moved—[Ash Denham]—and agreed to.

Amendment 70 moved—[Neil Findlay].

The Convener: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Kerr, Liam (North East Scotland) (Con)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 70 disagreed to.

Amendments 18 to 21 moved—[Ash Denham]—and agreed to.

The Convener: Amendment 71, in the name of Bob Doris, has already been debated with amendment 15. I call Bob Doris to move or not move the amendment.

Bob Doris: During the minister's summing up, I lost internet connectivity, so I am not absolutely clear on the reassurances that were given. I think that, when addressing my amendment, the minister promised to look at the matter again and to try and give legal certainty about how it might interact with the reserved aspects of the Equalities Act 2010. I think that she also said that she would take the views of her officials and that we might return to it at stage 3. However, I could be wrong in that. That was certainly said in relation to one of the amendments, but I lost internet connectivity. I therefore want to put that on the record before I say that I will not move amendment 71, but I will hold my position ahead of stage 3.

The Convener: Minister, can you give Mr Doris the reassurance that he seeks?

Ash Denham: I can. He summarised quite well what I said. I am looking at the issue, but I need a little more time to consider the legal implications.

The Convener: That is great.

Amendment 71 not moved.

Amendment 22 moved—[Ash Denham]—and agreed to.

Amendment 72 moved—[Neil Findlay].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 72 agreed to.

Amendments 23 to 25 moved—[Ash Denham]—and agreed to.

The Convener: I invite Mr Findlay to move or not move amendment 73.

Neil Findlay: I am on a roll, so I will move it.

Amendment 73 moved—[Neil Findlay].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 73 disagreed to.

12:00

Amendments 26 to 28 moved—[Ash Denham]—and agreed to.

Amendment 74 moved—[Neil Findlay].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 74 disagreed to.

The Convener: Group 8 consists of minor and technical amendments. Amendment 29, in the name of Ash Denham, is grouped with amendments 34 to 36 and 40 to 42.

Ash Denham: The amendments in my name in group 8 make minor adjustments to ensure consistency of expression across the statute book. I prefer not to take up members' time by going through each amendment, but if anyone has any questions, I would be happy to answer them.

I move amendment 29.

The Convener: I presume that you do not wish to wind up.

Ash Denham: I am content.

Amendment 29 agreed to.

Section 9, as amended, agreed to.

After section 9

The Convener: Group 9 is on arrangements for contact centres. Amendment 30, in the name of Ash Denham, is the only amendment in the group.

Ash Denham: Amendment 30 paves the way for the Scottish Government to contract for contact services across Scotland. I recognise the important role that is played by child contact centre services and I want to ensure that the funding of contact services is put on to a secure and sustainable footing. I have considered carefully the concerns that stakeholders and MSPs raised during stage 1 as well as the comments that the committee made in its stage 1 report about the funding of contact centres.

I consider that the most effective way to meet the objective of securing long-term funding for contact services would be to carry out a tendering exercise for the provision of child contact centre services through an open and transparent competition process. Amendment 30 paves the way for that.

I move amendment 30.

The Convener: Liam Kerr, would you like to ask any questions?

Liam Kerr: No, I would not. My point in the chat box was a separate one. However, as you have brought me in, I will say that I was interested in amendment 30 and I have listened to the minister's points. Unless I hear anything different, I am inclined to vote in favour of the amendment.

The Convener: No other member has indicated that they wish to speak. Minister, do you have anything more to say in winding up?

Ash Denham: No, I am content not to wind up.

Amendment 30 agreed to.

The Convener: Group 10 is on renaming residence and contact orders. Amendment 75, in the name of Fulton MacGregor, is in the only amendment in the group.

Fulton MacGregor: Amendment 75 seeks to address an area that members will recall was subject to substantial discussion throughout stage 1: the renaming of the terms "residence" and "contact". There has been broad agreement that how we word things is important and that that can impact on the practice of professionals and others working in the sector. I am grateful to the minister and to other organisations that have submitted briefings for acknowledging the intention behind the amendment.

As the minister is aware, I am happy to say from the outset that this is a probing amendment and I will be interested to hear what the minister and other members have to contribute to the overall debate. I have not made alternative suggestions to those terms, because it is a probing amendment and I do not think that I, as one person, should do that.

I think that there should be a collaborative approach among young people, organisations and practitioners to address what terms might work best for Scotland. In England and Wales, those terms were replaced relatively recently with simply "child arrangement orders", and I believe that that is working pretty well. I am also aware that the family justice review recommended using the term "child arrangements orders",

"which would set out arrangements for the upbringing of a child when court determination of disputes related to the care of children is required."

I am grateful for the input from other organisations, which offer broad agreement. The Children and Young People's Commissioner's briefing to the committee says:

"We agree that the terms contact and residence are not child-friendly and do not necessarily reflect modern living arrangements, however this amendment does not present any alternatives. We would welcome continued discussion on this, outwith consideration of the current bill."

The joint briefing by Scottish Women's Aid and Children 1st says:

"Our organisations have often shared concerns about language and terminology used by the courts when speaking about children and the relationships that they have with the important people in their lives. While we recognise the limitations of the existing terminology, this amendment does not appear to offer a viable alternative."

It goes on to say that there should be

"further consultation ... undertaken on more appropriate terminology."

Therefore, there is general consensus that the terms that are being used are not optimal, but there is a debate over what the terms should be. I fully agree, and that is why I am happy for amendment 75 to be a probing amendment that further airs the issue so that we might come back with a more agreeable solution before stage 3, whether or not it would need to be put in the bill—I am open minded about that. A solution could involve setting up a group or forum, which would include the organisations that I have mentioned, to discuss the best options.

I know from my own practice that those terms are not deemed acceptable by our young people, and we need to listen to them as well. It may well

be that they are reasonably well understood by practitioners, but the bill is about young people and children. I feel that they should be involved in any discussions. At the end of the day, practitioners will adapt to new terminology—that is nothing new, as new guidance and legislation are presented all the time. However, misplaced words, said at the wrong time, could have a much greater impact on a child who is going through difficult circumstances, and that has to be the key consideration.

I look forward to the discussion. As I have said, I do not expect to press the amendment at this stage, for the reason that I have not offered any alternative wording, and I have given my reasons for that.

I move amendment 75.

The Convener: No member has indicated that they wish to speak, so I invite the minister to comment.

Ash Denham: On amendment 75, I appreciate the point that Shared Parenting Scotland raised in its submission about the use of the terms “contact” and “residence” wrongly implying that one parent has a closer relationship with the child or more decision-making powers than the other parent.

However, I am unable to support the amendment for a number of reasons. The first is that the terms “contact” and “residence” have been in use for some time. They have gradually gained acceptance and they are widely understood. The terms can be seen as useful descriptors of the types of order that can be made under section 11 of the 1995 act. In addition, the amendment does not seek to remove all references to “contact” from section 11 of the 1995 act.

The court can make a range of different orders under section 11, so such an order might have nothing to do with contact between children and their parents or the child’s residence; therefore, the term “section 11 order” would not really tell anyone what an order was about.

Also, continued use of the terms would seem to be likely in any event. I still receive correspondence relating to the terms “custody” and “access”, as I am sure many other MSPs do, and those terms were replaced in the 1995 act.

I have committed to producing guidance to parties on what it is like to go to court. I am willing to include text in that guidance to emphasise that those terms do not mean that one parent has a closer relationship with the child. I hope that that would go some way to addressing the member’s concerns.

The Convener: I ask Fulton MacGregor to wind up and say whether he will press or withdraw amendment 75.

12:15

Fulton MacGregor: I thank the minister for her comments. The point about terminology from previous legislation still being used is the point that I am making. There is no doubt that the terminology would continue to be used by people who have used it for a long time, but we need to start somewhere to change mindsets. For example, the word “custody ” is much less used in this context than it was 10 or 20 years ago, so I do not agree that terminology should not be changed because it has long been in use.

I accept the point that a lot of change has to be made in practice rather than in the law. Councils and third sector organisations, in considering the needs of young people, should consider whether terms could be changed at the practice level.

I have a question for the minister. Given that many briefings for the committee make the same point that the terminology is not great and given that the issue will require further discussion, is the minister open to having a discussion ahead of stage 3 on what terms to use, and could that involve young people?

Ash Denham: I am open to discussing with Fulton MacGregor ahead of stage 3 other terms that he would like us to consider for an amendment. However, I am content at the moment that the terms in use are meant to be descriptors, not pejorative terms. They are well understood in practice, and I am concerned about changing them and people not understanding any new terms for some years to come. However, I am happy to meet the member to discuss the matter further.

Fulton MacGregor: Given that response, I will not press amendment 75 but will have further discussion with the minister ahead of stage 3. Several other committee members have expressed a keen interest in this area, but I politely ask them to support me in not pressing amendment 75 at this stage.

Amendment 75, by agreement, withdrawn.

Section 10—Promotion of contact between looked after children and siblings

The Convener: We move to group 11, on promotion of contact between child and others. Amendment 54, in the name of the minister, is grouped with amendments 76, 77, 55, 78 and 31. I ask the minister to speak to and move amendment 54 and speak to all amendments in the group.

Ash Denham: On amendment 54, the committee recommended in the stage 1 report that the word “practicable” be removed from section 10. The section highlights the importance that the Government places on the need to promote

relationships between siblings for children requiring care away from home. Removing the word “practicable” from section 10 will remove the concern that has been raised that practicalities could be inappropriately used to prevent contact from happening.

Amendment 55 will remove unnecessary wording to ensure that the focus is on those who the child might not otherwise have contact with.

On amendments 76 and 78, I fully understand that a child’s continued link with key people from their childhood can be beneficial to them. In relation to Mr Cole-Hamilton’s amendment 76, though, “lineal ancestors” is an unclear expression. It could involve a large number of people, which would not be in the best interests of children and could create a disproportionate burden on local authorities. The Scottish Government recognises the important role that grandparents play in the lives of many young people. As we discussed earlier in the meeting, I am committed to promoting further the charter for grandchildren.

I also have much admiration for the role that foster carers play in the lives of many care-experienced young people. However, the variety of people who can be part of a child’s life cannot be covered by amendment 78, and I cannot support it.

First, the aim of our policy is to focus on the needs of the child and not on those of the adults with whom they may come into contact. Just over a third of Scotland’s looked-after population is in foster care. Although many foster placements offer long-term stability for a young person, some offer short-term solutions. In relation to former foster carers, amendment 78 makes no distinction between the different types of care that a young person may experience. Therefore, to impose a duty on local authorities to promote contact with all foster carers would be disproportionate and would not serve the best interests of children, as it would take resources and focus away from the child’s core relationships.

Secondly, I am supportive of efforts to sustain contact with those who have had a positive impact in a child’s life. However, I would expect local authorities already to be assessing the needs of a child in their care and making decisions on an individual basis about who the child stays in touch with—with those decisions led by the child and their views.

Many local authorities are involved in family group conferences. Programmes such as lifelong links focus on the needs of the young person by building relationships and long-term social connections with family members, as well as with other adults such as former foster carers.

The Scottish Government will take forward work to update the guidance for looked-after children. Input from the Fostering Network and others would be beneficial in ensuring that the crucial role that foster carers play is adequately reflected.

Therefore, I ask the member not to press amendments 76 and 78.

On amendment 77, and on the language used in section 10 to define siblings, I understand the concerns that Rona Mackay has raised. I offer to engage with her to explore an appropriate replacement for those terms and to lodge an amendment at stage 3. I cannot support amendment 77 at this stage.

On amendment 31, one of the asks in the Stand Up For Siblings pledge for siblings is to introduce a duty on children’s hearings to consider contact between a child and their siblings. Amendment 31 does that. It also requires the hearing to specifically consider contact with the child’s relevant persons. That will most often be a parent.

Panel members across the country make considered legal decisions for children daily. They are best placed to consider—in addition to their decisions as to where a child stays—what level of contact a child should have with their parents and siblings. Panel members could also decide to make a measure of no contact, for example when it is not in the best interests of the child to see an abusive parent.

Amendment 31 allows children’s hearings to take a bespoke approach to the relationship between siblings. That is in line with the decision of the Supreme Court last week in the cases of ABC and XY. As the committee is aware, those cases considered siblings’ participative rights in children’s hearings. The Supreme Court’s decision recognises that the legislative scheme behind Scotland’s children’s hearings is compatible with children’s article 8 rights.

As we have previously indicated, ministers want Scotland’s care system to move from compliance into excellence. It remains our ambition to bring in procedural and practical improvements that will better support children in care to maintain relations with their brothers and sisters. My intention is to bring any necessary amendments at stage 3 to further address any gaps. That will also enable the Government to honour the independent care review promise on siblings.

I move amendment 54.

The Convener: Amendment 76 is in the name of Alex Cole-Hamilton. As he indicated earlier, Liam McArthur will speak to and will move or not move any amendments in Alex Cole-Hamilton’s name.

I invite Liam McArthur to speak to amendment 76.

Liam McArthur: I also have an amendment in my own name in this grouping, convener. To be clear, do you want me to speak to that amendment too at this stage?

The Convener: No—you can speak to amendment 76 now, and I will call you later to speak to your own amendment separately.

Liam McArthur: That is fine, convener. Suffice it to say that, given the pressures of time and given that Alex Cole-Hamilton was not planning to move these amendments on the basis of the earlier debate on the substantive amendments, I do not have much to add. As Alex Cole-Hamilton has requested, I will not be moving the amendments in his name.

The Convener: I call Rona Mackay to speak to amendment 77 and other amendments in the group.

Rona Mackay: I can be brief here. The terminology of "whole-blood" and "half-blood" in the bill struck me as incredibly archaic—it has a real Harry Potter ring about it. I could not see how such language could still have a place in 21st century legislation, and I would have liked the phrase "biological or non-biological" to replace it.

However, I do not now intend to move my amendment 77. The minister said that she will enter into discussion about the terminology before stage 3 to ensure that there is a consistent approach and compatibility across UK and domestic legislation, and I am content with that. I have not changed my view on the language, but I am content to discuss the issue in advance of stage 3.

I will not speak to the amendment supported by Fulton MacGregor, because he encapsulated everything that needed to be said on the matter previously.

The Convener: I call Liam McArthur to speak to amendment 78 and other amendments in the group.

Liam McArthur: I start by acknowledging the support of Jeremy Balfour and Fulton MacGregor for my amendment 78.

I am indebted to the Fostering Network for its advice and support in framing the proposed changes to the bill. As the Fostering Network reminds us in its briefing, foster care allows children to develop valuable relationships. Keeping in touch with the people they love and trust is important for children and young people as they move through or even out of the care system.

Sadly, for many, the relationships that they have developed with their foster carers are not prioritised or supported. In some cases, children and foster carers are even prevented from maintaining contact, due to an outdated belief that children must break their attachments in order to make new ones. Abruptly ending relationships can be damaging to children, who can be left feeling abandoned or rejected and less able to make future relationships.

As I said earlier, I realise that decisions need to be based on the best interests of the child. The bill is not, and nor should it be, about embedding or prioritising the rights of any adult. However, the evidence suggests that the interests and the voice of children and young people are not being taken into account when it comes to foster carers. In that respect, I disagree with the assurances that the minister provided earlier.

As one foster carer explained to the Fostering Network:

> "I believe it's important for fostered children to have contact with previous carers if they want it. They are entitled to have an extended family circle that can offer support or just friendship if they choose this. Most of the time this is discouraged by our local authority as they believe it may be unsettling and confusing for them. I don't believe this to be true. Many of the children we have fostered who have contacted us themselves when they have left care, just want to keep in touch."

In a UK-wide survey of young people, around one third of children and young people in care said that they had been prevented from keeping in touch with their former foster carers. Of those foster carers who had been prevented from maintaining contact with young people, 56 per cent said that it was the local authority that had prevented them from doing so. Those statistics make the case—they should certainly make the case to the minister—for pushing local authorities to do more to support those relationships where that is in the interests of the child. They also make the case for amendment 78 in my name and the names of Jeremy Balfour and Fulton MacGregor.

Given what the minister had to say earlier, I am minded not to press my amendment 78 at this stage, with a view to refining it and bringing it back at stage 3. Nonetheless, I am conscious of the support that Jeremy Balfour and Fulton MacGregor have expressed for the amendment, and I would be interested to hear their comments before I take a final decision on what to do at this stage.

The Convener: The following members have indicated that they would like to speak: Liam Kerr, Jeremy Balfour and Fulton MacGregor.

Liam Kerr: I want to express my support briefly for the minister's amendment 54 and the attendant removal of the word "practicable". Several MSPs spoke about the matter at stage 1, and I appreciate that the minister has listened to and

met Neil Findlay and me to discuss the issue, and ultimately has conceded the point. I am therefore very much in favour of amendment 54.

As I said at stage 1, I think that there is merit in dealing with the issue in Rona Mackay's amendment 77. She said that she is minded to not move the amendment today, and I understand why, but I am pleased that she will be developing the issue as the bill process progresses.

12:30

Jeremy Balfour: I will be brief. We have to recognise two things. A lot of work has been done recently on how attachment issues affect children's lives, particularly those who have had long-term relationships with a foster carer. Losing that contact can damage a child's life.

As Liam McArthur said, the issue is not about giving foster carers individual rights; it is about protecting children. The evidence that I have seen, including from the emails and the post that I have received, is that local authorities do not always pursue such matters. I therefore ask the minister to reflect on comments that she has made.

I have had contact with people who have been through the system and with foster parents. It is often the case that local authorities do not prioritise that contact. In fact, they do the opposite and make it difficult for that to happen.

We have to look at what is in the best interests of the child. If Liam McArthur does not move amendment 78 this morning, I hope that the minister will look at the issue and lodge an amendment to deal with it at stage 3.

Fulton MacGregor: I will start with amendment 54.

Like Liam Kerr, I welcome the amendment; it is a good addition. The minister has demonstrated the Government's willingness to work with other people. During the committee's stage 1 evidence gathering, I said that the approach that it provides for should be being taken anyway through the looked-after and accommodated review process. However, removing the word "practicable" takes away the doubt, and I think that that is reassuring for everyone. I offer my full support for amendment 54.

My name is attached in support of Liam McArthur's amendment 78. I thank the Fostering Network for the briefing that it has provided and for the brief discussion that I had with it.

Too often in this and other debates, when it comes to what is in the interests of the child, one side of the coin is taken more than the other side of the coin, as it were. I think that it is probably better to start from a place in which everyone should be putting the interests of the child first, no matter the point that they are arguing.

I would like to think that colleagues from all parties would respect that, after working for eight years on the front line of child protection, I would always think in that way. It is not great that I even need to say that. Even though another individual, grandparent, foster carer or whomever may be involved, it should always be the interests of the child that come first.

It would be a wee bit naive to think that long-term foster carers not having an on-going relationship with the child after they leave would not be an issue, or could have no impact on the child. Often, that relationship is an afterthought, so amendment 78 is relevant.

I hear what the minister has said, and I think that there are various issues to do with the amendment, because it does not take into account whether, for example, the foster care relationship has broken down for negative reasons for the child. The minister said that any such contact would have to apply to relationships that have been positive, and that on-going relationships would have to be positive for the child. That could be done simply through the guidance on the looked-after and accommodated review process for children who are coming out of care and will no longer be in that process and have other care plans in place. I agree with the minister's view that the issue is not one for the face of the bill.

My name is on the amendment for probing reasons, and in that respect I agree with Liam McArthur's stance. I would be interested to hear what the minister's thinking is ahead of stage 3. There is no doubt that this is a complicated issue, but it is definitely one worth airing. It needs to be looked at, because children who have long-term relationships with foster carers can suddenly be removed and, because of other pressures, and other relationships, those foster carer relationships might not be prioritised.

Ash Denham: I think that I am right in saying that Liam McArthur said that he was not going to move amendment 78. I was going to say that it was opposed by Social Work Scotland, CELCIS—the Centre for Excellence for Children's Care and Protection—Adoption and Fostering Alliance Scotland, Adoption UK and the Children and Young People's Commissioner Scotland. The issue has some significant complications—it is not at all straightforward—and I cannot support amendment 78 as currently drafted.

The debate is an interesting one, though, and I take on board the point that members have raised about children wanting to maintain contact with certain foster carers, and local authorities making

it difficult for them to do that. I am very sympathetic to that issue.

There might be a way to reflect the spirit of amendment 78 in a stage 3 amendment, or it may be that legislation is not the way to address the issue and that it is better addressed in guidance. I would be happy to speak to members who have an interest in the issue to see whether we can find a way forward that respects the spirit of the amendment.

Amendment 54 agreed to.

Amendments 76 and 77 not moved.

Amendment 55 moved—[Ash Denham]—and agreed to.

The Convener: Amendment 78, in the name of Liam McArthur, has already been debated with amendment 54.

Liam McArthur: On the basis of the comments from my co-signatories and the offer from the minister, I will not move amendment 78, and look to develop something ahead of stage 3.

Amendment 78 not moved.

Section 10, as amended, agreed to.

After section 10

Amendment 31 moved—[Ash Denham]—and agreed to.

Amendment 79 not moved.

Section 11 agreed to.

After section 11

The Convener: Group 12 is on alternative methods of dispute resolution. Amendment 57, in my name, is grouped with amendments 58 and 80.

On amendments 57 and 58, during the committee's stage 1 scrutiny of the bill, various stakeholders stressed that an early resolution to family disputes reduced stress and trauma, stated that it helped to prevent views and positions becoming entrenched, and acknowledged that courts are rarely the best place to resolve family disputes. The committee heard that alternative dispute resolution could allow more bespoke and family-focused solutions to parenting disputes. However, witnesses also identified the lack of legal aid as one of the barriers to greater use of ADR.

Amendments 57 and 58 therefore aim to encourage greater use of alternative dispute resolution and to help prevent children from experiencing the ordeal of a case coming to court. Furthermore, the amendments reflect the recommendations on ADR that the Justice Committee made at stage 1, which are in its report and reflect the committee's previous recommendations in its 2018 report, "I won't see you in court: alternative dispute resolution in Scotland". Those recommendations were that the Scottish Government and the Scottish Legal Aid Board should explore

"making legal aid available for other forms of alternative dispute resolution"

and that

"mandatory dispute resolution information meetings should be piloted",

with an exception for domestic abuse cases.

More specifically, amendment 57 would make provision for legal aid under section 11 not just for mediation but for other types of ADR, including arbitration, collaborative law and family group conferencing. The amendment reflects SLAB's current procedure for the funding of mediation costs, which is that a solicitor must be involved before the commencement of mediation and which provides the definitions of both advice and assistance and civil legal aid from the Legal Aid (Scotland) Act 1986.

Liam McArthur's amendment 80 seems to aim at getting us to the same place, but states that regulations should be laid within 12 months of royal assent. However, given that a process is in place to provide limited legal aid for mediation, it seems reasonable for Scottish ministers to be able to lay regulations within six months of royal assent.

I turn to amendment 58, which would make provision for Scottish ministers to introduce a pilot scheme for mandatory mediation information meetings. Under the pilot, before an order was made under section 11, the parties would be required

"to attend a mediation information meeting"

to discuss

"the options available to resolve the dispute".

It is important to understand that the parties would thereafter decide whether to progress with ADR or to continue with court proceedings.

I stress again that only the information meeting about ADR or mediation would be mandatory. The hope is that, with that opportunity to get the information, the parties would decide to go ahead with ADR; if they chose not to use ADR, they would continue to court proceedings to resolve their family dispute. Importantly, the amendment makes it clear—for the avoidance of doubt—that cases involving domestic abuse would be exempt.

In addition, amendment 58 would provide judicial discretion in the determination of whether parties should be required—the mandatory

aspect—to attend the mediation information meeting, should the court consider that there were reasons why that would not be appropriate.

Amendments 57 and 58 together represent a positive and comprehensive way forward to ensure that families can benefit from alternative dispute resolution in order to reach an early resolution to potentially damaging disputes and to avoid children being traumatised.

I move amendment 57.

I call Liam McArthur to speak to amendment 80 and other amendments in the group.

12:45

Liam McArthur: As the convener says, amendment 80 would place a duty on Scottish ministers to make regulations on providing legal aid for funding ADR within 12 months of royal assent, and would require ministers to consult SLAB before making the regulations. As the convener outlined, it follows a very similar approach to that set out in amendment 57.

Two recent Justice Committee reports have made it clear that ADR is being underutilised, and that legal aid should be available for forms of ADR other than mediation. That was the consensus—if not the unanimous view—of those who participated in the round table that we held at the start of the parliamentary session.

The benefits of the various forms of ADR, compared with going to court, are well established, particularly in cases that involve children or anyone who might be considered vulnerable. As Children 1st pointed out:

"Courts are rarely the best place for resolving family disputes ... families should be given early help and support to resolve problems and disputes, where it is safe and appropriate to do so, before these issues reach the Courts. In particular we highlight the value of Family Group Decision Making (FGDM) as an important option to help resolve conflict and reduce stress."

Without access to legal aid, however, going down the ADR route may not be an option for some who might benefit from it.

Limiting legal aid to mediation also unnecessarily limits the cases in which ADR might safely and successfully be used. I appreciate that ADR may not be a sensible option in some cases; however, surely we should be doing more, particularly if our interest is in the best interests of the child, to encourage its greater use in the resolution of family disputes.

Whether it is in the form of my amendment 80 or the convener's amendment 57, I hope that committee colleagues will back the recommendation in our earlier reports and ensure that more forms of ADR become a realistic option for many of the people who—[*Inaudible*.]

The Convener: Shona Robison would like to contribute.

Shona Robison (Dundee City East) (SNP): I have some concerns about amendments 57 and 58.

First, as I understand it—perhaps the minister can clarify this—work is already under way to reform the legal aid system. That should be done in a strategic way rather than piecemeal. I am therefore concerned about the process.

On a more fundamental point, anyone who has read the Scottish Women's Aid briefing will have noted its concerns. Scottish Women's Aid is very clear that

"alternative methods of dispute resolution (ADR) are not appropriate for cases involving domestic abuse."

I heard the convener say that ADR would not be appropriate for such cases, and that they would be exempt. However, Scottish Women's Aid has made a couple of points about that.

Scottish Women's Aid said that domestic abuse is not always disclosed to the authorities, whether the police, the courts or social work. It also had concerns

"about the practical implementation"

of the amendments in their current form, as it said that they

"would not protect or safeguard children's rights".

It made the point that it lacks confidence that the existing system could always

"identify where domestic abuse is taking place."

We have to take on board very carefully the concerns that Scottish Women's Aid has expressed.

John Finnie: I will pick up on some of the points that Shona Robison has raised. For a long time, we have been hearing about the reform of the legal aid system—there are significant frustrations about that, not least among those who are involved in dealing with domestic violence—and about the difference in the support that is given for criminal and civil matters, which we have often touched on.

The convener made clear the position that is replicated in the reports that have been mentioned, which is that there is no place for the approach to be adopted in cases in which domestic abuse is a factor.

I understand Shona Robison's point that domestic abuse is not always disclosed to the authorities. It is rare that I find myself taking issue with anything that Scottish Women's Aid says, but

a key word that both the convener and Liam McArthur used was "support", and we need to move things on. If everyone agrees—I understand that everyone does—that the resolution of a dispute is not best located in a courtroom, we must encourage the proposed approach.

It seems to me that there is no insurmountable problem here. The concerns that Scottish Women's Aid has outlined are understandable and I share them. However, there are reasons why I and others are always going on about the judicial process and the need for awareness of the pernicious nature of domestic violence. We must encourage the use of alternative dispute resolution.

Liam McArthur: Earlier, John Finnie suggested that I was quicker out of the blocks than he was. He has now returned the favour, as he has outlined the views that I was going to express.

I absolutely accept the concerns raised by Shona Robison, Scottish Women's Aid and others about the deployment of ADR in the context of domestic abuse cases. Those concerns must remain a consideration for us, but they should not prevent us from opening up the option of a wider range of alternative dispute resolution processes where no domestic abuse is at play.

As John Finnie said, we have been round the houses on this a number of times. The suggestion that either the convener's amendment 57 or my amendment 80 would constitute a piecemeal adaptation of legal aid seems to ignore the point that it has been piecemeal all along and we have been waiting for far too long for a more fundamental review to open up access to ADR. With the bill, there is an opportunity to resolve that to some extent, and further reforms may come in due course.

Notwithstanding the reasonable and legitimate concerns that Shona Robison raised, I think that they are addressed in the way that amendments 57 and 80 are structured. I therefore encourage committee colleagues to back one or the other.

Ash Denham: Amendments 57 and 80 would direct Scottish ministers to make regulations to provide for legal aid to be available for parties to participate in ADR forums.

As has been discussed, we are undertaking a root-and-branch review of the legal aid system, although it is slightly delayed in relation to where it might have been. The legal aid payment advisory panel, which I am sure the committee is aware of, was due to have its final meeting in March, but that did not go ahead as a result of the coronavirus. We are slightly behind on that work, but the committee has my commitment that we are still pushing ahead with it.

A common criticism of the existing system is that it has developed in an ad hoc way, reacting to changes in the law with no proper systemic and strategic review. However, that criticism and the issues about costs can be addressed by the strategic review that is being undertaken.

Although the Scottish Government welcomes the roles that both arbitration and collaborative law can play in resolving disputes, they are unlikely to be cheap options given the likely need for very senior lawyers to take part. The content of any regulations under amendments 57 and 80 is unclear, but simply to direct that legal aid should be available would not guarantee that it could be accessed, because civil legal aid is subject to the statutory tests of probable cause, reasonableness and financial eligibility, and advice and assistance is subject to prescribed financial eligibility criteria.

As well as our review of legal aid, we are continuing our review of mediation and wider dispute resolution in co-operation with key stakeholders. That review is aimed at improving access to justice by enabling access to a range of dispute resolution mechanisms in appropriate cases.

On amendment 58, the Government recognises the valuable role that ADR, including mediation, can play. We provide funding to the Relationships Scotland network, and part of that funding is for mediation and couple counselling. In addition, legal aid resources are used to support mediation.

In 2018, the Scottish Government relaunched the parenting plan, which is designed to help separating parents, and the "Family Justice Modernisation Strategy" commits us to improving signposting to and information on alternatives to court. The convener is right that court can end up being an unpleasant experience at times, especially in areas of high conflict. If it is possible to signpost people to other ways of resolving such disputes where that is appropriate, that could be a good thing.

However, we cannot support amendment 58, because we do not consider it to be necessary. An existing court rule empowers the courts to send a section 11 case to mediation, so that is already in place. The Scottish Government has just sent a policy paper to the family law committee of the Scottish Civil Justice Council that aims to strengthen that rule. We propose that the rule be extended to cover other family cases, such as financial provision on divorce cases, and that the rule should not be used when there has been domestic abuse.

There are practical problems with the amendments. They assume that it can be known at the outset whether a case will ultimately end up with a section 11 order being made, but that is not

the case. Court proceedings might not begin as section 11 proceedings but may become so where the court considers making an order under section 11, which could be at a later stage in the proceedings. Therefore, the proposed requirement to provide funding for ADR might arise only midway through a court case or even after a section 11 order is made.

Given those issues and the Scottish Government's commitment to do further work on ADR and to promote it in appropriate family cases, I ask members not to press amendments 57, 58 and 80.

The Convener: I want to address the issue of piecemeal reform, which has been referred to. We have been looking at the issue since 2018 and a consultation has been promised for a considerable time, but we have failed to make any progress.

Amendment 57 would move us on and would include other forms of dispute resolution in the provisions that are already in place for mediation to be legally aided. The amendment does so by making available legal aid under section 11 not just for mediation but for all forms of alternative dispute resolution. The amendment reflects the current procedure and funding, but a solicitor would have to be involved before the parties moved forward. Therefore, I do not think that the minister's fears about section 11 are justified.

Amendment 58 makes it absolutely clear, in a stand-alone avoidance-of-doubt provision, that the mandatory mediation information meeting would not apply in domestic abuse cases. Indeed, mediation would not apply in such cases. The requirement to have an information meeting is at the discretion of the judge. When the judge considers the matter, one of the parties might refer to a domestic abuse aspect or something else that can be taken into account. That is a belt-and-braces provision in the amendment.

We have an opportunity to extend ADR, which is a much more satisfactory, less traumatic and preferable solution to family disputes. On that basis, I will press amendment 57.

The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 57 agreed to.

13:00

Amendment 58 moved—[Margaret Mitchell].

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 58 agreed to.

Liam McArthur: On the basis that I am not sure what amendment 80 would add to amendment 57, I will not move it. However, I may come back with something else at stage 3.

Amendment 80 not moved.

Section 12—Factors to be considered before making order

Amendments 81 and 82 not moved.

Liam McArthur: I will not move amendment 83 or bring it back at stage 3.

Amendment 83 not moved.

Section 12 agreed to.

The Convener: I suspend the meeting for a five-minute comfort break.

13:04

Meeting suspended.

13:09

On resuming—

Section 13—Curators ad litem

The Convener: We move to consideration of group 13 amendments. Amendment 32, in the

name of the minister, is grouped with amendments 43 and 44.

Before I call the minister to move amendment 32, I want to say to everyone that there is a real prospect of completing consideration of stage 2 amendments today, so I ask you to be succinct wherever possible.

Ash Denham: Section 13 requires the court to reassess the appointment of a curator ad litem every six months. The provision currently applies to curators appointed before the provisions of the bill come into force as well as to any appointments made after commencement. However, I am aware of concerns raised by the Scottish Courts and Tribunals Service during stage 1 about the workability of the requirement, in so far as it applies to appointments of curators made before the provisions come into force.

In the light of those issues, I propose to amend the provision so that the reassessment requirement will apply only to curators appointed after section 13 comes into force. That takes a practical approach to the issues raised about workability, while protecting the best interests of children by ensuring that the appointment of curators in new cases will be subject to periodic review.

As cases move on and curator appointments that predate commencement come to an end, the position will be reached whereby all curator appointments will be subject to the periodic review required by the bill.

I am also proposing a minor structural amendment to the provisions to reflect that the reassessment of the curator's appointment will occur routinely whenever the court has appointed a curator in a section 11 case, whether or not the court is considering making an order under section 11 at the time.

I ask for the committee's support for the amendments.

I move amendment 32.

Amendment 32 agreed to.

Section 13, as amended, agreed to.

After section 13

Amendment 33 moved—[Ash Denham].

Amendment 33A not moved.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Robison, Shona (Dundee City East) (SNP)

Against

Finnie, John (Highlands and Islands) (Green)
McArthur, Liam (Orkney Islands) (LD)

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

Amendment 33 agreed to.

Section 14 agreed to.

13:15

Section 15—Explanation of decisions to the child

Amendments 34 to 36 moved—[Ash Denham]—and agreed to.

Section 15, as amended, agreed to.

After section 15

The Convener: Group 14 is on child advocacy services. Amendment 84, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: Amendment 84 creates a duty on the Scottish ministers to ensure the availability of child advocacy services in section 11 cases. Colleagues will recall the powerful evidence that the committee heard on the need to strengthen the so-called infrastructure for taking children's views. That was one of the key asks in our stage 1 report.

In their written submission, Dr Morrison, Dr Friskney and Professor Tisdall argued:

"The strongest and most consistent request from children and young people in Scotland, who have been involved in contested contact proceedings, is to have a child support worker. Without addressing this now, children's participation throughout the legal process risks being dealt with inconsistently, on an ad hoc basis and thus marginalised. We recommend provision be put into primary legislation, with the ability to then link developments to other advocacy roles."

Similarly, Relationships Scotland—I remind the committee of my interest—suggested:

"The provision of Child Support Workers seems to be fundamental to supporting the main policy objectives of the Bill ... There would be significant benefit from including provision in relation to Child Support Workers in the Children (Scotland) Bill legislation to ensure action is taken sooner rather than later."

A number of other organisations echoed those views, including the Scottish Child Law Centre, Partners in Advocacy and the Scottish

Independent Advocacy Alliance. The amendment is not overly prescriptive; it merely adds a system-wide responsibility for a service that should already be available. However, I believe that, by creating that duty and placing it in the bill, a layer of necessary assurance would be added.

I look forward to hearing the views of others, including the minister, and I have pleasure in moving my amendment.

I move amendment 84.

Shona Robison: I have much sympathy with what Liam McArthur is trying to achieve. One of the issues that has been raised with me concerns the possibility of a number of adults involved in a child's life. For instance, a support worker could be involved in various types of situation. It would be useful to hear Liam McArthur's view on that. How would we avoid a plethora of adults becoming involved in various aspects of a child's life? As I say, concerns have been raised with me on that, and it would be helpful to hear his view on that.

John Finnie: I support Liam McArthur's comments. He talked about powerful evidence. I imagine that much of the evidence that we have heard in support of increased advocacy comes from advocacy groups, and it could be argued that there are no surprises there. However, we know that when it comes to mediation and early intervention, support can often stop situations from escalating, and we know the multiplicity of issues that can be faced. Shona Robison poses a reasonable question but, as Liam McArthur says, many believe that child advocacy services should be in place in any case. Certainly, if we are putting the focus on the interests of the child, that would seem to be a very modest proposal. It certainly draws my support.

The Convener: It seems that having access to advocacy services is certainly in the best interests of the child.

Ash Denham: I appreciate the aims of amendment 84, but I cannot support it. I am aware that a number of stakeholders have suggested that the bill should introduce a formal system of child support workers. I have therefore committed to bring forward, before stage 3, more detailed plans with timescales on the work that the Scottish Government plans to undertake to meet our commitment to ensure the availability of children's advocacy services.

I have also committed to producing, in advance of stage 3, a public paper that sets out the ways in which children can give their views in family court cases. I trust that that will reassure Liam McArthur that I appreciate his concerns and that I am actively looking at the issue. Although I appreciate that child support workers can play an important role in ensuring that children are able to give their views, as the member and others have said, we know that some children might already have child support or advocacy workers in other contexts such as children's hearings or criminal proceedings. There are concerns about whether it would be in the child's best interests to introduce another adult into that mix.

Further, if we were to introduce a system of child support workers, we would need to ensure that all those individuals were meeting minimum standards, were trained appropriately and had the right type of expertise and experience. That might mean establishing a list of child support workers, in the same vein as the other lists that we are proposing to establish, which of course would take some time to work through. Consideration would also need to be given to the effects of regulation on existing child support workers. Quite a few issues would need to be worked on and, for those reasons, I ask the member not to press his amendment.

Liam McArthur: I thank the convener, Shona Robison, John Finnie and the minister for their comments. I appreciate John Finnie's strong support and the arguments that he made. Shona Robison raises legitimate issues about the potential impact of having a multiplicity of adults being involved in supporting a child. Fundamentally, that comes back to the principle of decisions being taken in the best interests of the child. I am sure that, where there is already a support worker in place who is providing the necessary support, any court would take that into consideration if there were any concerns that adding additional support might dilute, rather than augment, that benefit.

I outlined a number of organisations that are supportive of the need for child advocacy services. I take John Finnie's point that many of those are advocacy organisations, but a number of them are not—Children 1st and Scottish Women's Aid are two of the organisations that support my amendment. Therefore, I will press amendment 84 to provide, as much as anything, a degree of reassurance in the bill that there is consistency in what a child has a right to expect throughout the system.

The Convener: The question is, that amendment 84 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 84 agreed to.

Section 16—Failure to obey order

Amendments 37 and 38 moved—[Ash Denham]—and agreed to.

The Convener: Group 15 is on failure to obey a section 11 order. Amendment 39, in the name of the minister, is the only amendment in the group.

Ash Denham: Amendment 39 gives the Scottish ministers power by regulations to amend the list of persons who may be appointed by the court to investigate the reasons for actual or alleged non-compliance with an order that the court has made under section 11 of the 1995 act. That paves the way for flexibility on who can investigate the reasons for actual or alleged non-compliance with a section 11 order. The bill as introduced allows the court to appoint a child welfare reporter to investigate. Amendment 39 will allow ministers to make regulations enabling other professionals to perform that investigative role. Those regulations will be subject to the affirmative procedure.

I hope that members will agree that the amendment is important to ensure that there is flexibility around the ways in which the court can investigate the reasons for non-compliance.

I move amendment 39.

Amendment 39 agreed to.

Section 16, as amended, agreed to.

After section 16

The Convener: Group 16 is on specialist judiciary. Amendment 59, in the name of Jeremy Balfour, is the only amendment in the group.

I remind members that we are near the end, the clock is ticking and succinctness would be appreciated.

Jeremy Balfour: I will be as brief as possible. Children's best interests are at the heart of our work on the bill, and it is very rare for those best interests to end up in a sheriff court. When I worked in family law many years ago, it was always difficult to go to the sheriff court for any case, and it was particularly difficult for children when they had to appear in a sheriff court or give their views to a sheriff.

Sheriffs predominantly do criminal law—that is their bread and butter. As we have heard previously, they often simply do not have judicial training in family law and, in particular, children's issues. Amendment 59 would simply allow sheriffs who specialise in family law to hear those types of cases. Such specialisation has already been set up for commercial actions in the Court of Session, where one judge hears all commercial cases. It seems an appropriate way forward in this area.

It might not be possible for smaller sheriffdoms to have one sheriff with that specialty, so the amendment would allow those who have it to come in to deal with those cases. It would be in the best interests of the child to have someone there with that specialty, who has that training and deals with those issues day in and day out. I hope that the committee will accept the amendment.

I move amendment 59.

13:30

Ash Denham: Clearly, the deployment of the judiciary is a matter for the Lord President and the sheriffs principal.

The Scottish Government does not support amendment 59. First, we do not think that it is necessary, because there are existing powers on juridical specialisation in the Courts Reform (Scotland) Act 2014 and there is no need to legislate again in similar terms.

Secondly, the amendment specifically refers to cases brought under section 11 of the Children (Scotland) Act 1995. In practice, cases can be multicrave. The pursuer might seek a variety of outcomes in a single court action: a divorce, financial provision, a civil protection order against domestic abuse—such as an interdict—and a section 11 order. That is not just a drafting point against the amendment but a point of substance, as there would be questions as to whether any specialisation was to apply only to section 11 or to the whole case.

Cases are not always brought under section 11, as amendment 59 supposes. Courts consider and make section 11 orders in proceedings that do not start out as that and, should such a situation require the case to be transferred to a specialist sheriff, the delay, expense and negative impact on the child would be obvious at that point.

There could be cost implications as well were sheriffs asked to specialise only in section 11 cases, because that might reduce flexibility in relation to deployment and lead to a need to appoint more sheriffs.

In summary, I recognise that there is a legitimate debate to be had on specialisation, but there are existing powers on it in the Courts

Reform (Scotland) Act 2014, so I ask the member not to press amendment 59.

Jeremy Balfour: That power is already used in certain sheriffdoms. The minister said that the power was there but then came around and said that we should not use it. There is a slight contradiction in that. I think that the amendment would be a way forward, because section 11 deals with children in particular, who need sheriffs to have that special training.

I press amendment 59.

The Convener: The question is, that amendment 59 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Finnie, John (Highlands and Islands) (Green)
Kelly, James (Glasgow) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Robison, Shona (Dundee City East) (SNP)

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

Amendment 59 disagreed to.

Sections 17 to 20 agreed to.

Section 21—Delay in proceedings likely to prejudice child's welfare

Amendment 40 moved—[Ash Denham]—and agreed to.

The Convener: Group 17 is on delay in proceedings. Amendment 85, in the name of Fulton MacGregor, is the only amendment in the group.

Fulton MacGregor: Amendment 85 seeks to deal with an issue on which the committee took considerable evidence at stage 1: delays in proceedings. I am grateful to all the organisations that submitted briefings on the matter, and to the minister for discussing it with me. It is clear that there is a majority of opinion that long unnecessary delays are not in a child's best interests. They need to know whether and in what circumstances they can have meetings with their other parent, or indeed whether a court feels that that would not be safe. Children need to know.

The children's hearings system is renowned for bringing about quick and decisive action. Therefore, children who are subject to its proceedings often have issues relating to spending time with their parents dealt with swiftly, and the situation is fully explained to them. However, as MSPs, we have all heard of cases that have lasted months and even years. It is no one's fault that that is the case, but it is not acceptable, and we have a duty to consider how the system can work better. Much evidence was given on that at stage 1.

I appreciate that the minister may indicate that she agrees with the premise of my amendment, and I am grateful for the input from Shared Parenting Scotland, the Children and Young People's Commissioner Scotland and, jointly, Woman's Aid and Children 1st. In their joint briefing for today, those latter two organisations state that there is recognition of the intention behind the amendment. That is unsurprising, given that, like many of us, those organisations have witnessed first hand the impact of huge delays on children, young people and their families.

I reiterate that amendment 85 seeks to address the best interests of children, not of the organisations that work within the system to deliver results. I recognise that the timescale puts in place some restrictions and, clearly, the provisions would not factor in those situations when it may be in the best interests of a child for the period to exceed 60 days.

I am also aware of concerns that, if the amendment were to be agreed to today, courts might become more inclined to make cautious orders in the first instance, rather than wanting to commit. To give the committee a bit of background on that, my initial version of the amendment did not include a timescale. When it was being drafted with the legislation team, however, I took advice and decided to include one.

On that basis, I am content for amendment 85 to serve as a probing amendment. I have already expressed that to the minister. I would be grateful if something could be worked up and brought back to us at stage 3, either as an amendment to the bill or otherwise—I am open minded on that. However, it should capture the intent of my amendment while taking into account the need for some delay, but only when that is in the child's best interests.

I look forward to hearing any contributions from other members and from the minister.

I move amendment 85.

Liam Kerr: I thank Mr MacGregor for his comments. He is right: the premise of the amendment is good, of course. The question that I would be interested to know about, had he sought to press the amendment, is what would happen if the dispute was not resolved within 60 days after commencement. Is there some kind of sanction or

something else in the proposed legislation that I am missing?

I will also pick up the point that Mr MacGregor quite rightly made about what would happen if it was not in the best interests of the child to complete the proceedings within 60 days. Presumably, as he is not pressing the amendment, those are the sorts of questions that might inform the discussion as he pursues the matter.

Ash Denham: Lengthy court proceedings and undue delays in cases relating to children are not in a child's best interests, which is why section 21 provides that

"the court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose."

That complements work that it is being done on case management by the family law committee of the Scottish Civil Justice Council.

Liam Kerr is right to raise questions—there are questions about what would happen if the deadline in the amendment is missed. Cases can be very complex, and courts will need to consider all aspects, which may be time consuming. Forcing a court to make a decision to a timeframe could have a number of unintended consequences. Although I share the member's concern about delay in cases, I cannot support the amendment. The right approach is the one that is taken in the bill, combined with the case management work that I referred to.

The member has indicated that he will not press the amendment, but if he had not done so, I would have advised him not to press it.

Fulton MacGregor: I was pretty clear in my opening remarks that I was not overly keen on suggesting a timescale. I took further advice on putting in a timescale, which is what ultimately led to amendment 85 being a probing amendment. Like Liam Kerr and the minister, I have issues with tight timescales. I hear what the minister is saying and I am not minded to press the amendment at this stage. I will perhaps come back at stage 3 with a more manageable amendment that is in line with the legislation.

Amendment 85, by agreement, withdrawn.

Amendments 41 and 42 moved—[Ash Denham]—and agreed to.

Section 21, as amended, agreed to.

Before section 22

The Convener: Our last group is on a review of the effect of the act. Amendment 86, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: I will try to be brief. Amendment 86 provides for a review of the act to be completed within three years of royal assent and a report to be published and laid before Parliament.

The report should include the steps, if any, that the Scottish ministers propose to take to further improve the participation of children in court processes. As with my earlier amendment 84, amendment 86 reflects the committee's recommendation that the Scottish Government should amend the bill to provide for a review of the impact of the bill on children's participation after three years following commencement.

As I said previously, Dr Fiona Morrison, Dr Ruth Friskney and Professor Kay Tisdall expressed concern that the financial memorandum makes no provision for an infrastructure to support children to express their views. That was supported by Scottish Women's Aid, which suggested that monitoring and review of the bill's implementation are required to ensure that children's rights are realised in practice. In order to provide greater confidence that children's rights will be realised in practice, I hope that colleagues will support amendment 86.

I move amendment 86.

The Convener: Liam Kerr, did you indicate that you wanted to speak to amendment 86, or was it the previous amendment?

Liam Kerr: It was the previous amendment, but I am sure that what Mr McArthur said was very important.

13:45

The Convener: I am very supportive of amendment 86 and I look forward to hearing from the minister.

Ash Denham: I understand the point behind amendment 86, but I am not convinced that three years after royal assent is the right timetable. The committee will understand that it will take time to implement some of the measures in the bill. The financial memorandum to the bill indicates that the regulation of child welfare reporters and contact centres may not be in place in advance of 2023, given the need, and the commitment that we have made, to carry out thorough consultations in those areas. I do not think that three years is the right timetable. However, if Liam McArthur were to lodge amendment 86 at a later stage with a different, more appropriate timetable that would allow the operation of the bill to be more accurately assessed, I would potentially support that.

Liam McArthur: Thank you to the convener for her support, to Liam Kerr for his inadvertent

support and to the minister for her offer. I recognise that the timeframes for these things can sometimes be arbitrary and I take her concerns on board about pre-empting some of the work that will need to be taken forward after the bill has been given royal assent. On that basis, I will not press amendment 86 now. I will lodge it at stage 3 with something that is perhaps more in keeping with the timeframes that we need to see.

Amendment 86, by agreement, withdrawn.

Section 22—Power to replace descriptions with actual dates

Amendment 43 and 44 moved—[Ash Denham]—and agreed to.

Section 22, as amended, agreed to.

Sections 23 to 25 agreed to.

Long title agreed to.

The Convener: That ends our consideration of the Children (Scotland) Bill at stage 2. The next meeting of the committee will be scheduled at an appropriate date, which will be notified in the *Business Bulletin* and on the committee's social media pages. Any follow-up scrutiny issues will be dealt with by way of correspondence, which is published on our website. Our last item of business will also be dealt with by way of correspondence. I thank all members for their attendance today.

That concludes the 16th meeting of the Justice Committee in 2020.

Meeting closed at 13:48.

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