OFFICIAL REPORT
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Equalities, Human Rights and Civil Justice Committee

Tuesday 30 September 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
21st Meeting 2025, Session 6

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)
*Rhoda Grant (Highlands and Islands) (Lab)
*Paul McLennan (East Lothian) (SNP)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

The Rev Stephen Allison (The Free Church of Scotland)
Claire Benton-Evans (Scottish Episcopal Church)
Barbara Coupar (Scottish Catholic Education Service)
Caitlin Fitzgerald (Scottish Human Rights Commission)
Rachel Fox (United Kingdom Committee for UNICEF)
Dr Conor Hill (Glasgow Caledonian University)
The Rev Stephen Miller (Church of Scotland)
Melissa Murray (Glasgow Caledonian University)
Professor Angela O'Hagan (Scottish Human Rights Commission)
Leah Rivka (Jewish Council of Scotland)
Dr Alejandro Sanchez (National Secular Society)
Fraser Sutherland (Humanist Society Scotland)
Professor Elaine Sutherland (Law Society of Scotland)

CLERK TO THE COMMITTEE

Euan Donald (Scottish Parliament)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 30 September 2025

[The Convener opened the meeting at 09:00]

Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill: Stage 1

The Convener (Karen Adam): Good morning, and welcome to the 21st meeting in 2025, in session 6, of the Equalities, Human Rights and Civil Justice Committee. Agenda item 1 is our first evidence session on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill. We will hear from three panels of witnesses.

I welcome our first panel. We are joined in the room by the Rev Stephen Allison, public engagement co-ordinator at the Free Church of Scotland; Claire Benton-Evans, provincial youth co-ordinator at the Scottish Episcopal Church; Barbara Coupar, director of the Scottish Catholic Education Centre; and the Rev Stephen Miller, co-ordinator of the education and schools group at the Church of Scotland. We are joined remotely by Leah Rivka, research and publications officer at the Jewish Council of Scotland. You are all very welcome.

We will now turn to questions from members. If you would like to respond to a question or any point that is raised, please indicate that to me. Leah, if you wish to come in, please type R in the chat and the clerks will bring that to my attention.

I will kick off with the first question, which is for everyone. What is your experience of how the right to withdraw from religious observance and religious and moral education currently works in schools?

Claire Benton-Evans (Scottish Episcopal Church): It is important for me to say that I am not involved directly in the work of schools, so others will be better qualified to talk about that. However, I know that the issue affects a very small minority of children, so it is a small issue. We need to trust in our teachers' wisdom and expertise in handling these difficult discussions, but I acknowledge that they will need further training and support to follow the suggestions that the bill proposes.

Barbara Coupar (Scottish Catholic Education Service): Good morning, everybody. I am a religious education teacher by trade, and I look after Roman Catholic schools on behalf of the Bishops Conference of Scotland. Withdrawal from religious education or religious observance is very rare across Catholic schools in Scotland. When there is withdrawal, it often involves not those of no faith but those of a different faith who have opted to attend a Roman Catholic school. When that happens, our schools have a process that is in line with the way in which local authorities ask our schools to deal with the issue, which involves being sensitive and pastoral both to the pupil voice and to parental wishes and ensuring that young people who are withdrawn from religious education or religious observance have something educational to do. However, having surveyed all Catholic schools in Scotland, I must stress that we are talking about very small numbers.

Leah Rivka (Jewish Council of Scotland): There is one Jewish school in Scotland, but the majority of Jewish pupils attend non-Jewish schools—either non-denominational schools or other faith schools—so we look at the picture from both sides.

We recognise that it is very difficult for the Jewish school and for other faith schools to disentangle all aspects of religious education and to withdraw a pupil from it, because those aspects are often intertwined in all parts of the curriculum. We feel that a parent who has chosen to send a pupil to a faith school will take that into account.

On the other hand, if a religious pupil or a pupil from a particular religious background attends a non-denominational school, there should be an expectation that religious education and religious observance will be more discrete and that the whole curriculum will not involve those practices. However, that is often not the case and, in our experience, some pupils have encountered difficulties with that. For example, a mother whose child attends a non-denominational primary school told us:

> "The huge amount of time spent on Christmas nativity and Easter activities was a surprise to me as, perhaps naively, I thought that non-denominational schools did not have such a big Christian slant. My son spent two hours at nativity rehearsals for over five weeks prior to the school show, in addition to the Christmas lunch, the Christmas fair and Christmas jumper day—I could go on."

Often, there is also a lack of understanding among some members of staff. I will quote again briefly before I hand over to another witness. When a parent questioned the way that a headteacher conducted their assembly, they were told in a letter:

> "We hold the assembly in church for all S3 to S6 pupils. Participating in a service in church is an ancient tradition of the school … Irrespective of any question of personal

belief, Easter is part of our cultural inheritance. The theme of renewal is of universal significance."

The fact that those remarks came from a non-denominational school shows a remarkable lack of awareness and a lack of understanding for a parent who wished to withdraw their child from the activities.

The Rev Stephen Allison (The Free Church of Scotland): Good morning. It is great to be with the committee. As well as having a central role with the Free Church of Scotland, I am a minister and am involved in delivering religious observance in local primary schools and high schools. I have more experience of that than of withdrawal. Conversations that I have had with headteachers suggest that a very low number of people have asked anything about withdrawal. Most of that is done informally in conversations with the headteacher, who usually seems to reassure parents and answer their questions. I have not seen many pupils exercising their right to withdraw. People may have questions, but they are dealt with very well by the school.

The Rev Stephen Miller (Church of Scotland): Thank you for the opportunity to contribute. Although I am wearing a dog collar, I have been an ordained minister for only one year. I spent 40 years in schools as a religious education teacher by trade and 25 years in school senior management, for the last 13 of which I was a headteacher in a non-denominational secondary school.

My experience has been much like that of the other two contributors in that withdrawal was not really an issue. In my 13 years as a headteacher, I did not have one conversation with a parent about withdrawal. During the 25 years that I spent in senior management, a handful of children opted to withdraw from religious and moral education, and a similar handful agreed not to attend religious observance. In the main, those tended to be children whose parents were of other faiths rather than of no faith.

Withdrawal has never been a real issue; if it was, we would deal with it pastorally. That is why I am a wee bit concerned about the bill introducing a potentially adversarial situation, which I think is unnecessary. If senior management came across those concerns, they would be dealt with in a pastoral and sensitive way.

One of the main things that we need to get right—obviously, as headteachers, we are very concerned about this—is that the RME programme itself is pupil centred and inclusive. It is about not just Christianity but other world religions. It is about the pupil's personal search and their own critical evaluation, so it does not take a doctrinaire stance.

It is the same with religious observance. I wonder whether it would be helpful to talk about the RO experience of pupils at my last school. We had about five 10-minute assemblies over the whole year, and there was no going to church or acts of worship—we were not singing hymns or asking pupils to participate in any prayer. I—and my fellow heads were exactly the same—always wanted to ensure that, if there was to be religious observance in a school, it was conducted in an inclusive way. Preaching is not teaching.

I hope that that helps.

The Convener: Thank you all very much. We will move on to questions from Paul McLennan.

Paul McLennan (East Lothian) (SNP): I welcome the witnesses to the meeting.

I want to ask about some of the specifics. My question is kind of in three parts. The bill requires a school to inform a child if their parent asks for them to be withdrawn from religious observance or RME. When that request has been made, the child is given an opportunity to express their views and the school has to seek a discussion with the child and parent. I would like to hear your thoughts on that and on the fact that a school must respect the child's wishes, even if their view differs from that of their parent.

Claire Benton-Evans: I think that young people can choose what they believe. Everyone in this room has the right to choose their religion, or none, and I am here to support that right for young people, too.

The young people with whom I work in the Scottish Episcopal Church choose to come back to us again and again. The SEC values their contribution so much that we invite them to address our annual meeting—our general synod—at the start of business every year.

We, in the SEC, support the United Nations Convention on the Rights of the Child principle of "No decision about me without me." The committee that I represent, which made the written submission, believes that children should be able not only to opt in to religious observance, but to opt out of it. We were interested to note that the bill does not mention that. They should get to choose.

Barbara Coupar: I find it interesting that we are having this evidence session at this committee and not at the Education, Children and Young People Committee. I think that that is because the issue is rooted in rights, and that is what we have to keep our focus on. If this legislation alters parents' place as the first educators of their child, which is what the Children (Scotland) Act 1995 gives them up to the age of 16, what precedent does that set? If a child expresses views contrary

to those of their parents, are we saying that either the state—or, in this instance, the school—should be arbiters of that and make decisions contrary to what the family has decided on behalf of their young person? That is my answer to the last part of your question.

As for the first part of your question, my experience has been that schools have a culture of listening to the pupil voice, and they listen sensitively. However, there is a difference between the views and wishes of a child being expressed and heard—really heard—and the outcome always equating to what the child has asked for. We need to be really sensitive in how we journey through that with the young person and their family, and we should not put our schools in a position where they become some sort of named person, making decisions on behalf of the child instead of their family.

The Rev Stephen Allison: We are in complete agreement with 90 per cent of the process that is set out in the bill—talking to children about this, being informed of decisions, having that discussion and listening. We think that that is in the existing guidance, and we would completely agree with putting some of that on a statutory footing, to ensure that such discussions are had in the interests of the rights of the child. It is absolutely better to discuss, engage and listen while obviously taking the child's age and maturity into account.

Our issue with the legislation is with that final point—that is, where there is disagreement between the parent's view and the child's view, the child's view trumps the parental wishes. When we look at the international human rights framework—the Convention on the Rights of the Child, the European convention on human rights, the international covenants—we see that those international agreements repeatedly make clear parents' right to educate their children in line with their own philosophical or religious beliefs. Multiple articles, even in the Convention on the Rights of the Child, make it clear that due weight should be given to the child's views according to their age and maturity, but they also make reference to the way in which rights are often exercised through their parents, with their parents. Indeed, paragraph 2 of article 14 of the UNCRC, on freedom of thought, conscience and religion, talks about respecting

"the rights and duties of the parents and"

providing

"direction ... consistent with the evolving capacities of the child."

09:15

Children should, fundamentally, be listened to and engaged with, and there should be discussion with them. That might mean that there is no need for them to be withdrawn. However, I think that allowing the child's views to trump the parents' views goes against what is a well-established principle. It also sets a precedent, potentially, for other areas of education. I can think of other areas where a parent might want to withdraw their child—for example, sexual health and relationship education. Would the pupil be able to say, "Actually, I want to be part of that"?

I think that we will be setting a precedent with this move away from parental rights, and it will create discontent within the family. That is where we have concerns.

Paul McLennan: On your point about age and maturity, every child will be different when it comes to how mature they are for their age, but is there some cut-off point—say, when a child is over 12, over 15 or whatever? I know that that is a bit of a "How long is a piece of string?" question, but do you have any thoughts on that?

The Rev Stephen Allison: One of the concerns that we have with the legislation at the moment is the assumption that the views of the child, no matter what age they are, should trump those of the parent. I think that that is problematic. Of course, when they get to 16, they have more rights and the parents' right to direct education is not as applicable.

I know that, when the child reaches the age of 12, various assumptions are made about what they understand about medical treatment and so on, and I think that all of that is helpful. Even then, however, I think that we would say that the parents still have a better understanding of the age and maturity of their children than teachers in school. I think that we are on dangerous ground when we place teachers and education authorities above parents in coming to those decisions. If you introduce a test of age and maturity, you make teachers the arbiters between parents and their children, which I think is a dangerous precedent to set.

Claire Benton-Evans: I want to make a point about children expressing their views on religious observance. In the churches with which I work, there is a really rich understanding of children's spirituality and their sense of something other and how that is expressed. If people are interested, I would highlight the play church project in Edinburgh as a flagship of that kind of learning, which reflects our understanding that, when children express their sense of the spiritual aspect of their life, they do not necessarily do so in words. Very young children, for example, can express

themselves through play, movement, their artwork and so on. That sets the bar a lot lower than 12.

Paul McLennan: Does anyone else want to come in?

The Rev Stephen Miller: Rather than waste time, I will just say that I am in general agreement with my colleagues on the matter. Perhaps I can ground this a wee bit by pointing out that there is already a legislative invitation to parents and children and young people to get involved in the direction of religious observance programmes and, in fact, the religious education curriculum. That was reinforced in the March 2017 document "Curriculum for excellence—provision of religious observance in Scottish schools".

Perhaps I can ground this in school practice, too. Something that I did in my own school—indeed, it is something that I think would always be a good idea—was set up a standing committee where pupils would meet with chaplains or school workers to discuss the programme. A sub-group of the parent council was set up specifically for the purpose of ensuring that the programme was educationally acceptable and as inclusive as possible.

There are ways of doing this that are not legislation. It is in no one's best interests that we pass an adversarial piece of legislation.

Paul McLennan: It is good to hear your comments.

Leah Rivka, is there anything that you want to add?

Leah Rivka: Yes, please. We are generally supportive of listening to pupils and hearing their views, but the way in which the bill proposes to enact that gives us a lot of concerns on behalf of schools, pupils and families. Stephen Miller and Stephen Allison mentioned making schools arbiters between parents and children, but we are concerned about the potential for forcing children—I use the word "forcing" advisedly—to become arbiters between their parents. We often find interfaith marriages in which the parents have different views about what the children should be learning in school. Beyond that, if parents separate, there is the potential for bad actors wanting to contradict the other parent as a matter of course. The bill states:

"If the pupil objects to all or part of the parent's request ... the operator"—

the school—

"is not to give effect to the parent's request to the extent of the pupil's objection."

The pupil is in a cleft stick if they know that their parents have diametrically opposed views. Whatever the child does—whether they say nothing and effectively consent to the withdrawal, object to the withdrawal or try to balance things in their explanation to the teacher—one way or another, they will, positively or by default, have a casting vote between their parents. We are very concerned that the legislation should not put children in that horrendous position.

Pam Gosal (West Scotland) (Con): Good morning to our witnesses. Thank you for all the information that you have provided so far.

My question is about uniformity. Last year, I was speaking to mothers at a Glasgow mosque, who told me about a certain aspect of education—it was a form of sexual education—that they felt was not appropriate, especially given their religious background. They went to the school, which is in Newton Mearns, and spoke to the headteacher, who agreed that it was fine for their children not to go through that education.

However, in the same room were parents whose children were relatives of those children but went to a different school. While one school said that it was fine to listen to the parents, the other school said no, and that, basically, the children were going to be taught that education. Do you see any difficulties or issues arising from the lack of uniformity among schools? The children could all be from one family, but the approach differs.

The Rev Stephen Allison: One of the challenges of relationships, sexual health and parenthood education is that there is no statutory right to withdraw, which there is for RO and RME. Thankfully, a lot of headteachers and schools are listening to parents and engaging with the issue, but without a statutory right to withdraw, there is a lot of disparity in what schools are doing. The answer to that is better training and equipping of teachers. I have seen headteachers engage well with parents on sexual health education, RO and other things. However, the fact that there is no statutory right for parents to withdraw their children from sexual health education is an issue.

I suppose that this is a separate issue from the bill, but, in general, there should be better training, engagement and sharing of best practice across schools. That is part of an education authority's role, so there should be more uniformity in how it operates. When engagement is done well, it is done well, and in the Newton Mearns example it was obviously done very well, but, sometimes, schools have not thought about the question before or have not been trained to deal with it correctly.

Pam Gosal: Sorry, I should say that when I talked about sexual education, I was not talking about the usual sexual education that schools provide under statute; I was talking about educating children on matters such as trans rights,

which Muslim parents did not want. I was not referring to the normal syllabus, which I had when I went to school, but something different that the school brought in.

The Rev Stephen Allison: I suppose that that is covered in the RSHP education. In the Free Church, we would have parents who would want to withdraw from that, but if it is included in the RSHP curriculum, I do not think that there is a statutory right to withdraw from it. It would be based on best practice, with schools and headteachers listening to parents, which is what they should be doing. However, there is no statutory basis for that at the moment.

The Convener: Leah Rivka has indicated that she would like to come in as well.

Leah Rivka: We have found, as you are suggesting, Ms Gosal, a great disparity between schools, which can be very problematic, especially in very small rural schools, where there is no choice if something happens that is contrary to the wishes and ethos of the home. In a large city, there is always the option to ask for a child to be moved to a different school or even to a different class or teacher within the school.

If you are in a small school with just a couple of teachers, who maybe have their own strong religious faith ethos that they transmit to the pupils, there is no alternative for parents living in that area, which can be very problematic. I do not want to imply that all schools are problematic—there are some fantastic examples of schools that bring in faith leaders from different communities to speak to pupils and which listen to the pupils and the parents, but where there is inconsistency, it can be very problematic.

The Rev Stephen Miller: I will say three quick things. First, this is very much a situation for the local authority to deal with using the relevant process. Secondly, it is a good example of where we must say that parents are the primary educators of their children. Thirdly, it seems a pity that all views would not be represented in a curriculum. We do not live in a uniform world, and that must be respected. If there is a particular view on any issue, it ought to be able to be accommodated within a syllabus or a programme, so that a child does not need to be left out of a lesson or a programme. If the parent wants the child not to be part of that, their wish has to be granted, in my opinion.

Claire Benton-Evans: If we are talking about clarity and coherence, there is a bigger point that I would like to make, which is that religious observance and religious and moral education are different. We were surprised that the bill lumps them together, because religious observance is a matter of belief, but RME is a matter of education. The committee that I represent believes that RME stands firmly within the school curriculum, because, just as Stephen Miller said, our children need to understand other faiths, beliefs and cultures if they are to grow up in the diverse, inclusive and tolerant society that we want in Scotland.

I want to really hammer home the point that there is a big distinction between RME and RO, and the bill does not recognise it.

09:30

Barbara Coupar: As you said, Ms Gosal, your question relates to consistency. Even now, there are concerns about consistency within the system, particularly on the part of teachers and schools. Sometimes, there is no consistency of approach within a school or between the local authority guidance and the structured national guidance. Therefore, should the bill be passed in the form that it is in at the moment, it will simply add another layer of bureaucracy and introduce the possibility of further inconsistency for our young people.

At the moment, it is difficult to get any real evidence about what schools do in these situations, because there is no real monitoring or reporting back to the local authority. My teacher colleagues who are listening will be telling me to stop talking now because of the admin that this might cause them, but I do not think that there is even real record keeping within the schools in such situations—as we have heard, often a pastoral approach is taken.

Your question raises a good point, although it is slightly tangential to the discussion: the fact is that there is no rigour in relation to the issue or in the collection of evidence about what is happening.

Leah Rivka: I want to pick up on what was said earlier. We strongly agree that there is a difference between religious observance and religious and moral education, but I would like to point out that there is an error in your meeting notes. Point 15 of paper 1 says that the Jewish Council said that the right to withdraw

"should only apply to RO".

In our responses, we have made a distinction between the two topics, but we have not said, and we do not say, that the right to withdraw should only apply to RO.

Earlier, Stephen Miller said that issues could be taken up with the local authority. On that point, I will give you a vignette that demonstrates why that is not always possible. It concerns a small rural school and, although the incident took place a few years ago, similar things are still happening.

The school had just two teachers—the headteacher and one other teacher. A Jewish child was being bullied in the playground by children who said "You killed Jesus." The mother did what all mothers would do in such a case and went up to the school to speak to her child's teacher. However, she was completely floored when the teacher shrugged and said, "Well, you did, didn't you?" The mother said to us, "What do I do? The two teachers are hugely respected in our very small community, and there is no other school within practical driving distance. If I complain to the local authority, to the GTCS or whoever, my family will be ostracised by the community."

Although it is possible to take things up with the local authority in a larger place, such as a city or a town, it is impossible to do so in large areas of Scotland.

The Convener: Before I bring in Maggie Chapman, Rhoda Grant would like to ask a supplementary question.

Rhoda Grant (Highlands and Islands) (Lab): I would like to ask a couple of questions, because things have occurred to me as I have been listening to people's answers.

Given what people are saying about the current situation, could the bill make improvements through the guidance on its implementation that will accompany it? Would that help address the issue with schools taking different approaches? I direct that question to Leah Rivka first.

Leah Rivka: There is non-statutory guidance at the moment. Perhaps if there were sensitive statutory guidance, that might help with levelling the playing field, but, again, I think that things will still be very dependent on the staff in the schools and on the facilities that the schools have.

Schoolteachers are not trained mediators and, in some of these cases, we will need trained mediators. Schools do not have the financial or staff resources to implement what is being proposed, whether there is statutory guidance or not.

The Rev Stephen Allison: I think that work will be undertaken to review the guidance in general. I do not think that guidance on the bill will deal with the vast issues that are involved. The right to withdraw from religious education is a niche area, whereas the issues that Pam Gosal raised are much wider, and are not just about RO and RME but about other areas of education and other guidance that is much more pastoral and to do with how headteachers and others discuss things with people.

I do not think that guidance on the bill, which is on a narrow issue, can really address the wider issues. That is part of the issue. You are looking at one tiny part of a much bigger issue, and a review of all the guidance—non-statutory guidance, although not binding, is very useful and helpful to teachers—with input from a variety of stakeholders would be more beneficial.

The Rev Stephen Miller: I am horrified to hear that story from Leah Rivka, and I would like to think that that was an exceptional case. We could maybe go down a few rabbit holes with just an individual case, but the response of the teacher who Leah spoke about is clearly unacceptable. As Stephen Allison said, I do not think that legislation will resolve that appalling attitude. I am not trying to pretend that everything in the garden is rosy just now. We have a long way to go to improve—and schools want to improve—but I do not think the bill will be a cure.

Rhoda Grant: I have a question for those who are from faith schools. It was mentioned that the belief of the faith school runs through the whole curriculum, not just through RO and RME. How will the bill impact on that? Will it create an issue? Perhaps Barbara Coupar could answer that.

Barbara Coupar: The current guidance from the Scottish Government makes it quite clear that it is difficult to completely extricate a child from religious education or religious observance. I speak on behalf of Catholic schools. There is something here about families choosing denominational schools in Scotland. One of the hallmarks of our system is that there is choice, which includes Gaelic-medium education. There are also additional support needs schools for young people who need that. There are options that match the culture and identity of the parents, for whatever reason, even if they do not identify with that religion.

Although it is difficult, we do very well to ensure that our young people can be present in a comprehensive way that represents Scotland. Our Catholic schools are not full of Catholics. I often use the line that we are Catholic schools, not schools for Catholics. We represent the whole of Scotland.

We are helping our young people to prepare for a pluralistic world where there are people who believe many different things. We find that religious education and, indeed, moments of religious observance are moments of community and solidarity where we build peace. Our young people are enabled to be there and present with their peers without anything being imposed on them. I invite you to go into our Catholic schools and see what they do, because they do that very well.

Claire Benton-Evans: Compared with Barbara Coupar's organisation, we have very few schools

and the set-up is different. For example, we have primary schools that have an Episcopal foundation, but they are very clear that they teach the curriculum for excellence for RME and that their schools are open and welcome to people of all faiths and none. For example, St Ninian's Episcopal primary school in Perth spells out, on the front page of its website, the difference that I pointed out earlier between RME and RO. It is not the case that everything has an Episcopal slant. Our schools are open and supportive for all faiths and none, and they teach the curriculum for excellence when it comes to RME.

Maggie Chapman (North East Scotland) (Green): Good morning, and thank you for joining us. I thank Stephen Allison for his comments, which I echo. I was appalled by the situation that Leah Rivka described. That should not happen in any school in any situation.

Barbara Coupar, you said that it was interesting and important that this conversation is taking place at the Equalities, Human Rights and Civil Justice Committee rather than at the Education, Children and Young People Committee because of the foundation of rights that underpins not only the proposals in the bill but the broader conversation. Could you say a little bit more about the conversation that takes place within Catholic education and Catholic schools on the rights in the UNCRC—in particular, article 12, on the right for young people to be heard, and article 14, on freedom of expression and freedom of religion? How do you draw those into the discussion, given some of the tensions and sensitivities that we have mentioned?

Barbara Coupar: Our schools are well equipped—in the same way that all schools are—to ensure that there are structures available to facilitate the pupil voice, whether through pupil parliaments, first-level guidance or pastoral care teachers, who know their pupils inside out. All our schools ensure, across the soft curriculum as well as the formal curriculum, that there are opportunities for young people to express themselves.

As a religious education teacher who has years of experience of teaching RE in the classroom, I know that an opportunity will always be provided for our young people to give their views and opinions. A line that we often use is, "We propose the gospel; we don't impose the gospel." Our young people are there to form their own conscience and make their own decisions, and we want to help them to flourish in that regard. There is not, as is sometimes suggested, a form of indoctrination within Catholic schools. There is the same openness as exists in other schools to young people expressing their views and developing their own capacities and their own conscience.

Maggie Chapman: Thank you—that was helpful. I suppose that we are talking about some of the tensions that folk have outlined. If there was strong disagreement between a child and their parent about how they wanted to develop their spirituality, their freedom of expression or their freedom of belief, how would you facilitate conversations about that?

Barbara Coupar: We would do that in the same way in a Catholic school as it would be done in any other school. It is important to say that we have never encountered such a situation—I know that from speaking to all our schools and asking them to respond. A situation in which parent and child have had such polarised views has never arisen. It is interesting that the bill has been set out in such a way that it deals with situations in which the parent wants to withdraw their child and the child wants to opt in. It does not deal with situations in which the child has a completely different view from the parent and opposes the denominational school.

We would deal with such a situation professionally and sensitively. In a Catholic school, such conversations would normally take place on a one-to-one basis and would not necessarily be known about by lots of different people, in order to ensure that the child's views were heard and understood.

Similar to what others have said, the challenge with the bill relates to situations in which a child wants to opt back in but their parent does not want them to. We are trying to navigate that issue and find out where the Parliament will land in relation to who has the end say in that regard.

09:45

Maggie Chapman: I put that question to the other witnesses. Given the sensitivities, tensions and potential conflicts that some of you have identified, how will society be able to support children to express their rights, as enshrined in the UNCRC, particularly those in articles 12 and 14?

The Rev Stephen Allison: That is always about letting young people be heard, respecting them and finding many ways of listening to them and hearing what they say. However, we must recognise that young people do not exist in isolation; they are part of families. As a result, our approach should involve engaging with parents and hearing what they think on a variety of issues. In a church context, we navigate such issues already. If someone under 16 expresses a desire to be baptised or to become a member of the church, we often have conversations with them

and their parents jointly, because parents know their child's faith and can have those discussions.

In relation to balancing rights, those coming from a faith perspective should not impose their faith on others and should respect others' beliefs. If there was a real conflict between a child and their parents—which does not happen often—as a church, we would call on the person expressing faith to respect and listen to the other party, whether that was the child or the parents, in order to work things through. There are duties for children to respect their parents, even if they have a different faith position. Likewise, parents are not to exacerbate issues for their children. We would call for a true expression of faith, which would involve showing respect and listening to one another in order to, we hope, resolve the issues. The fact that such issues do not occur regularly is testament to that approach, which works on a pastoral level, rather than on a formal level, as would be the case under the bill.

Leah Rivka: Several people have repeatedly said, "This doesn't happen very often." However, on many occasions, parents have come to us to tell us their concerns in relation to their children telling them that they would like to withdraw, but they have not approached the school about withdrawing the child because they are afraid of—for want of a better word—othering. Pupils are concerned about saying, "This is clashing. I don't want to sit in choir and sing all the hymns and carols. I don't want to attend assemblies or the prize giving in church." Some non-denominational schools hold their prize giving in church, which, in effect, excludes or makes uncomfortable those whom they are purporting to honour. Parents are afraid that pupils will be stigmatised if they say that they would like to withdraw or that they are uncomfortable in certain situations connected to religious observance or religious and moral education.

We need to be very careful about saying, "This doesn't really happen, so maybe we don't need to consider the subject." I am not sure whether the bill is necessarily the right way to go, but we definitely need to put the topic on the agenda somewhere.

Maggie Chapman: Thanks very much for that. It is important to note that, just because things are not brought to the surface, it does not mean that they are not rumbling underneath. Some of the examples that you have given highlight the broader issues of stigmatisation, othering and just not feeling like you belong, whether they are raised by parent or child. We will consider that carefully as we gather our evidence on the bill.

Do witnesses have any other comments on the rights?

Claire Benton-Evans: I am concerned to hear about the number of things that have come to Leah and her organisation.

I want to clarify a point about the bill. We have been talking about, and we have had a lot of examples about, children wanting to opt out or parents wanting to withdraw them, but the bill is talking about the child's right to opt in. It does not specify that children have the right to opt out. For what it is worth, my committee believes that children should have the right to opt in and opt out of religious observance, but that is not what the bill says.

Maggie Chapman: That is actually my next question. We know that the UN's Committee on the Rights of the Child has twice in the past seven or eight years strongly recommended that we have an opt-out option. What are your thoughts on that?

Claire Benton-Evans, you have made it very clear that there should be an opt-in and an opt-out. Do you want to say anything else about that?

Claire Benton-Evans: We have that position because we affirm article 12, which is that a child has the right to have their views heard and to, we believe, choose what they believe in. The complexity of that on a practical level for schools is huge. I do not know how many of us enjoyed attending school assembly, but if there was a sense that it was an opt-outable thing, that might be quite a popular position for people to take. Schools would have the practical difficulty of space and what to do with the children who want to withdraw, for reasons that might have nothing to do with belief.

Schools have enough to deal with without thinking about the practical issues of staffing and the supervision of those children.

Maggie Chapman: And all the safety issues.

Claire Benton-Evans: And the safeguarding and everything else that goes with people opting out. However, I would still stand by that right to opt in or opt out of religious observance.

Maggie Chapman: Thank you; that is clear. Does anybody else want to comment on the opt in, opt out question?

The Rev Stephen Allison: I completely agree, logically, that the bill is not balanced by not having opt out on the same basis as opt in, but we see so many problems with an independent right to opt out that we think that it should not apply in either case.

We live in a society that is often illiterate about religion and does not understand different faith traditions. We have all highlighted the importance of RME for understanding the different faith traditions, but this right would apply to opting out

of that, just because people are perhaps bored or think that RME is not the most engaging at times. RME lessons and RO can give opportunities to develop moral reasoning, respect for differences and discussion, which are all important things.

An opt-out would place a bigger burden on the school. You would not necessarily know why pupils were opting out. It might be that they had decided that it was not for them at one stage but they might look back later and regret not learning about other faith traditions.

Fundamentally, there should be better discussion. All the stuff that Leah Rivka raises is important. Schools should be engaging with parents, listening to them and providing opportunities for them to express concerns about, for example, a prize giving in a church that seems disconnected from needing to be there. All that should be discussed. The consultation, the discussion and listening to children's rights are all important, but the issue of where a pupil's right trumps parental rights is the fundamental point that we come back to.

If there is a possibility to opt back in, why is there not one to opt back out? It is not logically consistent, but there are many problems with an opt-out. Also, as I said earlier, the bill gives no basis for age and stage or maturity discussions. If you were to introduce an opt-out, you would place teachers in the very difficult position of having to make those assessments.

I agree that there is a logical inconsistency, which is why we should not go down this route.

The Rev Stephen Miller: There is a case for a young person who is 16 or older being able to opt in. In practice, it is rare that schools have the ability to staff an RME programme in S5 and S6. As I mentioned, children in secondary schools face instances of religious observance very infrequently in their school careers.

Barbara Coupar said that you "propose" faith, which is helpful. In RME and RO contexts, the chief duty of those who are in charge of such experiences is to explain. Even for a minister or a chaplain who is taking a religious observance session, it is about explaining faith. My plea is that, as educators, we ought to be making the experience as inclusive as possible, so that children will feel that it is acceptable to be part of it and will not need to go through all the difficulties associated with being seen to be different. It ought to be an inclusive occasion. It should not always be Christian ministers or chaplains taking the sessions, anyway.

Barbara Coupar: It goes back to the point that the vehicle for this conversation is a bill about parental choice to withdraw a child from RE and RO. If that is the decision in the legislation, there is a wider conversation to be had about what comes next. We have heard lots of what ifs, including about the reality of things that have happened in schools and concerns about what might happen. On a day-to-day basis, parents make decisions about bringing their children up on an all-vegetarian diet, about the choice of school for them, about which clubs they go to and so on. At what point do we say that something is a parental decision to make on behalf of their family and their child and at what point do we say that it is the state's decision?

My other point is one that it was remiss of me not to make earlier, when you asked about the process. The decision to withdraw is not a once-in-a-lifetime decision. That has to be brought into the scenario. When somebody has asked to withdraw their child and everything has been put in place for that, the school will ensure that there is a review and that, time and time again, the pupil's voice is heard.

Sometimes, the situation is portrayed as being quite polarised or black and white—as if, once you have made that decision, that is it. I understand that the suggestion is that there should be an understanding of which elements a parent or child would like to opt out of. We heard from Leah Rivka and Pam Gosal about instances in which a child in a denominational school might say, for example, that they want to take part in charitable fundraising, which is part of faith in action, but do not necessarily want to take part in the nativity. There is nuance in what we mean by religious observance and religious education.

Our concern is mostly about the precedent that it would set if we said that a child could opt in or opt out at any point and for anything to do with their education, their life or their choices.

Leah Rivka: As I said at the beginning, we are supportive of children's voices being heard in both directions: opt in and opt out. What we do not want to see is what Stephen Miller and Claire Benton-Evans mentioned, which is pupils choosing to opt out for frivolous reasons—because they are bored or because they do not like the subject. If a pupil can opt out of RME because they are bored, why would they not do that for geography, history, maths or anything else?

10:00

One of the proposals in our written submission relates to the reference in the bill and the policy memorandum to the pupil's "age and maturity". That will have implications, and we would like the bill's very bald proposal that, if a pupil objects, the school will comply with the pupil's objection and not with the parent's view to be reworded to the pupil having

"relevant, reasoned objections to all or part of the parent's request".

It will be an indicator of the child's age and maturity if they can actually say, "These hymns don't reflect my viewpoint," or, "I would rather read my own prayers and sit quietly while other prayers are going on." Indeed, not only will that be a sign of the pupil's age and maturity; it will also prevent pupils opting out for frivolous reasons.

Maggie Chapman: That is a really helpful suggestion. We will take it away and tease it out. I will leave it there, convener.

The Convener: Before we move on to questions from Rhoda Grant, I just want to say that we had earmarked an hour for this evidence session. We have now hit the hour mark and we still have more questions, so I ask members and witnesses to please be succinct.

Rhoda Grant: The bill's objective is to comply with the UNCRC as well as to give coherence and clarity to the process of withdrawing from RO and RME, but we have been hearing concerns about whether it achieves those objectives. Is there anything that we can do to amend the bill to ensure that it does? I am conscious of the time, so perhaps it should be something that you have not already mentioned.

Claire Benton-Evans: A really clear distinction should be made between religious observance and religious and moral education. Muddying the two together does not help with anything.

Rhoda Grant: Do you think that religious and moral education should come out of the scope of the bill? Is it so different that it should not be in the bill at all?

Claire Benton-Evans: It is certainly the view of the committee that I represent that those two things are distinct. As I have said, RO is a matter of belief and RME is a matter of education.

Rhoda Grant: Stephen?

The Rev Stephen Miller: It should definitely come out of the scope of the bill. I do not think that the Humanist Society Scotland would have a problem with that; indeed, it states as much. RME is so bound up with and sewn into the fabric of curriculum for excellence as a curricular area that it definitely should come out of the bill's scope.

However, I do not accept the dichotomy that RME is about education and RO is about matters of faith and participation in worship. We need to get away from that characterisation of RO.

Rhoda Grant: How would you characterise RO, then?

The Rev Stephen Miller: According to Education Scotland and curriculum for excellence, RO contributes directly to the intended outcomes of CFE.

Rhoda Grant: Okay. What about the other Stephen?

The Rev Stephen Allison: Our position would be that the bill addresses niche areas and not the whole thing. To improve it, you would need to look at the whole area of religious observance and RME, because the distinctions that Claire Benton-Evans has drawn out are really important.

Moreover, the bill does not really deal with the compatibility issue; indeed, the second part of it says, "Actually, we don't care about this anyway when it comes to certain areas." It is a confused piece of legislation that looks at just a narrow part of the issue. Given that a lot of the issues that we have been discussing today are not raised in it, I think that we would have to start again.

Rhoda Grant: Barbara?

Barbara Coupar: I would need to think about your question, because, in a denominational school, some pupils learn about religion while others learn through religion. It is intrinsic to what we do within religious education in Roman Catholic schools, so I would need to give it more consideration. I am sorry that I cannot give you an answer right now.

Leah Rivka: We think that there is a definite difference between RO and RME. Religious observance is worship and is reflected and grounded in faith, whereas RME is about learning about world views. However, it goes back to the inconsistencies between schools that Pam Gosal was talking about. Some schools may deal with those things brilliantly and reflect different faith communities across the board, but, in a poor school, RME could be used as a form of indoctrination or a form of religious instruction rather than education about different world views. We think that the option to withdraw from RME in such cases should still be available.

Paul McLennan: Let us move on to part 2 of the bill, which introduces an exemption for a situation in which a public authority is compelled to act incompatibly with the UNCRC's requirements. What is your view of the Scottish Government's reasoning for including the further exemption to the compatibility duty? The witnesses have partly answered that question. I do not know whether anyone wants to add anything specifically about the compatibility duty and part 2 of the bill.

Leah Rivka: I have two very quick comments to make. First, we are not sure why the exemption has been included in the portmanteau bill at all. It does not bear on the first half of the bill, which deals with the Education (Scotland) Act 1980 and is already covered by reserved legislation. It is

totally irrelevant to the withdrawal from RO and RME, and we feel that it should be in separate legislation. However, given that it is in the bill, there is a tension between the policy memorandum and the bill. Paragraph 47 of the policy memorandum says that adding the exemption

"would make clear that public authorities can continue to exercise functions and therefore deliver services, that are potentially incompatible with the UNCRC requirements, until remedial action is taken to remove the incompatibility."

However, there is no such proviso in the bill, which simply says that it is possible to act incompatibly. Either the bill needs to be amended to include the proviso "until remedial action is taken" or an erratum needs to be issued for the policy memorandum.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, panel, and thanks for your time. Do you have any other views on the potential impact of part 2 of the bill on children, public authorities or future legislation such as the Scottish human rights bill, which has been proposed for the next parliamentary session?

The Rev Stephen Allison: I think that part 2 has been included in the bill because of the difficulties in balancing rights. In almost every area in which human rights are engaged, there is always the challenge of competing rights. I am less persuaded that we are necessarily acting incompatibly with our international human rights obligations, although there are different views on that.

In this area of education, the United Kingdom is usually looked at as a whole, but the situation in England and Wales for collective worship, as opposed to religious observance, is quite different. Questions could be asked about whether the Scottish inclusive model of RO and time for reflection is incompatible with the UNCRC. However, most rights are not absolute, and states always have a margin of appreciation and must decide the balance between rights for all international human rights obligations. That is true across the board with human rights, because they are not written in the same way. It is for the Parliament and stakeholders to discuss how best to strike the balance.

The bill contains clear statements about the age and maturity of the child, as well as about parental rights. I am not convinced that part 2 is needed, because it assumes that part 1 is incompatible, probably because there is no opt-out. I think that those are separate issues. It is always about the balance of rights. I expect that the committee deals with those issues in most areas.

Claire Benton-Evans: I have in mind a personal implication of the bill that would be quite invisible from the policy level, which is its impact on an individual child who comes from a family that is vehemently anti-church but who feels something calling to her in the prayers, hymns and acts of religious observance in her school. If she feels empowered and has the right to say that she wants to be part of that and to be part of the sensitive discussions between the school and her parents, that will make a huge difference to her life. In all the nuances and complications that we have discussed, I would like to focus on that.

Marie McNair: We have had a very good discussion about part 2 of the bill. If no one wants to make any further comments, I will hand back to the convener.

The Convener: Thank you very much. That concludes our questions for the first panel. I will suspend the meeting briefly to allow the witnesses to change over.

10:11

Meeting suspended.

10:13

On resuming—

The Convener: Welcome back. I welcome the second panel of witnesses: Dr Alejandro Sanchez is the human rights lead for the National Secular Society and Fraser Sutherland is the chief executive officer of the Humanist Society Scotland. Thank you for joining us. We will move straight to questions, and I will kick off by asking what your experience is of the right to withdraw from religious moral education and religious observance.

Fraser Sutherland (Humanist Society Scotland): There are a number of issues. We have submitted written evidence to the committee, as well as our report, "Preaching is not Teaching", which brought together the experience of a number of parents, pupils and teachers and considered how RO is working in Scottish schools. Many pupils and parents do not feel as though their views are being respected.

We heard some powerful testimony from Leah Rivka from the Jewish Council of Scotland, who was on the first panel. I would echo a lot of her points. Unfortunately, some of the first panel tried to suggest that there is nothing to see here when it comes to RO. I would suggest that there is a lot to see here. There are a lot of problems in Scottish schools with regard to children's rights around freedom of expression, religion and belief.

Dr Alejandro Sanchez (National Secular Society): We probably have less direct experience of the Scottish situation than HSS, but

we have received requests over the years relating to evangelical groups coming into Scottish schools, including non-denominational schools, handing out to children leaflets that endorse religious beliefs along with chocolates. On several occasions, we have received requests about Scripture Union hosting residential courses or evangelising.

Paul McLennan: I want to move on to something a bit more specific. It is a three-part question. I do not know whether you heard the questions that I asked the previous panel, but it will be similar to those. It is about the requirement for schools to inform a child if the parent asks for them to be withdrawn from RO or RME. When a request has been made, the child is given an opportunity to express their views. The school must seek a discussion with the child and parent, and the school must respect the child's wishes if their view differs from that of their parents.

Fraser Sutherland: The introduction of a new model is not necessarily a bad thing. From our perspective, it would ensure that young people are listened to, to a certain degree, particularly as their capacities evolve. Certainly at secondary level education, they will be starting to form their own beliefs, not necessarily in line with their parents or maybe independently of their parents. That is protected under UNCRC, and a reason why its committee's concluding observations have pointed out on the most recent two occasions that the lack of an independent opt-out is a problem with regard to RO.

The new model that is being proposed for children who want to opt in is not necessarily a bad thing. However, it introduces a hierarchy of beliefs. Pupils who have a religious belief and want to participate in RO will be able to do so, but pupils who do not have a religious belief—they may be atheist, agnostic or humanist—or who have a religious belief of a non-Christian nature will not have the equivalent right. We would see that as a significant problem.

Paul McLennan: I do not know whether you heard our earlier discussion about age and maturity. As we all know, kids can mature at different ages. You hinted at it when you talked about secondary school. Will you expand on that?

Fraser Sutherland: We need to consider the individual's rights in each case. There is not a one-size-fits-all solution. I do not think that we would welcome a specific age bracket, because, at a particular age, some children may have capacity that others may not. It is problematic to say that, at a fixed point, they will have a decision. In England and Wales, children can opt out of collective worship at 16. Even in Scotland, they do not have that right. Children can decide to leave school at 16 or 17, but they do not have the right to opt out of RO if they stay at school, which seems a bit back to front. The individual context has to be considered. It might be a bit more challenging to do that at primary school, unless there is a particular case, but it should definitely be explored at secondary school.

Paul McLennan: Alejandro Sanchez, what are your thoughts?

Dr Sanchez: The provisions on informing the child of the parents' wishes are entirely reasonable, but they have to exist in conjunction with a parallel right to withdraw.

On age maturity, my recollection is that the concluding observations do not refer specifically to the age of the child. From our perspective, there is a more fundamental issue. Secularism is the idea that the state should be neutral when it comes to matters of religion. The state should neither suppress nor promote religious views, and neither advantage nor disadvantage them.

We think that schools should be open and welcoming to all. In an increasingly irreligious and religiously diverse Scotland, it is more important than ever to be educating our children together and not separating them along religious and potentially racial lines. We think that it is not for schools to endorse any particular religious belief, including atheistic beliefs.

Paul McLennan: Thank you.

Pam Gosal: Good morning. My question centres on the ability of children to make their own decisions. We know that children under the age of 18 cannot serve as jurors or hold a credit card, and there are many other decisions that they cannot make. How will teachers determine which child is capable of participating in religious education and observance? Do you think that there should be some kind of assessment?

In a scenario in which two children have different views from their parents, but one child is seen as capable of withdrawing from religious education and the other is not, would one child not be given more rights than the other? The children might come from the same family.

I spoke to the witnesses on the first panel about a scenario that took place in a religious setting—in a mosque. At a round-table event, parents told me that they did not want their children to learn certain things. They went to the school, the school understood and the children withdrew. At the same round table, there were other parents who belonged to the same family, whose children went to another school, but the school did not allow the children to withdraw and decided that the children should carry on that education. Will the fact that there is no uniformity across schools become an issue?

Dr Sanchez: On the issue of a child having more rights than another, article 12 provides that a child's views be given due weight in conjunction with their evolving capacities. That would explain why there might be more or fewer rights, as it were. A capacity assessment would not be necessary at all if there were not legally mandated worship in schools in the first place. We would suggest repealing the requirement for RO in the first place as the best path forward. We very much welcome inclusive, non-confessional assemblies, which would negate the need for those capacity assessments.

Fraser Sutherland: I have a lot of sympathy with your second point, Pam. In our report, we set out a number of such cases, in which concerned parents wanted to raise concerns about the RO that was happening in their school and wanted their children to opt out, but found a lot of resistance. One parent said:

> "The school has made out this is my problem—they say very few parents complain or opt their children out. This is (at least in part) because the school has been less than transparent about what's going on, and I'm just lucky to have an articulate child. When I raised my concerns with the headteacher, they replied: 'I won't apologise, this is a Christian country'."

You can see how that would impact on people of different beliefs, whether they are humanist beliefs or other religious beliefs. They have that right to opt out, and even when they are trying to enact that and we are trying to help them, they are still finding a lot of resistance. That is an area where there is a statutory right to opt out—unlike in the example that you were citing, in which there is no such statutory right—but the parents still feel a lot of resistance when they try to do that.

Pam Gosal: Thank you. The earlier panel spoke a lot about a precedent possibly being set that would affect other areas. I have introduced the Prevention of Domestic Abuse (Scotland) Bill, which has provisions on mandatory education, but I have also included a parents' right to opt the child out of getting that education.

If the bill that we are discussing passes, would it set a precedent such that when children come forward, parents will not be given the rights that they are due? Children could say, "Hold on, we do not want to learn this," because a precedent has been set. Is that a concern? The witnesses on the first panel had a lot of concerns around that, and they mentioned it quite a few times.

Fraser Sutherland: The reason that there is the right to opt out is that it is a statutory requirement for RO and RME to happen in schools—in a way that other areas of the curriculum are not statutorily required to happen. That is why, when the relevant acts were introduced in the 1800s, the thought process was about giving people the right to opt out because they followed other Christian beliefs than the Christian belief that the school was enacted for. It was about making sure that those parents and families were not unduly affected by the type of religious instruction that was happening in the school. That is why that right was originally introduced, and that is why this opt-out mechanism is still around in 2025.

Our position—you also heard this from a couple of the speakers, particularly Claire Benton-Evans, on the first panel—is that RME is very different from RO. Paul McLennan asked about this at the end of the previous session. We would be quite happy for RME to come out of the provisions with regard to both the statutory requirement and the opt-out. As I hope you will hear in evidence at a later point from the Scottish Teachers Association of RME, the RME and RMPS curriculum is very good. It covers a variety of beliefs, including humanism, atheism and agnosticism. The curriculum involves pupils in a discussion about different beliefs, so that they view things in a critical manner and examine different ethical and moral issues from different perspectives. It is exactly the kind of education that you want for children and young people, so that they learn about different beliefs and view them in a critical and evidence-based session, which is led by a teacher in an objective manner. That is a fantastic curriculum that has been built up over the years, and there is an on-going review at the moment to make it even better.

One issue that you might hear in evidence is that, where there is not a subject specialist, sometimes the curriculum is not delivered as well. Particularly in the primary setting, we get a number of complaints about that, and people ask us for help, because it is not a subject specialist that is delivering the curriculum. Sometimes, as Leah Rivka on the first panel was saying, it can become more about religious instruction and learning the ways of a religion, rather than objectively learning about religion and different beliefs. There are two different aspects.

However, the RO is completely different, because, as we said in the report that we submitted to the committee, there are numerous instances of people having to take part in prayers and hymns. As Leah Rivka mentioned, on a number of occasions, we get complaints when prize-giving ceremonies happen in churches, and humanists feel that they cannot participate, so their child is left out.

We also have a massive problem with regard to parents and young people who do not want the stigma of opting the child out. They want to be able to participate in the activity. Stephen Miller said that the provision in his school sounded very good and that people certainly felt that everyone

could opt in. Unfortunately, that is not our experience in many schools across Scotland. What is provided is very often religious worship, and a lot of people feel that they cannot participate in that.

The Convener: We now have questions from Maggie Chapman.

Maggie Chapman: Good morning, and thank you for joining us. You may have heard, in the earlier evidence session, quite a lot of discussion about the potential conflict between parents' rights as primary educators of their children and children's rights to free expression of their spiritual or religious development in ways that suit them.

The Scottish Government's view of the bill is that the new process would better support UNCRC articles 12 and 14 on the right to be heard and on freedom of thought, conscience and religion. How do you see that intention to give those rights legitimacy in our laws, alongside the potential conflict with parents' rights to be primary educators?

Dr Sanchez: If we did not have legally mandated RO in the first place, that conflict could be avoided, so I would certainly recommend that as the best approach.

With regard to the Scottish Government's intention of improving compliance with UNCRC articles 12 and 14, I am very supportive of a child's right to remain in the class, but that absolutely has to co-exist with the parallel right to withdraw from it.

10:30

Fraser Sutherland: Currently, the decision whether a child participates in RO rests entirely with the parent, and the bill would introduce a new system whereby the decision will always rest with the party who holds religious beliefs and supports participation in religious worship. It is difficult to understand how that amounts to an effective balancing of parents' and children's rights, when the views of the non-religious participant in the discussion are overridden because there is only a one-way mechanism. The United Nations Committee on the Rights of the Child's concluding observations, as well as the submissions by the Children and Young People's Commissioner and by Together, the Scottish alliance for children's rights, all say that the only way to effectively and fully comply with the UNCRC is to give young people the right to opt out if they have the capacity to do so. That is how you make sure that young people's rights to freedom of expression and freedom of religion or belief are respected. Not doing that—which is what the Government tries to do in the bill—completely ignores the problem.

Maggie Chapman: Dr Sanchez, you have been quite clear that, in your view, the mandating of RO is the main issue, and that the distinction between RO and RME is important.

Fraser, what would your solution be, if not the provisions in the bill? Given the guidance and the statutory obligations that exist, where should the conversation about rights for parents and guardians and children and young people go? We heard quite a lot of tension about children being pitted against their parents or guardians and the consequences that that can have, especially if there are issues of family separation and so on. We also heard about the idea of enabling spiritual development in a way that is right for the individual, rather than saying, "This is how it has to happen." Can you see a way through that?

Fraser Sutherland: As I said, the RME curriculum is good. It contains key components that encourage pupils to think about their own spiritual beliefs or non-religious beliefs, to consider the beliefs of other religions, and to use those insights to reflect on themselves. That is something that can happen very well within the RME curriculum, which is delivered by teachers, as opposed to RO, which is often delivered by religious leaders.

For a number of years, we have championed a move to a time for reflection model, which would be guided by the three basic principles of inclusivity, objectivity and plurality. Earlier, Stephen Miller said that that was the nature of what his school offers, but it is certainly not what is happening in a lot of schools that we are approached about.

Our view is that no pupil should be asked to pray or sing religious songs. That is an issue in non-denominational schools in particular. It is clear to us from what we hear that, as was reflected by Leah Rivka earlier, people do not understand what non-denominational means. They think that it means non-religious, but that is not what it means in statute, and parents are often surprised when they find that out. For example, a parent contacted us to say this:

> "We discovered in Primary 5 that our child had had to take part in monthly assemblies led by a brethren preacher involving praying. Had we known this was happening we would have withdrawn her from it. The school did not inform us other than a date marked on a calendar saying 'Jamsie' was leading assembly."

There are many instances where, in a non-denominational context, the time for reflection model should not be confessional in nature. The Parliament has a very good time for reflection model that I think could be replicated in schools.

The guidance touches on time for reflection. It does not mandate it as the model that should be

produced, but if we continue to have religious observance in schools, the non-denominational sector in particular should move to that model. It should not involve evangelising or preaching to children, but should be about exploring different beliefs and allowing young people to express themselves, and young people should be more involved in co-designing it.

The current guidance talks about young people being involved in what religious observance looks like, but the evidence from young people is that they feel that it is something that is done to them rather than with them. They are often not involved in the conversations about the school's approach. I am not overly critical of headteachers for this, but their approach is, "We have always done it like this so we'll just continue to do it like this because we've got a relationship with that local church," rather than thinking about how they can approach the matter much more inclusively.

Some of the best practices are found in urban environments where schools have much more diversity of belief. In some instances, most pupils on the school roll will have a different religious belief from Christianity and schools are forced to think about that because they genuinely do not want pupils to feel excluded from an activity. Some individual schools have developed really good guidance on how to do an inclusive time for reflection model.

Maggie Chapman: Thanks very much. My final question perhaps follows on from some of Pam Gosal's questions about consistency and the issues across the board. I hear the views about whether or not we should have RO but, given that we do, how best can headteachers, schools, local authorities and others who are having the high-level conversations about it ensure consistency, so that—as you were saying, Fraser—the principles of inclusion, non-stigmatising and non-othering processes are universally understood? How would you go about doing that?

Fraser Sutherland: The national guidance definitely has to be a lot clearer and more prescriptive than it is. At the moment, it is quite loose and wide ranging. Different headteachers can take the guidance and interpret it in many different ways; much clearer guidance would go a long way. That goes back to the point of principle that pupils should not feel that RO is something that is done to them but something that they feel a part of, that does not involve acts of worship and that they are not required to participate in.

To come back to the general initial point, if schools are going to have acts of religious worship during the school day, they must give young people an opt-out in order to respect their rights. That was the UN Committee on the Rights of the Child's concluding observation and it is why the bill is in front of this committee. The Government has realised that it is acting incompatibly and has to amend that.

The Government feels that the bill will resolve that incompatibility; our view is that it will not. We will come on to part two of the bill, which has been drafted in a way that would certainly deny young people the right to challenge it in the way that the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 envisaged, because the bill would amend a pre-devolution act. I do not want to talk about that too much now, because we might come on to it later.

Dr Sanchez: I understand that the requirement for RO in non-denominational schools to be inclusive comes from the 2017 non-statutory guidance. I do not know whether there is scope to make the guidance statutory as a means to enforcing it more rigorously.

Maggie Chapman: You are looking at the statutory enforcement route.

Dr Sanchez: Yes, if I accept the confines of your question, which is that we still have RO in place.

Maggie Chapman: Yes, but as long as we have it, would that be the route?

Dr Sanchez: That would be the route, yes.

Maggie Chapman: Okay, that is helpful. Thank you.

Fraser Sutherland: Sorry, I failed to mention one wee thing. I agree with what Barbara Coupar said in the first session, which was that there is a lack of evidence gathering on what is happening in schools. We have spoken to Education Scotland over a number of years, and I will express it here again, about the education inspectorate doing a thematic review of RO. The inspectorate has done thematic reviews in other areas and it would really help the Government to understand what is happening in schools, because the bill documentation and the pre-bill consultation clearly show that the Government does not fully understand what is happening. If better evidence were gathered by the inspectorate or at school level, as Barbara Coupar suggested, that might help.

Maggie Chapman: Thanks to you both.

The Convener: I seek clarification on something that you mentioned, Fraser. You said that you would prefer that RME was not included in the bill, but then you praised RME. The legislation will allow a child to opt in to that.

Fraser Sutherland: I mean that parents should not have a right to withdraw their child from RME.

The Convener: In the first place.

Fraser Sutherland: In the first place.

The Education (Scotland) Act 1980 gives a right to opt out of RE, RME, RMPS and RO. We question why there is a right to withdraw from a key component of the curriculum. The bill would have to remove the provision from the 1980 act that allows that right to opt out from RE. If RE is delivered in the way in which the curriculum sets out, that is a significantly good thing, overall.

The Convener: Thank you for that clarification.

Rhoda Grant: The bill's objective is to comply with the UNCRC, as well as to provide coherence and clarity with regard to the process of withdrawal from RO and RME. You have concerns about the bill. What are your thoughts on how we could ensure that the bill achieves those aims?

Dr Sanchez: The bill could be amended to include an independent right to withdraw, but, ideally, it would be amended to repeal the legally mandated RO in the first place.

Fraser Sutherland: To meet the concluding observations of the UN Committee on the Rights of the Child, this committee should absolutely recommend that the bill is amended to allow a child to opt out of RO, as has been recommended in those concluding observations on numerous occasions, and as suggested in the evidence that has been put forward to the committee by the Children and Young People's Commissioner Scotland, the Scottish Human Rights Commission, UNICEF and Together, the Scottish alliance for children's rights. They all say that children's rights have to be respected through an independent opt-out.

On the scope and aims of the bill, it is quite concerning that the Scottish Government has chosen to reform the opt-out rights for RO by amending the Education (Scotland) Act 1980, which is a pre-devolution act. In 2019, when the then Deputy First Minister John Swinney, now First Minister, spoke about incorporating the United Nations Convention on the Rights of the Child into law, he said:

"Our Bill will take a maximalist approach. We will incorporate the rights set out"

in the

"UNCRC in full and directly in every case possible—using the language of the Convention. Our only limitation will be the limit of the powers of this Parliament—limits to which many of us obviously object."

I would say that the Scottish ministers are using those very same limitations as a mechanism to prevent children from accessing their human rights. The bill would amend a pre-devolution act, which would not be within the scope of the 2024 act, so the access to justice options that children have under the 2024 act that apply to acts of this Parliament will not be realisable through the courts.

Rhoda Grant: Okay. A child could tell their parents that they want to opt out and explain to them what is happening in class, assembly or whatever. Is that how a child's rights would be realised, or should a child have a stand-alone right to opt out themselves? If so, what would the mechanism be for that, given that parents also have rights? What about children who are under 16?

Fraser Sutherland: The rights of the parent are a qualified right to look after the rights of their child, whereas the rights for young people to have freedom of expression, religion and belief are absolute rights, where they have the capacity to express their view.

As I mentioned in answer to Paul McLennan's question earlier, pupils who are in secondary education, particularly the second half of secondary education, are making a number of decisions about a wide variety of areas of their curriculum—what subjects they choose to study, for example—and a number of other areas, such as what sports they participate in, and what clubs, activities and hobbies they undertake. Even though it is a fundamental human right for them to make a decision on their religion and belief, the fact that they are not able to make that decision for themselves seems quite contrary to all those other decisions that they are able to take.

Rhoda Grant: Those other decisions would normally be taken in conjunction with their parents. Parents come to parents' night and are with their children while they choose their subjects. When giving the right to the child to opt out, how do you involve parents?

Fraser Sutherland: The bill introduces a mechanism that involves a conversation. Where there is an opt out and the pupil wants to opt in, as I have said, I am quite comfortable with that conversation happening between parents and pupils and the school having a role in making sure that happens. If the Government or the committee think that that model should be replicated for an independent right to opt out—that is, if a pupil is opting out and their parent wants them to continue—there should be that conversation, on the same lines as the bill proposes.

10:45

As I said, the bill proposes to allow religious young people or pupils who may want to explore their faith more to have the right to opt in, against their parents' wishes; it does not give humanist young people the right to opt out where their views differ from their parents' views. It creates a hierarchy of beliefs, in which one set of pupils who

have a religious belief are empowered to make that decision for themselves, but young people who have a different religious belief—or a non-religious world view—are not respected in the same manner.

Paul McLennan: Fraser, I will come to you first. We have talked about rights under the UNCRC, the compatibility duty in the bill, and the Scottish Government's reasoning for the further exemption from that duty in part 2 of the bill. You have touched on that already. Do you have anything to add on that point?

Fraser Sutherland: I think that you will hear more about that in the next panel and in your future sessions, from people who are more involved in the woods of the 2024 act and who will know about it in more detail.

I have already explained that, in our view, this is the first real test for the Government in relation to the powers in the 2024 act—and it has been found wanting, because it has chosen to amend the 1980 act. The Government could have chosen to repeal the provisions of the 1980 act and use the bill to introduce new provisions on RO—and on RME, if it wanted to include that. That would mean that the bill, when enacted, could be challenged by children, young people and interested parties under the powers in the 2024 act.

In 2017, the Humanist Society Scotland sought a judicial review in the Court of Session on religious observance, in relation to not having an independent right to opt out and based on the concluding observation issued by the UN Committee on the Rights of the Child. We did not have standing in that case because it was considered not to have a direct impact on us. If the bill were passed, we would be concerned that there might be similar instances, where children and young people would find it difficult to access justice. One of the main reasons why the 2024 act was passed was to allow young people to have that influence over legislation that affects their lives.

Paul McLennan: Alejandro, do you have anything to add?

Dr Sanchez: I am not a lawyer, but my impression from reading the other submissions is that part 2 of the bill risks neutering the 2024 act. It would decrease the number of legal remedies for children and diminish the ability of the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland to bring proceedings. It appears to be in conflict with "General Comment No 5" by the UN Committee on the Rights of the Child, which says that the convention rights that the 2024 act enshrines should be capable of being directly invoked before the courts.

Marie McNair: Good morning. Do witnesses have any further views on the potential impact of part 2 of the bill on, for example, children, the public sector, or future legislation such as the human rights bill? Fraser, you touched on that earlier—do you want to expand on it?

Fraser Sutherland: I think that I have covered most of the points that I wanted to make about how it is not entirely in line with the 2024 act.

Dr Sanchez: My impression is that the child would no longer have direct recourse to take the local authority to court and that, instead, they would have to challenge the legislation directly—potentially via judicial review, which can be prohibitively expensive. It could cost people out of their rights.

Marie McNair: Thank you. Do you have any further comments about part 2 of the bill?

Dr Sanchez: Nothing beyond what I have already said.

The Convener: That concludes the evidence session. I thank the witnesses for their participation. We will suspend the meeting briefly to allow for a change over of witnesses.

10:48

Meeting suspended.

10:53

On resuming—

The Convener: I welcome to the meeting our third panel of witnesses. We are joined in person by Dr Conor Hill and Melissa Murray, both of whom are lecturers in law at Glasgow Caledonian University; Professor Angela O'Hagan, chair, and Caitlin Fitzgerald, legal and policy co-ordinator, UNCRC, from the Scottish Human Rights Commission; and Professor Elaine Sutherland, a member of the child and family law sub-committee of the Law Society of Scotland. We are also joined online by Rachel Fox, senior policy advisor, UN Convention on the Rights of the Child, the United Kingdom Committee for UNICEF—UNICEF UK.

We will go straight to questions. Please indicate if you would like to respond to any questions or if you have any points that you would like to raise. Rachel, if you want to come in, please type R in the chat function and the clerks will bring that to my attention.

I will kick off by asking, first of all, about your experience with regard to the right to withdraw from religious moral education and religious observance. Perhaps Professor Sutherland can start.

Professor Elaine Sutherland (Law Society of Scotland): I am here on behalf of the Law Society of Scotland. With regard to withdrawal, I have to say that, when we were looking at the bill, there was not an immense amount of discussion of the practicalities. We are more concerned with the legal implications, so perhaps I can give you an overview of those.

Our feeling is that there is a question mark. Does the bill do too little in that respect? There has been a lot of discussion this morning about the child having the right to challenge the parents' right to withdraw them, but the bill seems to us incomplete in that it is not doing the other bit—that is, giving the child the right to challenge the parents if they want them to remain in religious observance or religious education. We feel that there is an asymmetry there.

The UN Committee on the Rights of the Child had made it clear that this is about the whole picture—the right to do it and the right not to do it—so it is curious to us that the bill does only part of the job. Perhaps we can come back to that, but we certainly asked the ministers why they were doing only part of the job when, on the basis of the background documents, they were clearly quite aware of what the UN committee had advocated.

As for the other bit—whether the bill does too much—that is about these provisions being set alongside parts 2 and 3 of the bill. I noticed that there was very little discussion of part 2 this morning and none at all of part 3. It is another of our concerns that the bill is doing these other things that are almost unrelated and there is a danger that they will just slip through without any real scrutiny because part 1 is clearly more publicly and broadly understood and is perhaps more controversial. We are a little concerned about that question—that is, whether the bill does too much in parts 2 and 3. Perhaps I can make some observations on that later.

The Convener: Absolutely.

Professor O'Hagan, can you tell us about your experience of how the right to withdraw currently works in schools?

Professor Angela O'Hagan (Scottish Human Rights Commission): Thanks very much, convener, and thanks to the committee for inviting the Scottish Human Rights Commission along today.

Our concerns broadly echo those that Professor Sutherland has articulated on behalf of the Law Society in that we are concerned about the intent of the bill, both in terms of withdrawal and in terms of the legal mechanisms that are set out in part 2. Therefore, we have several concerns about part 1 and several about part 2. We believe that part 1 falls outwith the scope of the UNCRC incorporation act and, indeed, has been drafted in such a way that it is incompatible with it, which is a problem. As I have said, our focus is on what it is proposed will happen rather than our experience of what currently happens.

Caitlin Fitzgerald (Scottish Human Rights Commission): I echo Professor O'Hagan's comments by saying that our focus is on how the broader human rights framework applies rather than on what is currently happening in practice. I think that the committee has had the benefit of evidence from other stakeholders in that regard.

Dr Conor Hill (Glasgow Caledonian University): Good morning, and thank you for inviting me and Melissa Murray along to speak to you today.

Like our fellow witnesses, we are concerned primarily with the proposals themselves, and, like Professor Sutherland, we are here to offer, I hope, a legal perspective on what the bill will mean. My colleague Melissa will focus mostly on the right to withdraw and issues in part 1 of the bill, while I will focus mostly on some of the legal implications of part 2. I echo Professor Sutherland's concern that there has not been a great opportunity to take much evidence or have much discussion on part 2 so far this morning. I hope that we will have an opportunity to do that later on.

The Convener: Absolutely. Thank you.

11:00

Melissa Murray (Glasgow Caledonian University): I thank the committee for giving me the opportunity to discuss the significant and important bill that is in front of us.

There might be a lot of alignment today, as I echo what many of my fellow witnesses have said. Our concerns extend across the breadth of the bill. We have two major concerns about part 1. The first is about the fact that, although there is an option for children to opt back in to religious instruction or religious observance, there is no corresponding option for them to opt out of it.

Our second concern is about the approach that has been taken in the bill of amending a piece of legislation that is outwith the scope of the 2024 act. As, I am sure, we will come on to discuss, we would have liked the opportunity to have been taken to recast that piece of legislation in a new act of the Scottish Parliament that would have fallen within the scope of the 2024 act.

Again, to echo what has already been said, we are concerned that the way in which the two parts of the bill have been put together means that the more technical and less controversial aspects of part 2 will not receive the same amount of scrutiny.

The Convener: Rachel, would you like to come in?

Rachel Fox (United Kingdom Committee for UNICEF): Yes. Can you hear me okay?

The Convener: Yes.

Rachel Fox: Brilliant. Thank you so much for inviting me to speak at the meeting and for enabling me to join it online.

I echo what those in the room have said. We have come at the bill very much from the perspective of analysing the proposals against the UN Convention on the Rights of the Child. We have three concerns about part 1. First, it does not go far enough to comply with the UN convention—in particular, articles 12 and 14 and the relevant concluding observations and general comments of the UN committee. Secondly, as others have said, it falls outside the scope of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, which means that children will not have access to redress for any issues that they may experience under the changes that are proposed in part 1.

In addition, we are concerned about the conflation of religious observance with religious and moral education, which we do not think is particularly helpful, given the different character of those two components. We think that religious and moral education, if it is delivered objectively and inclusively, can help to fulfil the goals of education that are set out in the UN Convention on the Rights of the Child.

In relation to part 2, we are concerned—as others are—about it getting enough scrutiny. It is really important that it gets the attention that it deserves. Secondly, we believe that, if the proposed change goes ahead, there needs to be an extremely robust process for proactively and effectively ensuring that acts of the Scottish Parliament that contradict the requirements of the UNCRC are identified and amended or repealed in a timely fashion.

Those are the key points that we want to input. I will be able to expand on those at different points.

The Convener: That was helpful. Thank you.

We move to questions from Paul McLennan.

Paul McLennan: Good morning. You probably heard the questions that I put to the previous panel. I would like to hear your views on the process that the bill proposes for withdrawal from RO and RME. There are three aspects of that process, the first of which is the requirement for schools to inform a child if their parent asks for them to be withdrawn from RO or RME. Secondly, when a request has been made, the child will be given an opportunity to express their views, and the school must seek to have a discussion with the child and the parent if the child objects to being withdrawn. Thirdly, the school must respect the child's wishes if their view differs from that of their parent. Previous witnesses raised the issue of the age and maturity of the pupil, which they thought was important, although their views differed.

I am particularly interested in hearing a legal perspective. Who would like to go first?

Professor Sutherland: Aside from the caveat that the proposed process appears to be too narrow in scope in that it does not give children the opportunity to initiate opting out, when it comes to consistency, a lot of the wording of the statute in relation to listening to the child's views has clearly been taken from other statutes, such as the Children (Scotland) Act 2020. That is a good thing; I am not making a criticism. If we keep using the same words, that means that there is no scope for debate about whether something different is meant. Keeping the established wording, if it is working, is definitely the way to go. The bill is clear that if there is a difference of opinion, after the school has tried to talk to everybody and there have been opportunities for mediation, the outcome should be that the child's view will prevail. Again, that clarity is important in legislation.

We are not troubled by those bits. We are troubled by the fact that, as Melissa Murray mentioned, the changes in the bill are being made by amending a Westminster statute. That is essentially a bad idea, because it puts the bill outwith the reach of the UNCRC incorporation act, and that is a pity. It would have been better to introduce a fresh piece of legislation. There will always be a danger in amending Westminster statutes—that is a problem.

Paul McLennan: You have all touched on the UNCRC. I know that the UNCRC provisions are in part 2, but it is relevant to the other question that I asked, too. Does anyone else want to come in and pick up the UNCRC point specifically? We heard about that from witnesses on the previous two panels.

I ask Caitlin Fitzgerald to respond specifically on the UNCRC point and on the general question as well. Angela O'Hagan can come in, too. It seems to be a rolling theme in all our evidence sessions so far.

Caitlin Fitzgerald: I am happy to speak to that. We think that part 1, as it is currently drafted, takes steps towards recognising the child's right to have their views accorded

"due weight in accordance with"

their

"evolving capacities",

pursuant to article 12 of the UNCRC. Our big question is, why does it stop there? That is not good enough. There is a clear recommendation from the UN Committee on the Rights of the Child that, in order to guarantee the child's right to freedom of religion, they need to have a right to withdraw—a right not just to opt in, but to opt out.

Paul McLennan: Thank you for that. Angela O'Hagan was nodding away there. Angela, do you want to add anything else on the UNCRC point and the general question?

Professor O'Hagan: Caitlin Fitzgerald was clear: the UN committee that oversees the functioning of the UNCRC makes it clear that

"it is the child who exercises the right to freedom of religion, not the parent".

The UN committee says:

"the parental role necessarily diminishes as the child acquires an increasingly active role in exercising choice throughout adolescence",

which speaks directly to your point. It also says:

"Freedom of religion should be respected in schools and other institutions, including with regard to choice over attendance".

That reaffirms the common concern among the witnesses that the provisions in the bill contain a hard stop on opt-out, which is problematic.

Paul McLennan: Does anyone else want to come in on that particular point?

Melissa Murray: The bill's approach is to amend the 1980 act. However, when the UNCRC was incorporated into Scots law, the Scottish Parliament—as has been mentioned—sought a maximalist approach to that incorporation, and the original bill had a much wider scope than the one that has now been passed into law. As we all know, following challenges to the original legislation on the basis of the legislative competence of the Scottish Government, the UNCRC act as it stands today is much narrower in scope. One of its main limitations is that it now applies only to acts of the Scottish Parliament, so any legislation that is passed by Westminster, and any pre-devolution legislation, is outwith that scope.

As a child law academic, my concern is that certain key pieces of legislation are now outwith the scope of the 2024 act. That includes not only the 1980 act, which is in front of us today, but significant child law legislation such as the Children (Scotland) Act 1995. The fact that those acts are outwith the scope of the 2024 act means that the section 6 duty for public authorities and section 24 do not apply to them. The Scottish Parliament's published aims on the incorporation of the UNCRC say that it wants to make sure that children's rights are protected in all the work of public authorities, that those rights are built into the fabric of decision making in Scotland and that they can be enforced in the courts, and that the vision is of a Scotland where children's rights are embedded in all aspects of society. However, if we continue to amend acts that are outwith the scope of the 2024 act, those aims will never be met.

My hope is that we could recast all of child law and have it all nice and neat in a new, fresh act. That is not going to happen, unfortunately, but, if we take opportunities as they arrive and deal with them in a piecemeal fashion, we will get there eventually.

Paul McLennan: Does Dr Hill or Rachel Fox want to come in on that point?

Dr Hill: I will reiterate a lot of the points that have already been made. I think that it was Fraser Sutherland from the Humanist Society Scotland who said earlier that this is the first test of the 2024 act. It seems that, instead of using the opportunity to take the issue, which is outside the scope of that act, and bring it within its scope to create avenues for justice for children and their representatives, we have almost kicked the can down the road by seeking to amend a pre-devolution act.

That came up at the reconsideration stage of the UNCRC bill, before it was passed. In their evidence, people asked that that process perhaps be avoided. We should avoid continuing to amend pre-devolution acts. I reiterate that we have an opportunity to bring the issue within the scope of the 2024 act and to create those important avenues for justice that it provides.

Paul McLennan: Rachel Fox, do you have anything to add on that?

Rachel Fox: I echo the importance of ensuring that legislation is brought within the scope of the 2024 act. We would find it concerning if the bill signalled a direction of travel and not the commitment that we want to see to taking a maximalist approach and ensuring that as many areas as possible are brought within the scope of the 2024 act. We would like to see a legislative approach taken, across all kinds of bills, in which the default is to bring things within the scope of that act. I just wanted to echo that point.

The Convener: We move to questions from Pam Gosal.

Pam Gosal: I thank the witnesses for all the information that you have provided so far. I asked this question of the previous witnesses. It centres on the ability of children to make their own decisions. We know that children under the age of 18 cannot serve as jurors, cannot get a credit card and cannot make many other decisions. How will teachers determine which child is capable of

participating in religious education and observance? Should there be some kind of assessment?

I want to give an example of a scenario. If two children were to have different views from their parents and one child is seen as capable of withdrawing from religious education and the other is not, would it not be the case that one child is given more rights than the other?

Melissa Murray: There are several aspects to your question, so thank you for that. Child law in Scotland is in some ways quite messy, in that it is not the case that a child evolves and they get access to everything and all sorts of legal abilities and capacities on the day that they reach adulthood. The landscape of children's capacity in Scotland is fairly complex. Certain ages are significant in a child's life. The age of 12 is important because, at that point, they can stop an adoption process, they have testamentary capacity and they can make a will and, at 16, they can get married.

There is not one point where a child becomes an adult and the doors open and they get access to everything. There are also various areas in Scots law where capacity has to be determined, such as in healthcare law, where children under 16 can consent to medical or surgical treatment if they are deemed to have capacity. Recently, there has been a trend towards assessing capacity rather than having benchmark ages. For example, the reform of the Children (Scotland) Act 2020 removed the presumption of sufficient maturity at the age of 12 from the 1995 act. For this legislation, I think it would be good to assess capacity rather than have a benchmark age.

11:15

Pam Gosal: If nobody else wishes to answer the question, I will come back to you on that, Melissa. Are we leaving it up to teachers, then? Would it not seem questionable to the parents if the age of deemed capacity differed from one child to another? The Law Society might want to say something about that. Might there be a legal case on this later on?

Professor Sutherland: Quite possibly. It is always a possibility. The bill is saying that the starting point is a presumption that the child has capacity. That ties in with the modern trend of avoiding fixed age limits—given that all children develop differently from one another, and you cannot necessarily say, as the law used to, that one 14-year-old is as developed as another 14-year-old. Now, individualised assessment is increasingly part of the whole thing.

The good thing about the bill is that its starting point is to presume that the child has the capacity to understand. To ignore what the child is saying, the case would have to be made that that particular child does not have that capacity. To do that, there has to be a decision maker. In a practical sense, and from reading the bill, it looks like that would be the school—a guidance teacher, headteacher or somebody who is designated in the school to make that decision. Of course, anyone who does not like the decision may challenge it, for example, if they feel that it was taken irrationally and that there were not good grounds for it. It is very unlikely that the whole process would kick in in such situations. But, ultimately, there has to be somebody to make a decision. At first stop, it would be the school, and, ultimately, it would be a court.

On your second point, if one 14-year-old is thought to be mature enough and the other is not, then the children's perception is certainly going to be that somebody's rights are being respected and the other person's are not. It is very hard to see how you could make a case to a child that anything else was happening. Somebody is being listened to and is getting to make a decision, and somebody is not. Children's rights are coming out differently in such situations, but I guess that that is because the children are different.

Pam Gosal: I have one more question. In panel 1, there was a lot of talk about precedents being set. We are talking about religious education, which is one thing, but what about the precedent that is being set for other subject areas? For example, I have a member's bill—the Prevention of Domestic Abuse (Scotland) Bill—currently going through Parliament, and I have put in it a provision that education on domestic abuse should be mandatory. However, I have also put in that parents have the option to withdraw their children from such a course.

I would like to hear the witnesses' views on whether, if a precedent is set in the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill, it means that if we jumped from the subject area that we are considering today, which is religious education, to another subject area in school, we would have to comply with that precedent. Could people bring that forward and set it in law in a different area? I would especially like to hear the Law Society's understanding of that.

Professor Sutherland: I do not recall us, on the child and family law committee, ever having that discussion, so I would be a bit uncomfortable speaking on behalf of the Law Society and saying that the society thinks X in respect of that. That would not be fair, because we have not explored the issue.

As an individual academic—if I am allowed to whip on a different hat and answer your question from that standpoint—I think that, if it can be done in respect of one subject, why not do it in respect of others? Earlier today, the committee was discussing aspects of sex education. There could be a bunch of areas in which parents are not comfortable with their children being exposed to certain things.

One point concerns me; I know that some of the written evidence mentions this, and some of the other witnesses might like to come in on it. We have to remember that under the UNCRC, children have a right to education, and it could, therefore, be rather undermining if parents were to start cherry picking subjects and pulling their child out. Some children would never be educated in domestic violence, for example, because their parents thought that it was distasteful that they should be. It seems concerning if, broadly speaking, all children are not being exposed to the same range of potential for education as others are. The withdrawal point has perhaps to be corralled in if we are to respect the child's right to education.

Pam Gosal: On that point—

The Convener: I think that Rachel Fox would like to say something on that.

Pam Gosal: Oh, right—okay. I was just going to ask Elaine Sutherland another question on the same point. Sorry, Rachel—on you go.

Rachel Fox: Thank you. I just want to expand a little on what I said earlier. We do not think that it is helpful to conflate religious observance and religious and moral education. We think that the latter aligns with the goals of education as set out in article 29 of the UNCRC. That includes aims around preparing children to live in a free, diverse society in peace and tolerance.

If RME is taken out of the equation, setting a precedent is not so much of a worry, because religious observance is of a different character from lessons that are educating children objectively about different aspects of religion. If we talk about religious observance rather than religious education, we do not then stray into concerns about a precedent being set for other areas that are properly classed as education, if that makes sense.

Pam Gosal: Thank you for that, Rachel.

Professor Sutherland, I go back to something that you said. You mentioned a parent wanting to withdraw their child. If a precedent is set—I am taking into consideration what Rachel said, too—it is not the parent, but the child, who is withdrawing. Under the bill, a child could make a decision. If a precedent is set, what if the child decides not to go ahead with attending lessons in any other subject? It is not always on the parent. I know that you said that it may not be right for a parent to withdraw their child, but the bill could set a precedent that the child could make a decision, which could be the opposite of what the parent decides.

Professor Sutherland: I am not clear what you are asking about. Are you asking about children's right to withdraw in respect of religious observance or religious and moral education? Again, I would take Rachel Fox's point about the distinction in that respect. Are you anticipating a situation in which a child decides, "Maths is just too hard, so I'm going to opt out of it," or, "Gosh, I find history boring and I don't want to do it"? I do not think that it is necessary to go down that road, and the legislation certainly would not open the door to it. There is perhaps a difference there.

That said, I think that Rachel Fox is on to something. If you confine the bill to religious observance, you are not opening any doors to children deciding that maths is just too hard to be bothered with.

Pam Gosal: Thank you for that clarity, Professor Sutherland.

The Convener: Would anyone else like to come in on that point?

Melissa Murray: Perhaps I can quickly echo what others have said. The human rights framework requires that the curriculum be objective, critical and pluralistic; in that respect, the limit—which should not exist—would be pursuing the aim of indoctrination. That is why we agree with others on the panel that the problem as we see it, in terms of the UNCRC right to freedom of religion and belief, is religious observance, and that RME should be conceptualised as information about religions that contributes to an understanding of the diversity of beliefs and faiths.

The Convener: Thank you. We will now move to questions from Maggie Chapman.

Maggie Chapman: Good morning to the panel. Thank you very much for joining us and for your contributions so far.

It is quite clear from what Caitlin Fitzgerald has said and from Rachel Fox's comments that there is a need to disaggregate RO and RME. We have heard the same from other witnesses this morning, and we will take that into our deliberations.

I have also quite clearly heard frustration—if I can put it like that—that the bill is perhaps a missed opportunity to do something not necessarily grander but much more complete on the rights of the child. I suppose that that is where I want to focus my first question. Articles 12 and 14 of the UNCRC clearly speak of the right to be heard and the freedoms of expression,

conscience, thought and religion. The bill is perhaps intended to fulfil some of those rights, although perhaps not in the way that we might wish, with a stand-alone act that would be UNCRC compliant.

A question that was posed back to us earlier this morning was about a balance—or a tension—between the parent's rights as the primary educator of their children to make those choices for them, and the UNCRC articles that I have mentioned. How do you balance those rights? Angela O'Hagan said that what we are talking about is the child's right to religious expression, freedom of religion and so on, but do you see a way through any potential conflicts that schools would have to navigate?

Angela, I will come to you first.

Professor O'Hagan: You are absolutely right: the focus has to be on the rights of the child. We are talking about children, but what the bill talks about is the child's right to opt in but not to opt out. As a result, a very blunt primacy is being given to the rights of the parent in contrast to the various UNCRC rights that you referred to and which are relevant in this context. Therefore, in balancing those rights, we need that balance of provision to allow the child to opt out.

Moreover, as colleagues have very eloquently pointed out, we need avenues to remedy in relation to justice, but part 2 seeks to put that sort of thing further away from the reach of rights holders and make the system significantly more complex than it needs to be. As drafted, the bill is, right out of the traps, incompatible with the 2024 act, in which the Parliament has invested so much and which it has been championing for such a long time. That is our primary concern, along with the failure to give complete effect to the rights of the child through the lack of compliance of part 1.

There is a triple whammy here: part 1 is not compliant with the UNCRC; the drafting of part 1 is not within the scope of the UNCRC; and part 2 looks to weaken the remedy in the balancing that you spoke to. It looks to weaken the 2024 act.

11:30

Given all of that, the commission has a very significant concern. The bill is the first piece of legislation that has come from the Scottish Government in relation to the UNCRC since the passing of the 2024 act. The commission is very concerned about what that signals by way of the approach that the Scottish Government is adopting in the way that it seeks to approach full implementation of the act and subsequent incorporation.

Maggie Chapman: Thanks, Angela. That is really helpful. Rachel, I know that you want to comment, and I am happy to bring you in.

Rachel Fox: Thank you. I will respond to your question about balancing rights between parents and children. Article 5 is about states parties' respect for the responsibilities, rights and duties of parents to provide direction and guidance, and it notes that they need to be provided

"in a manner consistent with the evolving capacities of the child".

If you look at the interpretations of the UN committee and its general comments on articles 12 and 14 and other articles, you will see that it is clear that, as children evolve and their capacity to understand increases, the states parties' respect for the parental rights needs to recede. In that context, there is not really a conflict, given the evolution of the child's capacity and the need to view their rights in that context and give them increasing say over what is happening in their lives and decisions relating to their freedom of religion.

One of the general comments states clearly that it is the child who exercises the freedom of religion, and not the parent. The parent's role necessarily diminishes as the child acquires an increasingly active role in exercising choice as they get older. It is potentially unhelpful to frame it as a conflict or a need for balance because, as the child grows, the parental role here recedes. That is recognised in the language of the UN convention and the interpretation by the committee.

Maggie Chapman: Thanks, Rachel. That is really helpful. It is important for us to bear that in mind as we consider the bill. You mentioned the child's increase in agency and the receding of parental rights as that happens. What mechanism do you envisage will enable that to be supported? Is it statutory guidance for schools, or training and support for teachers? Do we have the mechanisms in place or will they be enabled by the bill? Do we need to look at something else that will support that shift and the transfer of responsibility, I suppose, from the parent and state to the child?

Rachel Fox: I am not sure that this will fully answer the question, but I will try my best. If the bill is taken forward—ideally, as we have said, it will become a stand-alone act of the Scottish Parliament for reasons of scope—with a corresponding right for children to withdraw, and with some of the same mechanisms in place that assume capacity in the first instance, as has been spoken about, that will be a good starting point, with the assumption of the child's capacity. I expect that some support and guidance will be needed on what that will look like in practice to

support the implementation of that legislative change. Does that help?

Maggie Chapman: That is helpful. We heard in the earlier sessions this morning about some of the challenges that schools might face in facilitating such discussions. For example, anxiety may be expressed by both parents and children, or by either parents or children, in different situations. They may be anxious about even raising the issue, because they do not want to be stigmatised and show themselves to be different in some way or another.

We heard earlier about some good examples of where such conversations are handled very sensitively and cleverly in some respects. How do we ensure that there is no stigmatisation and no risk of othering? There is a risk that the issue may not be raised in a conversation at all, because children do not want to annoy their parents, and parents do not want to shine the spotlight on the child as "other".

Do you have any further thoughts on that? What you have said is fine—I just wondered whether you wanted to add anything else.

Rachel Fox: Others are probably much better placed than I am to comment on the practice in schools, because I am very much coming at the issue from the perspective of compliance with the UNCRC.

Sorry—I will just gather my thoughts. Do you mind repeating the last part of the question?

Maggie Chapman: Are there things that we can do in legislation to support those conversations and to prevent the stigmatising or othering, or the singling out, of individuals, whether those are the children or the parents?

Rachel Fox: Bearing in mind that I am not best placed to comment on the practice, I think that those considerations, and administrative difficulties and difficulties in delivery, cannot drive us away from taking the child rights approach that the UNCRC requires. I have no doubt that more support would be needed. UNICEF UK conducts its rights-respecting schools award programme, and I would hope that having a rights-respecting culture in schools—with an understanding of difference, for example—should facilitate a reduction in issues around stigmatisation.

Maggie Chapman: That is helpful. I saw Angela O'Hagan nodding vehemently as you were speaking. Angela, do you want to come back in on that?

Professor O'Hagan: I thank Rachel Fox—that is exactly the point that I was going to make.

We have a concern that assessment processes, with probing and public interrogation of the expression of the right to opt out, could give rise to concerns around the right to respect for private life. As Rachel eloquently said, it is about creating a human rights culture in which the language of rights is the currency, and the practice evolves. That culture must apply to duty bearers in all situations, with regard to understanding obligations and finding ways through in practice to ensure that rights are explored and upheld in the practices of duty bearers—in this case, education authorities.

If that requires training, so be it. It can be underpinned by statutory guidance. Again, however, that would mean looking at yet another add-on, with another legislative instrument added as a sticking plaster to patch up legislation whose proposals have not been well defined in the first instance. We need clarity in the first instance that the bill is compliant with the 2024 act and with the convention itself, and that it has not been drafted outwith the scope of that recently passed legislation.

For the bill to propose in part 2 a much more significant carve-out for all subsequent legislation, rather than addressing the problem at the core, is a problem. The problem is about ensuring that acts of the Scottish Parliament are compliant with the UNCRC in the first instance.

Maggie Chapman: I think that we all ruminate on that in the committee. Do any other witnesses want to comment on those rights questions?

Melissa Murray: As my colleagues have illustrated, if we are going to take a children's rights approach to the legislation—which we absolutely should do—all the practicalities, and the matters under that, have to be secondary. We have to start with an approach of, "Is this compliant with the UNCRC?", and, as we have discussed, it is not, so we have to address that. That has to be fixed first, and then measures involving practicalities come after that.

As the policy memorandum notes, there is precedent for education authorities assessing a child's capacity in an education setting through the Education (Additional Support for Learning) (Scotland) Act 2004. The practicalities may be similar and there may be some cross-over there. However, we have to address the children's rights issues first.

Maggie Chapman: That fundamental has to be our starting point.

Melissa Murray: Absolutely.

Maggie Chapman: That is really helpful. Elaine, do you want to comment on that? You do not have to, but you are welcome to if you want to add anything.

Professor Sutherland: I do not have anything to add to what my colleagues have said. They put it eloquently and fully.

Maggie Chapman: Thank you. I will leave it there, convener.

Rhoda Grant: The objective of part 1 of the bill is to comply with the UNCRC, as well as to provide coherence and clarity on the process of withdrawal from RME. It is clear that folk believe that the bill does not really comply with the UNCRC, so I will not ask you whether it does. I suppose that my question is about how we make it comply. How do we make the bill achieve the objectives that the Government has set out?

Melissa Murray: The UNCRC is a complex instrument. There are so many different parts to it. On this issue, several of its articles are relevant, as has been laid out. However, there are, helpfully, a number of additional guidance documents that we can use to ensure that we are compliant with the convention. They come in the form of the United Nations Committee on the Rights of the Child's concluding observations and general comments. Those are not binding on us as a state party, but they are an authoritative interpretation of the convention and of what a state needs to do in order to be compliant with it.

The starting point for compliance is to look at those documents—the 2016 and 2023 concluding observations and the general comments, which we have already discussed. They lay out what we need to do to be compliant with the convention, from the perspective of the Committee on the Rights of the Child.

Rhoda Grant: I will ask you a difficult question. Given that this committee cannot rewrite the whole bill, is there a quick fix that we can recommend to the Scottish Government? We have to report to it and say, "This is what we think you should do with the bill." We cannot just take it away and rewrite it. Are you saying that the bill just will not work and that there is a need to go back and rewrite it? Is that the fix, or is there something simpler that we can do?

Melissa Murray: Others may have other approaches, but I think that it needs to be reconsidered from the starting point. From my perspective, parts 1 and 2 need to be separated. Part 1 needs to follow the recommendations of the Committee on the Rights of the Child, but as a stand-alone new act of the Scottish Parliament. Anything less than that would be a sticking plaster, to use a phrase that I have come across, and it would eventually need to be looked at again. If we want to address the issue well for the long term, I see no other option at this point.

Rhoda Grant: I do not want us to have a long conversation about that because others have views that they will want to give, but the question that arises is whether we need the sticking plaster now, before the Government can go back and do a full review.

11:45

Melissa Murray: That is a judgment that you need to make about parliamentary time and what is realistic. Personally, I would be wary of a sticking plaster that is still not compliant. We would be taking legislation that is not compliant and putting a plaster over it that is still not compliant. The result might be slightly better, but I do not think that that would be a significant enough improvement.

Rhoda Grant: Thank you. Sorry, I was not trying to shut out the rest of the panel, but I thought it was important to get to that. Has anyone got anything to add, or is everyone happy with that?

Rachel, I am sorry—we did not see your hand or your R in the chat.

Rachel Fox: No problem. I will echo Melissa Murray. A key change would be to enable children to have that independent right to withdraw, and that has been highlighted by numerous people who have given evidence on the bill. Obviously, that would not solve other issues with the bill. For example, its remedy is outwith the scope of the 2024 act, so it would reduce children's access to justice; it conflates RME and RO; and the second part of the bill being included is potentially unhelpful. On balance, it seems that quite a lot needs to be changed, so tweaking is potentially problematic, but that independent right to withdraw jumps out first and foremost when looking at the UN committee's recommendations.

Professor Sutherland: We seem to agree that using it as sticking plaster is the best that we could do with the bill, because it does need dramatic change.

The other concern if the bill were passed—slightly modified, but still not satisfactory—is that we are coming up to an election, so there will be a new Parliament and people will be coming in with their priorities. When would we get back round to repairing what was not good enough in the bill that was passed? It could slip right down the list of priorities, depending on what happens in the election and where all of that goes. A quick fix is a dangerous option to go for, particularly at the moment.

Rhoda Grant: We are coming to the end of a parliamentary session, so I do not think that anything other than a quick fix is an option at this moment.

When we come into a new parliamentary session, of course, a new Government will have its own priorities, so the bill is probably an opportunity to do something. Certainly, there will be no other opportunity for at least a couple of years, and maybe beyond that, because it takes a year before new Government legislation starts to come through. If the Government has other priorities, that timetable slips back further. Realistically, we would be looking at four years. I am not making that up. Such a bill could be a priority for a new Government, but that is unlikely, because it is technical. Should we try to make the best of the bill, rather than saying that we do not agree with its general principles?

Professor O'Hagan: But we do not agree with the general principles of the bill. The bill has been drafted to make provisions outwith the scope of the 2024 act. It has inbuilt complexities and incompatibilities that are outwith the scope of the 2024 act.

As I said, there is the wider context of what that signals with regard to intent around incorporation and the contrast between a maximalist approach, as originally pursued, and drafting that is about building in limitations on rights and, in part 2, the carve-outs around routes to access to justice.

With regard to timescale, the requirement is that, for human rights to be meaningful, incorporation needs to give immediate and urgent effect to those rights, and the provisions in part 2 push all that much further away.

In terms of quick fixes, how many times will the Parliament have to try to find quick fixes around what then becomes baked in as a significant problem, where legislation is proposed that is outwith the scope of the 2024 act on the UNCRC that the Scottish Parliament has just passed?

To address the fundamental flaws of the bill, Rachel Fox and others have highlighted adopting the opt-out recommendations made by the UN Committee on the Rights of the Child. It is for you to decide how you are going to address the fundamental problems posed by the bill, because part 1 and part 2 are about very different things.

On part 1, we would highlight the UN committee recommendations on upholding the rights of the child and the need to take the authoritative direction from the UN committee, because that is what incorporation means. Incorporation does not just look good and signal good things; it is about taking complex matters into domestic law and practice. That is the challenge that this Parliament took on in adopting the UNCRC and its later clarifications and complexities. If we do not get it right at the outset, the Parliament will be running to catch up in a subsequent session.

Although we are opposed to the principles of the bill, if the will of the Parliament is for it to go ahead, we have said in our written submission that there need to be some mitigations in regard to part 2 of the bill. There is already statutory guidance which says that public authorities should notify the Scottish Government if they become aware of incompatibility. That guidance and the direction around it should be strengthened—even more so because our concern is that public authorities may be less likely to proactively notify the Scottish Government of areas where they think that they might be at risk of incompatibility. There are too many options for putting things in drawers here.

In our written evidence, we have also suggested some initial mitigations, which are for the Scottish Government to

"publish potential legislative incompatibilities of which it has been notified"

and to

"publish whether it intends to take any action to change the legislation"

where such incompatibilities arise. Where the Scottish Government does not intend to take any action, it might need to explain

"why it assesses the legislation to be compatible with the UNCRC."

We have also asked—and we still do not really have the clarity that we would like—what the Scottish Government's rationale is for drafting the bill in the way that it has and for the recommendations in part 2. Again, that returns to the point about what this approach says about intent around incorporation.

Rhoda Grant: I almost wish I had never asked. [*Laughter*.]

Dr Hill: We were talking earlier about the idea of a sticking plaster and whether that is better than the option of perhaps leaving it for a while and not doing anything. In respect of part 2 of the bill, I would raise the additional question of why the sticking plaster is needed in the first place. The policy memorandum associated with the bill states that

"There should not be any provisions in existing legislation in devolved areas that require a public authority to act in a way that is incompatible with the UNCRC".

It seems that no statutory duties have been identified that, at present, would be incompatible with the UNCRC and which would therefore lead to a situation where public authorities would have to choose between acting incompatibly or failing to comply with a statutory duty.

With that in mind, that raises the question of what the sticking plaster is for. What problem are we trying to solve, if we do not seem to have

identified any instances where the problem currently exists? The evidence that was submitted during the reconsideration stage for the 2024 act discussed that point and different suggestions were made. I think that it was the Convention of Scottish Local Authorities that suggested doing some kind of scoping exercise to see whether there were any public authority functions or statutory duties that were currently incompatible with the UNCRC. That could be helpful, because it would enable those to be amended. The amendments made in part 2 of the bill are trying to address a problem, the extent of which we are not really clear on, in a way that is disproportionate to the impact that it would have on children's rights.

The Convener: We will come on to part 2 of the bill and have more time to get into it. Marie McNair has some questions on that.

We now have questions from Tess White, still on part 1 of the bill, then we will move to part 2.

Tess White: I have two questions and will address my first one to Professor O'Hagan. You have just talked about the intent of the bill and Dr Hill talked about the lack of a scoping exercise. We looked at three local authorities and our data shows that, of 700,000 pupils, 143 pupils withdrew from RO only, nine pupils withdrew from RME and 61 pupils withdrew from both. Why not wait until the Scottish human rights bill and do it all properly? We have four legal experts here who support the view that the bill is a sticking plaster. So, Professor O'Hagan, why not just wait until the Scottish human rights bill?

Professor O'Hagan: We already have the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, so legislation that is now coming forward from the Parliament needs to be compliant with it. That is the first issue.

Why not wait for an incorporation bill? We have waited for that bus for a while and it has not yet come. That is the second issue. Although we continue to be hopeful that any future Government, encouraged by the Parliament, will introduce an incorporation bill in the next session, that is not written in stone. We certainly hope that any future human rights incorporation bill will look to far more effective means of access to justice and the justiciability of rights than those that the current bill is proposing, which are really problematic.

With apologies, convener, I know that you are trying to keep us on part 1 of the bill but we keep having to go into part 2, because it relates to the bill's unworkability.

Tess White: My second question builds on what my colleague Dr Gosal talked about in relation to capacity. The bill is looking to give very young children the ability to make decisions, when the age of capacity is usually 16. My understanding is that a child is legally allowed to be left alone at age 12 and that there is a different age for when a child is allowed to be left overnight. Therefore, the law must be very clear.

Professor O'Hagan talked about access to justice. If there is a conflict, will legal aid need to be provided to children if they disagree with their parents? I understand that the age at which a child has the capacity to access legal aid is 12. My point is that the law must be clear, as the starting point in the bill is that the child has capacity. Professor Sutherland, what is your view? I know that it is very complicated, but the law must be clear.

Professor Sutherland: Yes, absolutely. I agree with you. The problem is that, as far as ages are concerned, the law is not clear at the moment. Curiously, the matter of when a child can be left unattended is not subject to a bright-line rule, which is very confusing for parents. They do not really know and will only find out if the issue of their neglecting their child comes up, which will be after the event, when something has gone wrong. In advance, there is no clear rule about when you can leave a child unattended. That is always thought to be curious. All kinds of helplines say that it is one of the questions that they are most often asked, and that they cannot answer it because there is no clear rule.

12:00

However—to get back to what Melissa Murray, I think, said fairly early in our session—when the law has age limits, it is inconsistent all over the place. There are all kinds of age limits. The limit is 14 for possession of an air rifle. How does that make sense when it is 17 for driving a car? You can pick out examples from all over the place.

Sometimes, the reasons are historical—the ages were set in statute at a particular time and have just never been changed, so are sitting out there inconsistently. However, we carry on being inconsistent. The voting age for Scottish elections is 16 yet, when it comes to criminal responsibility in sentencing, we can take account of a lack of development up to the age of 25. It is all over the place—it is inconsistent, unclear and probably very confusing for users of the law.

An obvious solution, but not a quick fix, is to have a big review of age limits, looking at the rationale behind them all and coming up with something that is clear and consistent. That process would inevitably take time.

Some kinds of age limits could be bright-line rules. It may be helpful to do that if individual analysis is not wanted for every specific case. That might be a more efficient way of doing it.

At other times, individualised assessment of a child is absolutely the right thing to do, because it is so important. For example, does that child really understand the nature of a medical treatment, in order that they can consent to it?

I guess that that comes at the end of the scale of things being sufficiently important that we will invest resources in individualised assessment. Where participation in religious education or religious observance at school falls on that spectrum would have to be a policy decision. That does not give us a quick answer or a quick fix, because good law reform always takes time.

Tess White: On my point about access to justice, we already have a problem with legal aid. We have looked at only three local authorities but, for the whole of Scotland, based on the stats and the estimates, 4,000 pupils could fall into the category. There could be disputes between what a parent wants and what a child wants. We need to think about that.

Professor Sutherland: We do. Not all of the 4,000 children that you have identified will be in dispute with their parents. However, that brings us to another very problematic area. In statute, we already bestow rights on children. Those rights are out there and the system looks very compliant, but you have to think about, first, whether the children and their parents are aware that children have those rights, and, secondly, whether children have any idea how they would go about enforcing those rights—if necessary, finding and instructing a solicitor, who would apply for legal aid. That is a bit of a problem. Children's rights start to fall down over the lack of education about them and the lack of opportunity to enforce them.

The Convener: We move to questions about part 2 of the bill.

Paul McLennan: I think that we touched on this issue already, and it is probably more of an exception. We talked about the proposal that the Scottish Government have more of an exemption to the compatibility duty. I think we have addressed that, so if there are no other comments, I will pass on that point. I think that we have gone on about the UNCRC and witnesses' thoughts on the compatibility duty, and their thoughts on that are very clear. I do not know whether anybody wants to add anything about part 2 at this stage. I think that Angela O'Hagan is right that we have crossed over part 1 and part 2.

Dr Hill: We have talked about it to an extent, but I want to make sure that I have emphasised how significant the amendment to the compatibility duty would be. Most of the written responses that the committee received to its call for views focused on part 1, as did a lot of the evidence that we heard from this morning's previous panels. That is understandable, because part 1 deals with important issues for children and their families and communities, but that should not take away from how significant the proposed amendments in part 2 are. Those amendments are not minor or technical; they would make significant changes to the legal framework for children's rights and the way that those rights are protected in Scotland.

One of the amendments would remove some things from the scope of the compatibility duty, and so narrow that scope. That would undermine and weaken the protection of children's rights in Scotland. It would take things out of the scope of section 7 of the 2024 act, which would mean that children would no longer be able to bring legal proceedings when they felt that their rights had been violated by an incompatibility.

Other sections of the act require members to make a statement of compatibility when they bring a new bill to Parliament. The proposed amendments in part 2 would opening up the potential that, although they would still make such a statement of compatibility, they would in essence be able to introduce a bill that was incompatible with the UNCRC and that contained incompatible statutory duties, and that bill could then be passed. Those incompatible statutory duties would then be on the statute book, without a process having been identified for amending or addressing them.

It is important that we do not lose sight of how significant that amendment is. It is a huge carve-out and a huge limitation to an act that has already had to be limited as a consequence of the Supreme Court's decision in 2021.

Paul McLennan: That really strengthens the point that was made earlier on; you put across a very good point. I do not know whether anybody wants to add to that.

Dr Hill: Thank you.

Paul McLennan: If there are no other comments, convener, I am—

The Convener: I think that Caitlin Fitzgerald wants to come in.

Caitlin Fitzgerald: I echo everything that Dr Hill has said about that. We think that that change goes to the heart of the way in which the 2024 act provides for remedies for breaches of children's rights. We know—or, at least, we think—that the Scottish Government's position is that the change is all fine because there will still be the ability to challenge the overall legislation that is incompatible. Our position is that that is not enough. Of course we want there to be the ability to challenge legislation, but, as well as those systemic remedies, individual remedies are needed.

There is a serious question mark in relation to the impact that the amendment would have on urgent cases—for instance, where interim remedies are sought. For those who are not familiar with the process: a court can sometimes order what is called an interim order on a temporary basis until it has decided the issue finally, in order to prevent further harm from being caused or to ensure that basic needs continue to be met. For example, a family that has a child who is at imminent risk of homelessness might want to go to court to seek an urgent interim order to prevent that child's homelessness in the meantime. If that possibility is taken away from them, they can only challenge the legislation, which can take a significant amount of time. We also do not know whether the court would even be able to issue such an interim order, because the public authority would not be acting unlawfully—it would be the Scottish ministers.

The Convener: Are you aware of any evidence that the additional exemption to the compatibility duty is required?

Dr Hill: No, I am not aware of any such evidence. As I said earlier, the policy memorandum states:

"There should not be any provisions in existing legislation"

that are

"incompatible with the UNCRC."

Therefore there should not be any existing statutory duties in acts of the Scottish Parliament that are incompatible with the UNCRC, and I am not aware of any instances where there are. That does not mean that they do not exist, but I am certainly not aware of them.

Rachel Fox: I echo the point that this part of the bill needs sufficient scrutiny. It feels slightly shoehorned in, which might mean that it gets insufficient attention. Particularly when it is combined with part 1, which many of us are saying does not actually signal compliance with the UNCRC, it sends a bit of a strange message.

We said in our written evidence that, as a very minimum, if part 2 goes ahead, we need a clear and proactive process for identifying acts of the Scottish Parliament that conflict with the UNCRC requirements and for remedying those quickly, in a timely way. That could be set out in the children's rights scheme or elsewhere, but there needs to be a clear duty on ministers to proactively collate such incompatibilities and resolve them in a speedy manner. That is the very minimum that we would want.

Caitlin Fitzgerald: The Scottish Government's position seems to be that it does not think that there are any current incompatibilities. However, we respectfully urge some caution in accepting that position given that we have not seen the Scottish Government's working. That links back to the issue that we discussed about what the Scottish Government has done to assess what is currently on its statute book and how that fits with the UNCRC obligations. The more we might be speaking about unknowns, the more that exacerbates the issues that we have expressed about access to justice and the potential dilution of the rights in the 2024 act.

Marie McNair: Good morning to the witnesses. Your contributions so far have been really helpful.

Professor O'Hagan, it is great to see you back at the committee. In the past few months, you have been with us a lot. Do you have any further views on the potential impact of part 2 on future legislation, such as the human rights bill?

Professor O'Hagan: Thank you for those kind words. It is very good to be back. I do not know whether there is more interest in human rights issues or there are more problematic issues around human rights that the commission comes to comment on.

That is certainly where we are today, because the bill, as introduced, is problematic. As I mentioned, as well as the fact that specific proposals are problematic, for all the reasons that colleagues have articulated, a concern of ours links to the previous question about evidence that the carve-outs are required. The 2024 act is a new piece of legislation. If the first response to it is to look for carve-outs from it, that is really problematic. That is our concern about the incorporation project, as it were. We are already embarked on incorporation, with the successful introduction of the 2024 act.

I say "successful", but what has been successful is that the act has been introduced. With its first challenge in trying to work it through, the starting point is to look for carve-outs. That is storing up the kinds of problems that colleagues have outlined and that take us into all sorts of aspects of rights. Part 1 is about parents and children and the relationship between rights holders and duty bearers, or public authorities. Part 2 is introducing further distance between access to justice and rights holders.

To link to Tess White's point about access to justice, what is being suggested in part 2 is a route to remedy that is, quite frankly, probably outwith the reach of most people, because it pushes things towards the higher courts. That will push up expense and the time within which remedy can be realised. Those are not the precedents or principles with which to start on a wider incorporation project.

12:15

Marie McNair: Does anyone else have any other comments on part 2 or any other part of the bill before I hand back to the convener?

Professor O'Hagan: I can keep going.

The Scottish Government has said that it is looking for legal coherence. We would like to see that as well, and I think that that point has come out from all the contributors today. Legal coherence can be achieved without compromising on children's rights. I will separate part 1 and part 2. On part 1, there is an issue to be resolved or, rather, a process to be secured that secures the rights of children, to ensure that the provisions are properly balanced and that children's right to opt out is there.

On part 2, we have suggested that the Scottish Government should proactively identify incompatibilities and remedy them. That speaks to Conor Hill's earlier point. In our written submission, the Scottish Human Rights Commission has suggested that the Scottish Government should embark on a legislative audit that identifies where the incompatibilities might arise. It should proactively identify those and remedy them. Yes, that is complex—incorporation will be complex—but if we take this piecemeal and reductive approach, that will not realise the rights of rights holders in the first instance, never mind the political or other aspirations.

Marie McNair: Thank you—that is really helpful.

Dr Hill: I want to raise a point about legal coherence. The policy memorandum suggests that the bill, in making amendments to the 2024 act and the Education (Scotland) Act 1980, would

> "provide clarity to public authorities on how they should interpret and apply their duties, and improve the clarity of our statute book, thus strengthening the legal framework for the rights of children and young people in Scotland."

Those are perfectly legitimate aims for the bill. Legal coherence and legal clarity are important. However, strengthening the legal framework for the protection of children's rights is not necessarily a consequence of providing clarity and legal coherence. They are separate aims. I do not think they are incompatible with each other. You can absolutely provide legal clarity for public authorities about their duties. We can aim for legal coherence, certainly, but we can do that in a way that is compliant with the rights of children and the rights in the UNCRC. The concern that we have all raised today is that the carve-out in part 2 is limiting the protections that are afforded to those rights rather than strengthening them.

The Convener: That brings our witness session to a close this morning—well, it is afternoon now. Thank you all for attending. We will now move into private to discuss the remaining items on our agenda.

12:17

Meeting continued in private until 12:33.

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