



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 28 October 2025

Session 6



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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
23rd 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:

Sarah Booth (Scottish Government)

Jenny Gilruth (Cabinet Secretary for Education and Skills)

Lewis Hedge (Scottish Government)

Denise McKay (Scottish Government)

Joe Smith (Scottish Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Equalities, Human Rights and
Civil Justice Committee

Tuesday 28 October 2025

[The Convener opened the meeting at 10:00]

Decision on Taking Business in
Private

The Convener (Karen Adam): Good morning, and welcome to the 23rd meeting in 2025 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies.

Under agenda item 1, do members agree to take in private item 4, which is consideration of our work programme?

Members indicated agreement.

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

The Convener: Under item 2, the committee will hold its final evidence session on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill. I welcome Jenny Gilruth, the Cabinet Secretary for Education and Skills. She is accompanied by Lewis Hedge, deputy director of the curriculum and qualifications division; Joe Smith, children's rights reporting and monitoring team leader; Denise McKay, deputy director of children, education, rights incorporation and disclosure in the Scottish Government legal directorate; and Sarah Booth, a lawyer from the Scottish Government legal directorate.

You are all very welcome, and I thank you for joining us. I invite the cabinet secretary to give a brief opening statement before we move to questions.

The Cabinet Secretary for Education and Skills (Jenny Gilruth): Good morning. I welcome the opportunity to give evidence on the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill. As members know, the bill has two key purposes, which are to strengthen children's rights in decisions about religious observance and religious and moral education and to clarify the legal duties for public authorities under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 in situations where provisions under acts of the Scottish Parliament could conflict with UNCRC obligations.

The bill is deliberately very focused, and it is intended to address priority concerns in this parliamentary session. It is also a technical bill to address two specific but separate purposes, as set out in parts 1 and 2 respectively.

As members will know, religious observance and religious and moral education are two distinct but important aspects of Scotland's education system. Religious observance supports pupils' spiritual development and helps to build a sense of community and belonging, and religious and moral education allows pupils to learn about different religions and belief systems and promotes understanding about them as well as exploring ethical questions. Religious and moral education is one of the eight core curriculum areas in the curriculum for excellence.

Sections 8 and 9 of the Education (Scotland) Act 1980 provide for the long-standing parental

right to withdraw a pupil from religious observance and/or religious and moral education. Guidance on religious observance notes that pupils' views should be considered in the withdrawal process. However, currently, there is no requirement in legislation to do so; the decision rests entirely with the parent.

Part 1 of the bill will make changes that provide a legal right for the child to be consulted in the withdrawal request process that was initiated by their parent. The aim is to provide legislative certainty that children and young people's views should be taken into account when parents are exercising their right to withdraw their child. It does not introduce an independent right to withdraw for the child or alter parents' long-standing right to request a withdrawal. Without those changes, pupils might be denied such aspects of their education against their wishes, and their rights under UNCRC articles 12, 14 and 29 might not be upheld.

I am conscious that a wide range of views have been expressed to the committee. Our public consultation also showed a wide range of views on religious observance and religious and moral education and on the exercise of parental and children's rights in the context of learning. As such, the consultation responses reinforced the decision to chart for the changes a middle course on the spectrum of stakeholder views. Therefore, our approach aims to support alignment with the UNCRC while balancing three key considerations—parental rights, stakeholder views and the practical implications for schools.

With regard to part 2 of the bill, the 2024 act places a legal duty on public authorities not to act incompatibly with UNCRC requirements when carrying out functions under acts of the Scottish Parliament. This is a key part of the act; it allows children and their representatives to challenge decisions and to seek redress when they believe that their rights have not been respected.

Nevertheless, a public authority could face a legal dilemma in the event that, in the future, it is required by an act of the Scottish Parliament to act incompatibly with UNCRC requirements when a requirement cannot be interpreted in a way that is compatible with the UNCRC. The bill therefore makes a limited technical amendment to the 2024 act to ensure that the framework operates in a way that is clear, fair and practical. It introduces an exemption for public authorities in the event that a conflict arises between an act of the Scottish Parliament and the 2024 act that means that a public authority would not be forced to choose between breaching the compatibility duty and stopping the delivery of an essential service altogether.

That accountability is directed at the incompatible legislation where the source of the problem lies. The exemption therefore ensures legal clarity and continuity of essential services, which will protect children from avoidable disruption or harm while action is taken to consider and address any legislation that is found to be incompatible.

The change has been framed in such a way that it reflects the safeguards that exist under the Human Rights Act 1998, which have long been understood to be necessary to avoid penalising public authorities for acting in accordance with legislation. The exemption that we propose is narrower in scope and will apply only when there is no discretion to act compatibly.

I welcome the broad understanding that has been shown by many stakeholders, including Together, the Children and Young People's Commissioner Scotland and the United Kingdom Committee for UNICEF, of the rationale for the approach, while I recognise that some concerns have been raised. I hope that the detailed letter that I sent to the committee during recess has helped to address those points, which I look forward to discussing further today.

The Convener: As you said in your opening statement, we have heard from a wide range of witnesses in the past few weeks. For various reasons, they have been quite critical of the bill. What is your response to that? Can you give those witnesses any assurances that the bill, in its current form, is necessary?

Jenny Gilruth: I have been struck by the evidence that the committee has taken. Yesterday, I was looking again at the evidence sessions that the committee held. There is a wide variety of views on the subject.

I have been clear about why we need to act on the issues. As I have set out, part 1 of the bill is about the issues with the current legislation on RO and RME and the Scottish Government's UNCRC obligations. On the one hand, we could go for the independent right to withdraw, which might appease some stakeholders that the committee has heard from, but it would not appease them all. I have therefore had to take a pragmatic approach that maintains parental rights to opt their children out of religious education or religious observance and puts the views of children into law. At the current time, that is not in legislation, and there is an issue around whether children's views are listened to.

I was discussing with the Church of Scotland and the Scottish Catholic Education Service how headteachers deal with this all the time. They speak to and engage with parents and carers and, in my experience, that is a natural part of how

schools engage with home. Headteachers are good at having such conversations, listening to views and balancing them, but the legislation is required for the reasons that I have set out. We have to chart a middle ground, which means looking at how we can bring stakeholders together.

In reflecting on the evidence that the committee has taken, I think that most of the stakeholders have been supportive of the bill being introduced. That is welcome, and we will continue to work with those stakeholders as we make progress with the legislation.

Paul McLennan (East Lothian) (SNP): I have two questions wrapped into one. What is the Scottish Government's current understanding of how the right to withdraw from RO and RME works in practice in denominational and non-denominational schools? How aware are parents and children that there is a parental right to withdraw their child from RO and RME?

Jenny Gilruth: I will come to your second question first. I was struck by some of the evidence that the committee heard on that point, because a number of stakeholders said that parents are perhaps not aware of that legal right, which has existed for many years. In the guidance that will sit alongside the bill, if it is passed, we will provide further clarity on that.

One of the parental organisations that the committee took evidence from—it might have been Connect—talked about disparate approaches to school handbooks and the situation not being communicated in the way in which it would have expected. I am happy to reflect on that. The passage of the bill will, in itself, draw parents' attention to the fact that they have that right, and that will foster better understanding. The guidance, which has also been raised by stakeholders in evidence given to the committee, will provide further clarity on parental rights.

On how the guidance works at the current time, we have very low rates of withdrawal. The committee took evidence on that from Barbara Coupar from the Scottish Catholic Education Service, and I spoke to her yesterday. We are looking at very low percentages for withdrawal rates. Lewis Hedge might want to give the committee the specific numbers. I think that there is a 0.59 per cent withdrawal rate overall—that is 0.56 per cent from religious observance and 0.19 per cent from RE. Is that correct, Lewis?

Lewis Hedge (Scottish Government): Based on the sample, yes.

Jenny Gilruth: There are currently very low rates in relation to how that practice operates. Back in 2017, Education Scotland published a supplement to the guidance—I think that the

committee heard evidence on that point. I spoke only yesterday to the Church of Scotland, which is supportive of the guidance.

I think that there is support at the current time for the way in which we approach the issue. I have given the committee the rationale for why we have to slightly adapt our approach, but I think that, in broad terms, stakeholders have been supportive of the nuanced approach, and I am more than happy to work with them as we progress through this. However, to go back to Paul McLennan's original point, I recognise that we are talking about a very small percentage of children overall.

Paul McLennan: I have a quick follow-up on the role of the Convention of Scottish Local Authorities, because we have heard that different local authorities have different views. What do you see as COSLA's overarching role in ensuring that there is a uniform approach? I know that local authorities will take slightly different views, but this is about making sure that there is an awareness out there.

Jenny Gilruth: The bill is very technical and focused, but the committee has—rightly—probed some of the issues in relation to the 1980 act. As members will know, I am regularly asked in the chamber about how that interacts with ministerial responsibilities. The statutory responsibility for the delivery of education does not sit with ministers—it sits with COSLA and local authorities. Therefore, to achieve greater consistency, COSLA needs to be supporting and working with local authorities.

We have different approaches to the delivery of education across Scotland. We also have different approaches within local authorities and within schools. That is because curriculum for excellence is meant to be about local delivery and it is meant to empower our teachers to look at how to deliver education in their context.

Elements of the evidence that the committee has heard—probably from the Children and Young People's Commissioner Scotland and others—have been about consistency on reporting requirements. I am happy to look at those issues in detail. Through the Verity house agreement, we established the education and childcare assurance board, which brings together ministers and local government to talk about that assurance work and to look at how we can drive greater consistency. I am happy to take those issues away, because I think that there is an ask there in terms of how education is delivered.

There are wider questions around the 1980 act, which I do not think that this five-page bill will resolve. Those questions are very interesting in the context of wider work that we might have in the reform space. The committee will know about the work on curriculum improvement and how we are

looking at reforming the curriculum. I think that the committee might have heard some evidence on that previously.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, cabinet secretary and your officials. Sticking with the withdrawal rates, we have heard concerns that this withdrawal bill may cause additional pressure for schools. We have heard that withdrawal rates are low; some schools have no withdrawals. What are your thoughts on how we move forward, if the bill is passed? Do you foresee the changes placing additional pressures on schools?

Jenny Gilruth: Colleagues will have looked at the financial memorandum; the concern that has been raised is not our understanding of how the provisions will operate in practice. It is worth saying that, in effect, the changes will align legislation with the existing guidance. To our mind, the current guidance does not provide that protection; that is why we are amending the legislation. However, we do not expect there to be an increased workload as a result.

I remind members—I know that you have taken extensive evidence on this—that we are not removing the parental right to withdraw. We are introducing a child's right to opt back in. If anything, we will see more young people opting back into religious observance and RME, for example, so we do not expect that the bill will drive a workload in that regard, because we could have fewer young people opting out than has been the case in the past.

However, I link the member's point to the points raised by Mr McLennan, because I am pretty sympathetic to the view that has been expressed to the committee that not all parents are aware of their legal rights under the 1980 act. Taking the bill through will help to draw attention to those rights, as will the updated guidance, and that will help to inform different approaches to policy and practice in schools and communication with parents.

The committee heard evidence on that point from Connect, which is the national parents organisation that the Scottish Government funds. I am happy to engage with Connect on those issues, because parents being aware of their rights around withdrawal is important.

Marie McNair: That was helpful—thank you.

10:15

Maggie Chapman (North East Scotland) (Green): Good morning, cabinet secretary and officials. Thank you for joining us this morning. I have a couple of questions on slightly different but related points. I will stick with part 1 for now. Many stakeholders have said that the bill conflates

religious observance with religious and moral education. Although that is the case in existing legislation, we have heard quite a lot of very clear evidence and very strong support for the view that it should not be possible to opt out of RME, because of its value and its educational role in our society. Why did the Government not take the opportunity with this legislation to make that distinction in law and say, "RME is core to our curriculum and we will not have young people opting out, whether it is them or their parents doing that, because it is a fundamental area of our education"?

Jenny Gilruth: Going back to the evidence that the committee has taken—I have heard a number of stakeholders express views—colleagues around the table will be aware that the policy memorandum looked at the issue. It is fair to say that views diverge on it, as the committee has heard is the case on a number of topics that the bill considers.

As part of the changes, we looked at removing parents' right to withdraw a child from RME, which is what has been done in the equivalent curriculum area in Wales. In particular, we looked at the benefits of RME as an academic discipline for all pupils, as well as its important role in helping to promote community cohesion. However, during stakeholder engagement and in consultation responses, many different concerns were raised about restricting parental rights, so we decided that there was not sufficient support for such a change at this time.

Ms Chapman can correct me if I am wrong, but she made a point about putting RME on a statutory footing, which is not how the curriculum is currently delivered in Scotland. We have curriculum for excellence and our eight curricular areas, but we do not mandate certain parts of the curriculum. If we were to do that, the bill would be a much bigger piece of legislation than what is currently proposed, which is a bill that is very focused and technical in nature.

I am not diminishing Ms Chapman's points, which cover an important issue. I discussed the matter with the Scottish Catholic Education Service yesterday, and I am more than happy for us to look at some of the work on it as part of the curriculum improvement cycle, which I mentioned to Mr McLennan earlier. I am usually in front of the Education, Children and Young People Committee talking about the cycle, which is led by teachers and involves updating our whole approach to the curriculum. I am more than happy to look at Education Scotland's role in providing greater clarity on the issue, which I know has been raised in evidence sessions.

Maggie Chapman: I was not suggesting that RME be put on a statutory footing.

Jenny Gilruth: Okay.

Maggie Chapman: However, there is clear agreement that RME is distinct, and you said in your opening remarks that RME and RO are distinct. RME is a core part of curriculum for excellence, so why not take the opportunity to separate them in law? I am not saying that we should put one of them on a statutory footing; however, as CFE suggests, RME is core to young people's understanding, education and development when it comes to learning how to be citizens and how to interact with, learn about and understand other faiths, belief systems and ethical questions.

Why give people the option to withdraw from that, given that some of our witnesses have suggested that doing so could be the thin edge of the wedge? If people do not like some of the science courses, can they opt out of them? That is the kind of question that we have wrestled with when gathering evidence. I am curious about why the decision was taken not to separate RO and RME, not necessarily about whether one or the other will not be put on a statutory footing.

Jenny Gilruth: It is important to remind the committee that we are not proposing to provide young people with an independent right to opt out. If anything, the bill is about providing them with the right to opt in, because opting out can be driven only by parental decisions, which we are not changing.

Maggie Chapman: We will come to that issue.

Jenny Gilruth: Such a principle of Scottish education goes back to 1872, when, as members will know, RME in our schools was very different in nature and far less objective. We need to be careful, because there are legal provisions that protect parents' right to opt out of RME and RO but that do not apply to any other aspects of the curriculum. We need to be clear about that. When we talk about other aspects of the curriculum, that is not what this is about, and we should be very mindful of that.

Ms Chapman asked why we have not separated RME and RO. I go back to the policy memorandum. We did look at that, and I encourage members to read the policy memorandum if they have not done so. There are lots of views on the matter, and finding alignment would be very difficult. For example, it would not result in a five-page bill being presented to the committee, so the process might take a lot longer. I am not suggesting that we will not come back to the matter in the future, because there are other ways in which it can be considered. Indeed, I touched on that only yesterday in my discussions with the Church of Scotland and other stakeholders. I am happy for us to look at the

issue in its totality and in the round. However, I do not think that we will be able to find a route through the issues that Ms Chapman has raised today in a short, technical bill such as we have at the current time, for all the reasons that we have heard during the consultation with stakeholders. Lewis Hedge or other officials might want to say more on that.

Lewis Hedge: As the cabinet secretary outlined, the issue is the scale of the change—the size of the bill and the change that that would represent. When we looked at the data, which the cabinet secretary shared earlier, we found that 0.1 per cent of pupils withdraw from the RME component as opposed to RO, so we feel that, in practice, there is not a huge problem to solve in relation to people not getting access to the RME element of the curriculum.

Maggie Chapman: Thank you. There will be different views on whether the matter could be dealt with through the bill. Linked to that, given the concluding observations of the UN Committee on the Rights of the Child, which has twice—in 2016 and in 2023—suggested that children should have the right to withdraw from collective worship, which means RO, not RME, can you give us more detail of why you have not gone down the route of enacting those recommendations, which have been made twice in the past nine years?

Jenny Gilruth: Forgive me, Ms Chapman, but are you talking about the independent right to withdraw?

Maggie Chapman: Yes.

Jenny Gilruth: As, I think, I intimated in a previous response, we could have adopted that approach, which might have appeased some of the stakeholders that you heard from, but we would not have appeased them all. The Government has taken a pragmatic middle ground, to try to work through balancing parental rights. In recent years, as members around the table know, there have been issues with regard to parental rights in education and how parents' views are listened to. I am very mindful of that. I think that the parental right to withdraw a child from RME and RO is important, and we are not proposing to change that. The change that we are proposing is to ensure that children's views are taken cognisance of. Currently, there is no real legal requirement for that to be done. There is guidance, but, in essence, children can be withdrawn at their parents' behest. We think that it is important that the matter is put beyond legal doubt, which is what the bill will do: it will ensure that children's views are listened to and that there is a discussion about withdrawal from RO or RME.

We have charted the middle ground. I absolutely accept Ms Chapman's point that this will not

appease all stakeholders—it might not appease her. However, I have to balance the views of those stakeholders against the views of other stakeholders who are on a different side of the argument. We have to come to a collective view, because, fundamentally, the bill is about strengthening children's rights. Currently, there is a question about how children's views are listened to. The bill puts that matter beyond doubt. The updated guidance that we will publish alongside the bill will help to provide more clarity to schools in that regard, which is the important point that, I think, Mr McLennan made earlier.

Maggie Chapman: Thanks, cabinet secretary. However, in coming to that middle ground, there is a risk that you do not appease anyone and that you do not make anybody happy by—

Jenny Gilruth: [*Inaudible.*]—Ms Chapman, so I am not sure that I agree with you on that. [*Laughter.*]

Maggie Chapman: It is interesting that you talk about strengthening children's rights and yet you are not proposing to give children that independent right. However—

Jenny Gilruth: Well, we are strengthening children's rights.

Maggie Chapman: —I accept that your position is where you are just now.

In a slightly different space—this might have an impact on the numbers and awareness of the right, which other members will speak about—there was concern about whether young people might feel othered by some of the conversations in that regard and in relation to children being able to opt back in if they have been withdrawn. We heard some quite concerning evidence from Leah Rivka about what were, quite frankly, completely inappropriate comments by staff members. Whether it is through guidance or additional training, how do you see us dealing with potential othering or concerns about othering and the inappropriate comments that are being made, whether we like it or not?

Jenny Gilruth: I read the evidence that you are referring to and was quite shocked by it. That should not be happening in our schools.

As, I think, I mentioned, I had a helpful discussion about othering with the Church of Scotland yesterday. The representative from the Church of Scotland is a former headteacher and RME teacher, which is helpful. He made the point that headteachers are very good at dealing daily and weekly with issues such as that. We need to trust our headteachers to respond to those issues as and when they arise. One of the other issues that the committee alighted on was the idea that the bill might create conflict. However, the

committee also heard that conflict exists in the current system.

There is a legal right to withdraw; the issue is how that is administered. This is about people and relationships. We do not want our young people to feel othered when their parents choose to opt them out of religious education. That is their right—that is what they are entitled to—and schools are already good at managing that. I have seen some of the anecdotal evidence that the committee has taken, but I go back to the point that the Church of Scotland made to me, which is about trusting our headteachers.

There are opportunities through the guidance and our continuing engagement with schools. We will listen to stakeholders throughout the passage of the bill, and, if there are ways to strengthen the guidance to provide greater reassurance, I am more than happy to implement them. I do not think anyone around the table today, regardless of their position on the bill, would want a young person to feel othered in our education system. We have an inclusive approach to education in Scotland, and it is important that that is protected.

Maggie Chapman: I suppose that, if young people are feeling othered or will not have those kinds of conversations with their teachers, that is a concern. Maybe that goes back to why RME is so important. How do we foster an inclusive culture of conversation, understanding and acceptance of difference? I wonder whether the cabinet secretary thinks that there is more that we can do. Maybe that is not about legislation at all, but about building a culture of inclusivity and acceptance. Are there other things, elsewhere, that we need to look at? The committee has looked at the public sector equality duty on local authorities and, therefore, on schools. Are we joining the dots on this?

Jenny Gilruth: I think that we are. I do not think that the committee has taken evidence from Education Scotland. I was thinking about that this morning. We have a national senior education officer—I think that it is still Joe Walker, from when I was last there, many years ago—who leads on religious, moral and philosophical studies at a national level. We also have a national adviser who is working with our faith-based organisations and across the country on how we should update the curriculum. It may be that the committee wants to write to Education Scotland or engage with it on those issues—I will leave that up to the committee.

Ms Chapman has raised some important points. The bill requires headteachers to inform pupils of a parental request, so we would expect there to be a discussion and a conversation. We do not want young people to be othered. At present, though, children can be withdrawn from religious education and RO against their wishes. We do not think that

that is tenable, so we need to look again at how we deliver on children's rights. I absolutely accept that Ms Chapman may be persuaded by the views of others that we need to go much further than we have. I could have gone there, but, in doing so, I would not have had the support of other stakeholders. As the cabinet secretary, I have to try to bring parties together on this. As the bill progresses through Parliament, there will be opportunities and means—through guidance, which the member has alluded to—to do that and to provide greater reassurance.

Tess White (North East Scotland) (Con): Good morning, cabinet secretary. I have two questions. First, you talked yesterday to some of the witnesses who came before the committee. When we heard from stakeholders, they were fairly unanimous that the bill will create conflict between parents and children. Such conflict could be one of the bill's unintended consequences. It is almost as though the state is stepping in when—as, I think, you said yourself—headteachers manage that nuance all the time. Why should the state step in when it is not a problem for headteachers?

10:30

Jenny Gilruth: On the point about conflict, I mentioned in my response to Ms Chapman that I was struck that, when we look at the responses from stakeholders such as Together, the Commissioner for Children and Young People, the Educational Institute of Scotland and a number of others, we can see that they are broadly supportive of the principles behind the bill, but, when we get into it, we can see that there are issues around how it will be implemented. I am more than happy to listen to those views as the bill progresses and to seek and find compromises, as Maggie Chapman mentioned.

I am, however, not sure that stakeholders would be unanimous on the point about conflict, because the committee has heard that conflict already exists. For example, at the moment, if a young person does not want to be withdrawn from religious education or religious observance, they have no legal right to say no to that. The parents' rights would absolutely overrule the young person's. We do not think that that is right, because of where we are with the UNCRC, so we need to balance that.

This is not about the state; it is about listening to children and young people, so I do not agree with that point. We are talking about listening to the views of children and young people. I agree with Tess White that schools already do that and that there should be conversations, but the law as it stands does not stipulate that that needs to

happen. Putting that beyond reasonable doubt is the approach that we have taken.

As I say, we could have gone much further by taking a much more interventionist approach with an independent right of withdrawal, which I do not think that Tess White would necessarily have supported. I would not support that, for all the reasons that I have just discussed with Maggie Chapman. We have to take a pragmatic approach through listening to children while maintaining the rights of parents and carers to withdraw their children from RME and RO, which are set out in statute. We are not proposing to change that.

Tess White: Cabinet secretary, the committee is spending a huge amount of time—and you are here today—looking at a technicality. The sample size is so small, and we are doing a huge piece of work on a bill that is going through Parliament when none of the witnesses have said that there is a problem. It just seems as though we are using a sledgehammer to crack a nut.

Jenny Gilruth: I am not sure that I would describe it like that. It is a five-page bill. I hear that it is causing the committee a lot of additional work, but I have taken much more extensive legislation through the Parliament. This is a technical bill, and a lot of different issues have been raised with the committee in evidence sessions. There are a lot of different views on the issue, and I am happy to listen to those views and to engage with stakeholders. I have to chart a route forward.

The issue might not be at the top of teachers' lists at the moment, but we need to reflect better on how the UNCRC interacts with the parental right to withdrawal and balance that with the rights of children.

It is a technical change that, I appreciate, is taking up the committee's time. I apologise for that, but we are where we are in the parliamentary session.

Tess White: That is not the point. The point is that nobody can see why we are doing this. In the past few weeks, we have heard from witnesses such as the Church of Scotland, the Scottish Catholic Education Service and the Scottish Human Rights Commission, and we are all scratching our heads about this.

Jenny Gilruth: The specific issue relates to article 12 of the UNCRC, which is about the right to be heard, and article 14, which is about the right to freedom of thought. Part 1 of the bill will put the position in Scotland beyond doubt by introducing a legal requirement to consider pupils' views. It is about how the UNCRC interacts with the right to withdraw from religious observance at the current time—that is why it is happening.

I absolutely appreciate the fact that the issue might not be at the top of stakeholders' lists, but the reasons for looking at the issue have been fully discussed in committee previously.

Tess White: Will you be giving extra support to headteachers to manage the situation when conflicts arise and students have to be given additional support?

Jenny Gilruth: I am more than happy to look at that. Going back to the points that I made to Marie McNair, we need to remember that, to our mind, the bill is not about more children coming out of religious observance or RME. We think that we will see an increase in the number of children opting in, because we are putting into statute the right of children to opt back in. We are not changing parental rights; we are saying that more children might be in.

Therefore, I do not think that there will be an increase in the number of people withdrawing, but I am more than happy to talk to organisations such as School Leaders Scotland, which is the professional association for headteachers. If there are areas that we can look at in guidance, I am more than happy to give that support.

The Convener: We will now have questions from Pam Gosal.

Pam Gosal (West Scotland) (Con): Good morning, cabinet secretary and officials. Cabinet secretary, I asked one of the previous panels this question. Religious education is one thing, but do you believe that the bill's provisions could be extended to other subjects? As you might know, I have introduced the Prevention of Domestic Abuse (Scotland) Bill, which makes domestic abuse education in schools mandatory, but which would also give parents the option to withdraw their children from such courses.

Similarly, we have heard that primary schools are working with controversial groups such as LGBT Youth Scotland, with many parents expressing concern about what their children are being taught. Do you believe that the bill will end up setting a precedent whereby children as young as primary school age can override their parents, even when it comes to controversial subject areas that could harm them?

Jenny Gilruth: I thank Ms Gosal for her question. It might give her some joy to know that I discussed her bill with officials this morning. I am interested in her bill because of the proposed introduction of the mandatory education element. That goes back to Maggie Chapman's point, which is that that is not the approach that we take to education in Scotland currently. I am also interested in the bill because, as cabinet secretary, I am regularly told that we need to mandate things—we need to mandate the banning of

mobile phones or practices in relation to behaviour. I also go back to the points that were made by Paul McLennan and say that that is not how our schools are run in Scotland.

The committee is chipping at bigger questions related to the 1980 act. I am not sure that we are going to resolve them in a five-page bill, but that is not to say that I do not think that they are important. There are question marks around which parts of the curriculum should be mandated and what that should look like—for example, how would it be delivered in a rural context and what would it look like in an urban environment? We are also asked whether we will have different approaches to staffing arrangements.

Ms Gosal is taking her bill through Parliament, and I am more than happy to meet her and talk to her about the specifics. I am interested in her bill and in how we can strengthen the approach to domestic abuse and, in particular, support children who might experience domestic abuse at home.

On what is taught, I have seen some of the evidence on that, which Ms Gosal put to other witnesses in her lines of questioning. I go back to the point that I was speaking to Tess White about. This is about parents engaging with and speaking to their headteacher. Currently, the legal requirement in relation to an opt-out applies only to RME and RO. It does not apply to other parts of the curriculum, and we are not proposing an extension in that regard.

On children's views, I know that the committee has probed issues around capacity. The Government always expects—this is set out in the guidance—there to be discussions with young people about their views. If a young person's mum, dad or carer wants to take them out of RME and RO, there will be a discussion with the young person about how that happens. At present, such discussions are good practice, but it is not set out in statute that they will happen. We need to make sure that children's views are listened to in such discussions. That is what the bill is about.

Ms Gosal made a further point about other organisations. I do not necessarily share her views, but that is a wedge issue that is separate from the bill, which is quite technical in nature and is very focused on religious education and religious observance.

Pam Gosal: Thank you for that clarity. When the gates are opened, precedents are set, and people start looking at other subject areas. It is great to hear from you today that this is about the provisions of this bill only, and that it will not set precedents in other areas.

There has been some concern about schools having to decide whether a child is capable of forming a view about religious education and/or

observation. I asked one of the previous panels about that, when I raised the fact that children under the age of 18 cannot serve as jurors or get credit cards—and there are many other things they cannot do. With that in mind, how do you think that teachers will be able to determine that a child is mature enough to make a decision about their education and whether their parents are right to withdraw them from religious education or observance? Is it a decision that teachers should be making? Are you able to explain the Scottish Government's position on the approach that will be taken through the bill?

I understand that you have answered similar questions from Maggie Chapman and Tess White, but I think that teachers already have a lot to deal with right now without being put in such a position. How are you going to create balance so that teachers can understand what a child is capable of?

In another evidence session, I gave an example of two children from one family, where the teacher might think that one child was capable of making a decision but the other was not. How do you balance the rights of those children?

Jenny Gilruth: I do not think that we are proposing that teachers get to decide. This is about young people's views being listened to. Essentially, at present, teachers do not need to listen to young people's views on decisions about withdrawal. We do not think that the current legislation goes far enough; we have discussed why that is the case. The decision to withdraw a young person from RO and RME is not a decision for teachers—it remains a decision for parents and carers. All that we are saying is that you need to speak to the young person about their views.

On teachers managing such situations, they already deal with them, so I do not think that they are necessarily new. Such things are already happening and being dealt with, and, as the committee heard when I gave the statistics earlier, we are talking about a tiny percentage of pupils withdrawing from religious education. We are not talking about lots of young people.

We already have a small number of pupils who withdraw. As and when that happens, good practice, which is supported by the national guidance, is that the headteacher or another teacher has a discussion with mum, dad—the parents—or the carer and the young person and listens to their views. However, they do not have to do that, and the bill puts it beyond doubt that they will have to do so.

Officials may want to add something from a legislative perspective, but my understanding is that the decision is not one that teachers have the capacity to take.

Denise McKay (Scottish Government): The bill sets out a statutory presumption that children have capacity. Part 1 inserts a new section 9A into the 1980 act and sets out that children will be

“presumed to be capable of forming a view unless the contrary is shown.”

The job of teachers will be to have regard to any views expressed, having taken into account the pupil's age and maturity. Teachers will comply with that requirement and take account of those views, and they will have the benefit of there being presumed capacity to start with.

If we want to create a scheme where children's views are heard, we have to ensure that the people who are listening to those views understand the capacity issue, so we start with the presumption of capacity—that is what the legislation does. We are confident that, given the existing education system, with teachers in classrooms, teachers will understand the abilities of the children whom they are teaching, including their ability to understand the subject matter that they are being spoken to about. We think that the bill addresses that point.

Jenny Gilruth: I am sympathetic to Ms Gosal's points about supporting teachers in how they deal with those discussions, because of all the points that Tess White made. Therefore, statutory guidance on the updated RO and RME withdrawal process will accompany the implementation of the changes.

As I think that I alluded to, we will engage with stakeholders, teachers, professional associations, parents and carers on that guidance. We will also look at how the guidance might support the delivery of inclusive RO and RME. I think that the national guidance might help to allay some of the quite fair concerns that Ms Gosal has raised.

Pam Gosal: Thank you for that clarity. You talk about children's views being heard. I will break it down and give an example of a possible scenario, to see whether I am hearing what you have said correctly. If a child decides to go against what their parents have decided, they can do that, because you have said that their views should be heard. Those views will be heard by somebody—a teacher or a headteacher—in their school, and that person will have to make a decision about whether that child is capable. It does not matter what age the child is—we have heard that one child can be capable at the age of 13 and another child can be capable at the age of 15. Again, I go back to the point that somebody has to decide and, whether it is right or wrong, the parents may not like that decision.

How do you see such scenarios playing out? I accept that you say that there might be only a small number of cases, but every child is different

and, obviously, every child has parents who care about them and might want a different arrangement, so there might be a conflict there. Like Tess White, I would like to know where teachers and headteachers can get help in such situations. The parents might not like the outcome, so who makes the decisions in such cases?

I took RE when I was younger. Although I agree that religious education brings in certain good values and that it is especially good for people to understand different religions, I have to say that I see that there is a conflict, and I want to hear how, practically, that can be managed.

10:45

Lewis Hedge: There is a presumption in the bill that the child will be deemed to be capable of making that decision, unless there is something in the context around the child and any issues that the teacher is aware of that suggests otherwise. The school does not have to make a positive decision about whether the child is capable; the assumption is that they are.

It is probably worth putting that scenario in the context of the process in the school. All of this happens through a conversation. That is what the current guidance points to and is what we see in our examples of best practice. A parent who wants to withdraw their child from RME approaches the school and there is a conversation around that, which involves a discussion of what RO and RME actually involve. That might alleviate some of the parent's concerns around indoctrination or their child being exposed to sets of views that they might not be comfortable with. That is the context in which we are strengthening the voice of the child.

I am speculating slightly, but it seems unlikely that a situation in which a young person was deemed to be not capable of making that decision would arise completely in isolation from any other wider engagement between the parents and the school in relation to that young person. Obviously, that becomes more the case as they get older.

Pam Gosal: Thank you.

The Convener: We now go back to questions from Paul McLennan.

Paul McLennan: I want to touch on the UNCRC. The previous evidence session on the bill was with legal representatives rather than people from the education side. My question concerns article 12 and article 14, and how part 1 of the bill supports compliance with them. Can you talk about that? We have heard various opinions about that.

My other question concerns the fact that, because part 1 of the bill amends the Education (Scotland) Act 1980, it is not possible to challenge a breach under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Again, we heard from legal representatives on that, and you said that you have seen that evidence. What are your views on the issue?

Jenny Gilruth: I have seen the evidence that was given to the committee, but I am not sure that I would agree with that point.

Could you repeat the final point that you made? I might bring in officials in relation to the interaction between the bill and the specific UNCRC articles that you mention.

Paul McLennan: How does part 1 of the bill support compliance with article 12 and article 14, given that it applies only to pupils who wish to remain in RO and RME following a withdrawal request?

My second question concerned the suggestion that it would not be possible to challenge a breach under part 1 of the bill, because it amends the Education (Scotland) Act 1980. How would it be possible to challenge a breach under the 2024 act?

Jenny Gilruth: Some of those issues are quite technical in nature, so I will ask my officials to answer with regard to the legal points.

Sarah Booth (Scottish Government): Article 12 is an important part of what we are trying to do in terms of taking the views of the child into account. That is the basis of part 1.

Denise McKay: If I understand correctly, Mr McLennan, you are asking whether, if the change is made to the 1980 act, it will be less likely that a child will be able to take the matter to court, because the 2024 act provides for judicial enforcement of rights.

Paul McLennan: That issue was raised during the legal evidence session that the committee held, and that specific point was raised as a concern.

Denise McKay: I do not want to give you the wrong answer to the wrong question, so, if this is not your question, please tell me. If you are asking what the Scottish Government's position is in relation to changing the 1980 act rather than introducing a new act of the Scottish Parliament so that we can get a new UNCRC duty biting, there are two answers. On why we are changing the 1980 act rather than introducing a Scottish Parliament bill, the answer is that the 1980 act is a very special bespoke piece of legislation; it is a sort of tapestry of very complicated things that all hang together and intertwine. With regard to

sustaining and protecting all of the education package that we have in Scotland, which assists us as a society, it is important to recognise that, if you cut bits out of that tapestry and try to recreate them somewhere else—that is, in a new piece of Scottish Parliament legislation—first of all, you will disrupt the existing package of the 1980 act and, secondly, you will end up with a stand-alone act of the Scottish Parliament with bits of sections 8 and 9.

I understand the question about why we are not putting sections 8 and 9 in an act of the Scottish Parliament, but they do not make much sense on their own, once you sever them from the whole, and, if you want to bring over the other bits to make such a bill make sense, it will start to grow bigger and bigger. Therefore, the question that we ask ourselves is: what will happen if we take that approach every time that we have a bit of Westminster legislation that we want to recreate? We would end up with a scattergun approach of ASPs, with bits of legislation that have been cut out of other bits and brought in. We want to create a body of law that is accessible to a reader. If we take a scattergun approach and people have to try to follow a breadcrumb trail, it will be much more difficult. At the moment, the 1980 act is where our whole package of law for education in Scotland sits. People know that, if there has been a change, that act is where they will find the answer to what has changed. That is one of our primary arguments for the approach that we are taking.

The second argument, which you have raised concern about, is about the fact that, if we take that approach, people cannot be taken to court when the legislation is contravened. Your question about the Scottish Government's position on that is a good and legitimate one. At the moment, our answer is that we have given a lot of thought to how we respect those rights and people's ability to challenge matters and go to court, including through things such as the children's rights scheme, which will be published in November as part of our work to implement the 2024 act. The Scottish Government is doing a lot of work on implementing that act.

We have also been looking at child advocacy provisions and how best we can get advocates for children so that their views can be taken into consideration and things can be challenged on their behalf. There are also the law centres, which serve Scotland very well. They are very good at complaining to the Government about what it is doing—that is their job. Those are all aspects of allowing people the opportunity to have their voices heard.

Paul McLennan: You mentioned the guidance that will be published in November. We are discussing this now, and the issue was raised with

the committee by legal representatives who were talking about the bill. I am not saying that it is too late for us, but we are trying to get a rounded picture of the bill. I take the cab sec's point that it is a very small minority of people who might want to challenge matters, but one or two cases is still one or two too many for the parents who are involved. Therefore, the issue is that, if the guidance is coming out in November—I know that we are not far from November—where does that leave the committee with regard to looking at the bill and how parents will challenge the position? I ask because that issue was raised quite a bit. Can anything be done about that? If we are looking at it in the round, having additional guidance might help.

Jenny Gilruth: Ms Don-Innes leads on the children's rights scheme. I think that it is part of the Promise—is that right? [*Interruption.*] I am being told that it relates just to children's rights. However, I think that the timing of the guidance being published in November is quite complementary to the passage of the bill. We are nearly in November, and we are only at stage 1 of the bill. The committee might or might not be content with that update when it is published, so feel free to come back to the Government to probe us on the issues. However, we are strengthening children's rights through our approach.

I will come back to the point that the member raised with Denise McKay about the 1980 act, because it goes back to the points that Pam Gosal made about mandating certain aspects of the curriculum. If you were to open up the 1980 act, you would see that there are lots of things that we could do. We would not have a five-page bill in that case, and some big, serious questions would potentially have to be asked about the delivery of education.

If the committee is interested to know—probably not for the purposes of the bill before us, but in the education space generally—I have commissioned John Wilson, a former headteacher in Edinburgh, to lead a piece of work for us on school governance and what comes next in how we fund our schools after the Scottish attainment challenge, which is meant to come to an end. We have extended it for a year, but such things need to be considered in the round. Indeed, Pam Gosal's parliamentary colleague Oliver Mundell is very interested in how we provide support to our schools and local authorities. We have 32 councils, and we have heard today about some of the challenges that that can create. We should not separate those issues from wider considerations on public policy.

Paul McLennan: I take that important point, which Denise McKay, Sarah Booth and you have made. We will probably discuss the issue of legal

challenges later, but I have taken cognisance of what you have said.

Rhoda Grant (Highlands and Islands) (Lab):

Following on from that, I note that some witnesses have told us that part 1 of the bill is not compatible with the UNCRC, because it amends the 1980 act. Is the bill compatible?

Jenny Gilruth: I do not think that I would have been allowed to introduce it if it was not compatible, so yes—and I have just checked with the lawyers. We will obviously have different opinions on these things, but what you have said is not our understanding.

Rhoda Grant: Okay, but the bill's provisions will fall outwith the UNCRC, because the bill is amending legislation from 1980.

Jenny Gilruth: I am sorry, but I thought that the question was about compatibility.

Rhoda Grant: Yes—of course it is about being compatible.

Jenny Gilruth: I do not know whether Denise McKay and Sarah Booth wish to comment further, but I have seen the evidence that Ms Grant is talking about, and it is not our understanding that the bill is incompatible.

Sarah Booth: If the question is about whether the bill is compatible with the international convention, we think that it is.

Rhoda Grant: Given what you have said before, cabinet secretary, about the complexity of all this legislation, should you have been considering a consolidation bill to bring the legislation into the scope of the UNCRC, rather than an amending act?

Jenny Gilruth: We could have done that—it is fair to say that. The committee is probably aware that a range of areas were considered in relation to where some items would sit in the legislative space. The Government has decided to postpone the human rights legislation; there was another legislative vehicle that could have been used.

The bill that is before us represents the first opportunity and, as the minister, I do not think that I am permitted to sit back and make us wait. It is important that we act as soon as we are able to in this regard. I take the member's point that there are different ways of doing things. Officials may wish to say more, but we view the bill as the first legislative opportunity to resolve the issues in the way that we have done. The committee has heard evidence on that.

For all the reasons that we have discussed this morning, we cannot wait—we need to make progress in this area. That is why we have a short, truncated bill. It is technical in nature, and it is very focused. I appreciate and accept that it could have

done lots of other things, but there will be further work in relation to the UNCRC, as the committee will be aware.

The Convener: Before we move on to part 2 of the bill, I ask whether members are content that they have asked everything that they wish to ask on part 1. Members can always come in at the end, but I want to ensure that we have finished with questions on part 1 and that we make a distinction in moving on to part 2.

Pam Gosal: Cabinet secretary, the committee has heard from several witnesses who are worried that the bill is a temporary and short-term solution that does not address the underlying issue of legislation being compliant with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Alongside others, Professor Angela O'Hagan from the Scottish Human Rights Commission told the committee that we are

"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."

Similarly, Fraser Sutherland from the Humanist Society Scotland said:

"the bill documentation and the pre-bill consultation clearly show that the Government does not fully understand what is happening."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 30 September 2025; c 48, 30.]

We are here to make good legislation, but it has been clearly stated in evidence that the bill is simply not good enough and is another sheer example of a "sticking plaster" approach to fixing bad legislation. How do you respond to that?

11:00

Jenny Gilruth: There have been conflicting views on part 2; indeed, that has been a theme that has run through the committee's evidence-taking sessions. The member just cited evidence from Fraser Sutherland and the Scottish Human Rights Commission, but there was other evidence that countered what they said. For example, Together, which the committee also heard from, was quite supportive of the provisions in part 2 with regard to strengthening children's rights.

I am quite surprised by the commission's position on this, but I suspect that it might link to wider work in relation to the delaying of the human rights bill. Although I am sympathetic to the points that it raised, I think that this bill is needed and will lead to an improvement in children's experience of their rights in education, which I would have thought that the commission would support.

Let us come back to the purpose of what we are doing. We are trying to stop a situation in which a

public authority is forced to choose between two statutory duties—in other words, when it would breach either the compatibility duty or another legal obligation. That would mean in practice that, to avoid acting incompatibly, a public authority would have to pause or stop delivering a vital service.

We are not aware of any legislation that would require any incompatible action to be taken, but we are trying to future proof our legislation and make sure that such an issue does not arise in the future. The bill not only future proofs the frameworks but recognises that only the courts can determine whether legislation is compatible with UNCRC requirements.

I hear some of the critique that has been made, but we need to balance it with the opinions that were heard from other stakeholders.

Pam Gosal: I note that you just used the word “balance”. I am sure that you have spoken to stakeholders.

Jenny Gilruth: I have.

Pam Gosal: Have you had a chance to speak to the people I quoted? They were concerned about the sticking plaster approach and, because they brought it up, I am bringing it up with you today. We on the committee have to listen to all the evidence, whether it be good or bad, in relation to the bill that you are putting forward.

Jenny Gilruth: Of course.

Pam Gosal: We need to be sure about this. Have you listened to those concerns?

Jenny Gilruth: I have engaged directly with the Humanist Society Scotland, and I am more than happy to sit down with Angela O’Hagan, too. I have been struck by some of the Scottish Human Rights Commission’s evidence, and I am more than happy to engage with it on these topics. I think that that would be a sensible route.

What I have been trying to do throughout all of this is find the pragmatic route. You are never going to appease everyone when it comes to some of these issues, because they are, by their nature, quite challenging, but we have to chart a course, for all the reasons that I have set out. We have already discussed part 1, but part 2 is about future proofing where we are. I am happy to engage with the stakeholders that Ms Gosal has mentioned, and I have already engaged with a number of stakeholders that the committee has heard from.

Rhoda Grant: Following on from the previous question and the cabinet secretary’s quite clear statement that she is not aware of any act of Parliament that would require action that was incompatible, I want to ask, given the concerns

about part 2, whether it is necessary. After all, you do not believe that there is any legislation that would require the provisions in part 2, but it still seems to water down children’s rights.

Jenny Gilruth: We think that part 2 is necessary, for the reasons that I have set out. With regard to children’s rights, I go back to some of the points that were made to the committee by Together, which views this as an opportunity to strengthen children’s rights and is broadly supportive of it.

I take the member’s point, but we think that part 2 is necessary, because of the compatibility duty and the potential for something to arise with a public authority—for example, a council. I am being careful not to give direct examples; I am just discussing the matter with officials and trying to think of things that I can provide the committee with, but it is difficult to give a specific example.

We need to think about circumstances in which a local authority might withdraw or pause a service because of the incompatibility duty. Part 2 puts the position beyond doubt with regard to responsibilities and future proofs the current frameworks. We think that that is a requirement that needs to be undertaken. I appreciate that some concerns have been raised about part 2, although I think that, from the evidence to the committee that I have seen, fewer concerns have been raised on part 2 than have been raised on part 1. Indeed, some people have been quite supportive of part 2.

I am happy to listen to and engage with stakeholders—Ms Gosal referred to two of them, and I have already met the Humanist Society Scotland—but I note that Together has been very supportive of part 2. I am more than happy to listen to stakeholders about how we might strengthen the provisions with regard to children’s rights, but we do view part 2 as a requirement.

Rhoda Grant: But you cannot give any examples of where it would come into play.

Jenny Gilruth: I might defer to the lawyers on this because, as cabinet secretary, I need to be careful about giving explicit examples. I do not know whether the lawyers or Lewis Hedge have any such examples.

Joe Smith (Scottish Government): The main thing about the exemption is future proofing, as the cabinet secretary said. Our position is that no current legislation is incompatible, and we also have steps in place through the 2024 act to make sure that no future legislation is incompatible.

However, the UNCRC is a living instrument. Court interpretations can evolve over time. Legislation that could be deemed compatible today might in five years’ time—or in a year’s

time—be deemed incompatible, because interpretation evolves. That could be relevant to any piece of legislation that is caught by the 2024 act, whether it involves access to health services or access to education. A court could come along and say, “We now think that that legislation is incompatible,” which has knock-on effects. It is in those specific circumstances that the exemption would apply, so it is about future proofing.

The Human Rights Act 1998 has a similar exemption, which has worked effectively for more than 20 years. It has long been understood as necessary, to avoid public authorities being penalised, essentially, for following law that they have to follow.

Rhoda Grant: Are there examples of the 1998 act exemption having been used?

Joe Smith: We looked into that—I may bring in my legal colleagues in a second. There is not a wealth of case law, but we could look into it and provide examples. There is not a wealth of case law because the exemption would be used only in limited circumstances. However, even though the circumstances might be limited, we think that an exemption is essential because of the risk of disruption to essential services.

Jenny Gilruth: The exemption could relate to a process that concerns children’s hearings, education or healthcare. Essentially, the exemption allows public authorities to continue delivering those services while the other potential incompatibilities are looked at and resolved in legislation, if that is needed.

The provisions are extraordinarily technical. They are about future proofing the legislation as it currently is. As Joe Smith said, the UNCRC is a living, breathing piece of legislation, so it will adapt over time. We need to respond to that accordingly, which is what part 2 of the bill aims to deliver.

Rhoda Grant: But such an exemption has never been used.

Jenny Gilruth: It has not, at the current time, but that is not to say that it might not be used in the future.

Marie McNair: Cabinet secretary, many of the responses to the committee’s call for views missed out the question on part 2 of the bill. Do you have any additional thoughts on whether the proposals in part 2 are easy enough to understand? It is important that guidance is provided, because it is vital that children, parents and public authorities understand the impact of part 2 of the bill.

Jenny Gilruth: You ask whether the proposals in part 2 are easy enough to understand. I think that they are extraordinarily complex. The committee has heard that, including from witnesses.

The Government can perhaps reflect on how we can better communicate some of the proposed changes. That is probably a point for us to take away. Certainly, from my reading of the evidence that the committee has taken, there is more for us to do in the communication space. However, the bill is quite legally technical in that it looks to future proof our position with regard to the UNCRC. We could perhaps take away a point about communication on that aspect.

Joe, do you have anything to add?

Joe Smith: I only wanted to say that the bill addresses two distinct issues. Although both parts relate to children’s rights, there might not have been as many responses to the question about part 2 partly because the education stakeholders might not have been as concerned about part 2 as they were about part 1. As the cabinet secretary said, there is an issue to do with communication, but the main reason relates to the fact that the bill deals with two distinct issues, with different stakeholders.

Marie McNair: Thank you. It is a very technical bill, so the more guidance we can get, the better.

Maggie Chapman: I want to follow up on Rhoda Grant’s questions on the impact of part 2. Given the unlikelihood of incompatibility arising—we hope that, from now on, all bills will be drafted to be compatible with the 2024 act—how does the cabinet secretary see the exemption in part 2 affecting young people’s access to justice? You talked about that in the letter that you sent to the committee during recess, but could you explain a bit more how access to justice for young people will work following the exemption, if it is enacted?

Jenny Gilruth: I am struck by some of the points that you made. You said that it is unlikely but not impossible that future bills will be incompatible with the 2024 act, which is why we are future proofing the legislation. I remind the committee about Joe Smith’s points about the Human Rights Act 1998 and how the approach that is being taken in the bill is a mirror image of that taken by other legislation.

On justice, the committee heard earlier from Denise McKay about some of the work that we have been doing to support children and young people to get access to justice. More broadly, we have implemented the 2024 act, and it is fair to say that there has been a cultural shift in the way in which children and young people’s rights are respected. The duty to not act incompatibly with the UNCRC requirements and the ability to use courts to enforce children’s rights apply only when a public authority is delivering functions under an act of the Scottish Parliament. However, many functions that are devolved to the Scottish

Parliament were conferred by the UK Parliament, so they are not subject to that compatibility duty.

We want to embed children's rights as widely as possible, so it is important that we have the judicial options that we have already mentioned today, as well as non-judicial remedies. That is why we are working with a number of partners to support the remedies that are already available, including through the Scottish Public Services Ombudsman, specialist child law centres, children's advocacy services and relevant tribunals. Even when children and young people can use the courts to enforce their rights, we hope that that will be a last resort and that, when there is a concern about access to rights, it can be resolved as soon as possible.

It is worth pointing out that we have given funding to the SPSO for a five-year project to look at a child-friendly complaints process. That is an important element of the mix that we are considering, and I know that the committee has taken evidence on how children interact with the complaints service. I am sure that members will have experience of dealing with the ombudsman, as I do. Having a child-friendly approach is important for access to justice.

Joe Smith: Maggie Chapman also asked about access to justice when the exemption would be used, and I can speak to that. I might get slightly technical, but I will try not to.

An important point is that the exemption does not affect the child or young person's ability to challenge the actions of a public authority in a court or tribunal. Whether the exemption applies is still a matter for a court or tribunal to decide. If a situation arose in which there were conflicting statutory duties and a public authority was acting under that, the child could still take that public authority to a court or tribunal and ask whether the exemption applied.

An aspect that I would flag is the strength of the interpretation obligation on public authorities in the court. When a child challenged the actions of a public authority, the court would look at whether the public authority had done everything to interpret the conflicting statutory provisions in a way that was compatible with the UNCRC. As we know from the Human Rights Act 1998, on which the provision in the bill is based, that is a really strong duty whereby public authorities and the courts can change the meaning of legislation and add in or remove words. Only in a situation in which that was not possible would the exemption apply.

If the case was in a higher court, it would move on to the strike-down and incompatibility declarator remedies that are in the 2024 act. If it was in a lower court, referral mechanisms are

already built in to escalate the case to a higher court.

I also want to flag up that, when the exemption applies, it is a signal that it is the legislation that is the problem, not the actions of a public authority, which is simply following that legislation. It is trying to redirect accountability to the legislation that is the problem.

Maggie Chapman: Thank you. Those comments are useful, and they reinforce what Marie McNair said about the need for clear guidance on interpretation so that children and young people are not forced to take that step to seek clarification of whether an exemption should apply through the courts. We do not want our young people to have to do that. I hope that we would have systems in place that deal with some of those issues before court actions and court decisions are required. That was a helpful clarification.

Cabinet secretary, my final question relates to something that you said in your letter to the committee, in which you talked about engagement with the UK Government to explore the

"removal of any legislative restrictions that currently limit the Scottish Parliament's ability to enhance human rights protections".

You said that if there was no progress within the next 12 months, the Scottish Government would commission a review of UK acts. Can you say a little bit more about the rationale for the 12-month period and how those conversations with the UK Government are going?

11:15

Jenny Gilruth: I might pass that one to Joe Smith, as that sits within his team. I had to do quite a lot of engagement with the UK Government on the Education (Scotland) Bill, and I have to say that we worked very well together on sharing information and on the crossovers between reserved and devolved competencies. The dissolution of the Scottish Qualifications Authority was possible only because of that cross-Government working.

As cabinet secretary, I would say that that approach is applied to where we are in terms of children's rights and the UNCRC, but I will defer to Joe Smith and the on-going work that is being led by Ms Don-Innes at the ministerial level.

Joe Smith: Ms Don-Innes is leading on the children's rights scheme and that will be laid before the Parliament soon, as the cabinet secretary said.

The wider engagement with the UK Government was to discuss the impact of the Supreme Court decision on the United Nations Convention on the

Rights of the Child (Incorporation) (Scotland) Bill and the impact of our new understanding of section 28(7) of the Scotland Act 1998. That engagement with the UK Government is being led by the Cabinet Secretary for Constitution, External Affairs and Culture, given that it is not just about children's rights issues but about the devolution settlement more generally.

I guess that that is part of the rationale for the 12-month timeline. The discussions are detailed and wide-ranging across the devolution settlement. It is about trying to give time for those discussions take place and to work constructively with the UK Government to see whether there are any solutions that would mean that we could extend the scope of the UNCRC compatibility duty.

Maggie Chapman: That is helpful. Thank you.

The Convener: Cabinet secretary, some witnesses have suggested that part 2 of the bill is so distinct and different from part 1 that it should not be in the bill. What are your views on that?

Jenny Gilruth: It is fair to say that the bill combines two pretty distinct issues. I think that I have mentioned previously that we intended to make the change that is in part 2 at the reconsideration stage of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which is the point that Ms Grant made earlier. However, that was not possible under parliamentary standing orders. We then planned to include it in the forthcoming human rights bill, which, as the committee knows, will not be introduced during the current parliamentary session. This bill is therefore the first legislative vehicle that we could use to make the change that is required.

I suppose that covers the answer, but I would say that, although the issues in parts 1 and 2 are quite separate, they both aim to give clarity and consistency around children's rights. The committee knows that the bill as drafted is a targeted piece of legislation that will address those priority concerns within the time that is available in the current legislative programme. I am sure that all members are aware that time is running out for our parliamentary calendar.

That is the approach that we have adopted because, as I have set out, the previous bills did not give us an opportunity to make progress.

The Convener: If members are content that they have asked everything that they wish to, that concludes our questions. I thank the cabinet secretary for joining us this morning.

That brings the public part of our meeting to a conclusion. We will now move into private session to consider the remaining items on our agenda.

11:18

Meeting continued in private until 11:53.

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