OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Education, Children and Young People Committee

Wednesday 4 February 2026

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 4 February 2026

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
5th Meeting 2026, Session 6

CONVENER

*Douglas Ross (Highlands and Islands) (Con)

DEPUTY CONVENER

*Jackie Dunbar (Aberdeen Donside) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Miles Briggs (Lothian) (Con)
*Ross Greer (West Scotland) (Green)
*Bill Kidd (Glasgow Anniesland) (SNP)
*John Mason (Glasgow Shettleston) (Ind)
*Paul McLennan (East Lothian) (SNP)
*Paul O'Kane (West Scotland) (Lab)
*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeremy Balfour (Lothian) (Ind)
Natalie Don-Innes (Minister for Children, Young People and The Promise)
Nicola Sturgeon (Glasgow Southside) (SNP)
Sue Webber (Lothian) (Con)
Martin Whitfield (South Scotland) (Lab)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 4 February 2026

[The Convener opened the meeting at 09:00]

Children (Care, Care Experience and Services Planning) (Scotland) Bill: Stage 2

The Convener (Douglas Ross): Good morning and welcome to the fifth meeting of the Education, Children and Young People Committee in 2026.

Today is the first day of our stage 2 proceedings on the Children (Care, Care Experience and Services Planning) (Scotland) Bill. We will be joined—hopefully soon—by Natalie Don-Innes, the Minister for Children, Young People and The Promise. I welcome her supporting officials, who are with us at the moment. The officials seated at the table are here to support the minister but cannot speak in the debates on the amendments. Members should therefore direct any comments or questions to the minister.

We will welcome a number of non-committee MSPs who will attend part or all of today's meeting to speak to their amendments and to participate in the debates.

As this is our first stage 2 day for the bill, I will briefly explain the procedure that we will follow today. The amendments that have been lodged on the bill have been grouped together and there will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all other amendments in the group. I will then call any other members who have lodged amendments in that group. Members who have not lodged amendments in the group, but who wish to speak, should catch my attention. If she has not already spoken on the group, I will then invite the minister to contribute to the debate. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in that group wishes to press it to a vote, or to withdraw it. If they wish to press it, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the agreement of other members to do so. If any member objects, the committee will immediately move to a vote on that amendment.

If any member does not wish to move their amendment when called to do so, they should say, "Not moved," but members should note that any other member present may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote and voting on any division is by show of hands, so it is important that members keep their hands clearly raised until the clerks have recorded their votes. The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put the question on each section at the appropriate point.

Now that we have covered the procedures that we will be following today, I should move to our substantive business, which is consideration of amendments. However, the minister is still not here and her office has informed me that she is stuck in traffic, so I will suspend the meeting until the minister gets here.

09:02

Meeting suspended.

09:04

On resuming—

Before section 1

The Convener: Welcome back. We move to our stage 2 consideration of the bill. Amendment 87, in the name of Sue Webber, is grouped with amendment 225.

Sue Webber (Lothian) (Con): It is nice to be back here in committee room 1 on a Wednesday morning.

My amendment 87 seeks to place prevention, minimum intervention and family reunification at the heart of the bill; to require robust consideration of the alternatives before young people are removed; to ensure access to services that keep families together; and to strengthen the evidential standards in child protection orders.

As I am sure that we will be reminded later on, many times, this bill is part of the Promise, which aims to keep families together, wherever that is safe.

I have been working, albeit later on, with the Parents Advocacy and Rights group, which came to me with compelling evidence that I was taken with. That is why I have lodged my amendments to the bill.

I lodged them primarily because the independent review of children's care led to a commitment to implement the Promise, recognising that the outcomes for children who are looked after have been unacceptably poor. The core principle of the Promise is that children should not be removed from their families unless it is absolutely necessary. Despite that commitment, the number of children entering care has continued to rise, with many entering care at or shortly after birth.

Child protection orders are the key mechanisms through which children are removed from their parents, usually their mothers. Those decisions are often taken in urgent circumstances, and yet they have immediate and life-changing consequences for so many children and their families. The bill, as currently drafted, represents a missed opportunity to refocus children's services on prevention.

John Mason (Glasgow Shettleston) (Ind): I have some sympathy for the idea of having general principles in a bill. However, Sue Webber mentioned prevention, and subsection (2)(e) in her amendment 87 refers to "preventative measures", which seems to me quite a vague term. Does she not think that it is a bit vague to put that in the bill?

Sue Webber: A whole host of things could come under the banner of preventative measures. However, far too often, those preventative measures are not fully funded. We will come to amendments on that later, but it is often easier or more convenient to take the child and put them in care than it is to provide the wraparound support that a family may need in the home. I have perhaps been broad in the language, but the intention is the same. There are many things that could be used to prevent a child from being taken into care, should local authorities see fit to do so.

Martin Whitfield (South Scotland) (Lab): We are talking about young people and so we have to go back to the basis of getting it right for every child. The individual support and assessment that one individual child may need is very different from what others may need. The phraseology in Sue Webber's amendment allows a very wide scope of input and support to prevent, as it seeks to, the removal of the child from the family.

Sue Webber: Mr Whitfield is right. We hear time and again that it is about getting it right for every child, and every child is different and every family circumstance is unique. If we have a one-size-fits-all solution, we are failing everyone.

I want to make prevention a priority, as does the Parents Advocacy and Rights group that came to me. We want to reduce family breakdown, stem unnecessary entry to care for children and, when care is necessary, make sure that it does not do more harm than good.

My amendment would insert a principles clause at the front of the bill that sets out, in plain terms and in plain language, what Parliament expects of the children's care system. It would firmly place prevention and early support services at the heart of the bill, and help to ensure that children do not enter care simply because no alternative support is available.

We must have the child's welfare at the heart of the bill. Any interventions that take the child away must be evidence based and proportionate. We want to promote upbringing by families, with the presumption that the child's welfare is best protected by remaining with parents and siblings, even when residential arrangements are in place.

It is about prevention first for children who are at risk of becoming looked after, and reunification support at every stage for children who are looked after. It is about a duty on public bodies to give effect to those principles. I also want steps taken to be recorded in the child's plan. After all, the purpose of my amendment, and this bill, is to align with the Promise's emphasis on early help and whole-family support. The evidence that the committee took at stage 1 shows that stakeholders want that clarity of purpose and a shared framework that guides practice and resourcing.

I move amendment 87.

Paul O'Kane (West Scotland) (Lab): I draw members' attention to my entry in the register of interests, which shows that my husband is a service manager in children and families social work and is a registered social worker.

I do not intend to speak for too long on amendment 225, because it is fairly straightforward and self-explanatory. However, I think that everyone in the room and more widely will be familiar with the words of the Oversight Board's third report, which was published a year ago tomorrow. It said:

> "2025 marks the midway point since the promise was made to when it must be kept. But Scotland is not halfway towards keeping its promise. There have been unexpected events, delays, and unnecessary barriers. This means there are children and young people not receiving the care and support they need. That means for some in the care community the promise has already been broken."

That report was a wake-up call for everyone, and I hope especially for the Government, which has long hung its hat on the promise that there would be a bill in this parliamentary session to advance the goal that we all share and to make up for lost time and missed opportunities, many of which the board referred to in the quote that I just read.

Perhaps more pertinent to the amendment is something else that the Oversight Board said in its report:

"The upcoming Promise Bill to be lodged in Parliament represents an opportunity and a risk."

The "upcoming Promise Bill" is how it referred to the legislation that is before us. We should talk about what we are talking about, which is why amendment 225 would rename the short title of the bill The Promise (Scotland) Bill.

Ross Greer (West Scotland) (Green): I have a lot of sympathy with what Paul O'Kane has outlined. My concern is the feedback that we have had from so many people in the care-experienced community, which I would be interested in hearing his thoughts about. We all recognise that the bill will not fulfil the Promise, but renaming it "the Promise bill" almost suggests that we think that it will. Is there not a risk that doing so would further erode the trust that many care experience people have in the process by making it look like we are patting ourselves on the back and thinking that the job is done, even though we know that at least one more bill will be required to do that?

Paul O'Kane: I recognise Ross Greer's point and some of the concern about renaming the bill. I have heard the flip side of that, too. I have met many care-experienced people—for example, through the cross-party group on care leavers—who have referred to the bill in shorthand as "the Promise bill".

We need to strike a balance. We could perhaps refer to the "Promise 1 bill" and the "Promise 2 bill". I do not want to get into the weeds of all that, but to focus minds and attention, we should call the bill what it is, because it is an opportunity. There is still mileage in the bill being an opportunity to begin to fix some of the challenges that Mr Greer referred to. However, I fully accept—as he knows, I said this at stage 1—that the bill will not do everything that we need it to, and it needs to go further and faster. I maintain that renaming the bill would be helpful, but I acknowledge the caveats that Mr Greer pointed out, which are very fair.

The challenge to the Government and to everyone here today is that, if we are serious about keeping the Promise and want the legislation to be part of that, we should, although recognising that the bill is not the full solution, call a spade a spade. If we are unwilling to do that and to call it "the Promise bill" because we simply accept that, as drafted, it will be another missed opportunity, it will set us back and we will not be able to meet the aspiration that we all share.

The Minister for Children, Young People and The Promise (Natalie Don-Innes): In the first instance, I thank Sue Webber for explaining the rationale behind amendment 87. I agree that the welfare of a child or young person should be paramount to any decisions that are taken to improve their safety and wellbeing. Many of the principles that Ms Webber has set out in amendment 87 are already provided for in Scotland's extensive legislative and policy landscape, including placing the best interests of the child at the heart of the delivery of the care system under the getting it right for every child approach.

The Children (Scotland) Act 1995 and the Looked After Children (Scotland) Regulations 2009 already place duties on public bodies to ensure that decisions about the care and protection of children and young people are made with their best interests at the centre. In addition, the GIRFEC approach, which underpins Scotland's child protection guidance, places the child's voice and their best interests at the heart of decisions that affect them and the support that they are provided to improve their safety and wellbeing.

09:15

Within GIRFEC, the process of any assessment of wellbeing should, at its heart, start with what the child or young person needs before consideration is given to what measures their family should have in place to support those needs. In some circumstances, the needs of the child will differ from those of the rest of their family, and the emphasis should ultimately rest on having the child's needs at the heart of any decision making or plan.

Amendment 87 places a duty on public bodies to record their adherence to the general principles outlined in the child's plan for an individual child or young person. That conflates the purpose of the child's plan with an assessment of options when planning support for a child or young person. The child's plan is non-statutory unless the child or young person is looked after under the Looked After Children (Scotland) Regulations 2009.

Sue Webber: Surely, for the sake of transparency and accountability, all the preventative measures that are considered should be documented somewhere, so that there is a record. People sometimes feel that things are being done to them. No matter how old the young people are, surely having a record of what has been considered and of the measures that may or may not have been taken would only be due diligence and is only right for the child.

Natalie Don-Innes: That may be, and I would be happy to debate that with Ms Webber, but I do not feel that the child's plan is the right place for that.

Under current legislation and practice, all information that is relevant to the action taken to improve a child or young person's wellbeing should of course be included in their plan. To include an assessment of alternative options in a child's plan, as set out in amendment 87, would risk complicating a child's plan for the child or young person and their family.

I am of course committed to keeping the Promise, which includes keeping families together where that is safe and in the child's best interests to do so. I understand the intent behind amendment 87. I would be happy to consider what might be possible to reflect those principles through a targeted or more refined approach at stage 3. I therefore ask Sue Webber not to press that amendment. If she does, I would encourage members to vote against it.

Paul O'Kane's amendment 225 holds some attraction, not least because we have all used and still use "the Promise bill" as shorthand for discussing it, myself included. A big reason for that is that I was talking about the bill long before its formal title was considered and chosen. I am afraid that the amendment would require us to deviate from existing practice and convention, whereby the title of any bill should reflect its substantive content—which includes measures that will help to keep the Promise.

Mr Greer raised an important point on the feedback that has been received. There is of course wider work entailed in the delivery of the Promise that goes far beyond even having another bill. It includes non-legislative measures. I feel that naming the bill "the Promise bill" could be misleading and could cause confusion.

Paul O'Kane: In her opening remarks, the minister referred to the fact that she has referred to the bill as "the Promise bill", both at the committee and in the chamber. Why did she do that? I appreciate what she is saying about naming conventions for bills, but does she believe that this bill is a crucial opportunity to keep the Promise, as was outlined by the Oversight Board? If so, why would she not be willing to name it as such?

Natalie Don-Innes: As I have just laid out, I do not believe that the bill is the be-all and end-all of delivering the Promise. As I have stated in committee before, a huge amount of wider work is under way, in a non-legislative fashion, which is in line with delivery of the Promise. That work is not all focused on the provisions in the bill. There has already been six years of work to deliver on the Promise.

Paul O'Kane: I do not think that anyone is suggesting that the bill is the be-all and end-all. In fact, we are quite far away from that. However, thinking about a statement of intent, does the minister recognise some of what has been outlined in relation to naming the bill, as an aspiration?

Natalie Don-Innes: I understand the intent behind the proposal, as I think I have said clearly. However, given the feedback that I have heard from young people on what the bill aims to deliver, I do not believe that that such a change is where our attention should be lying. I understand the point that I have been calling the bill "the Promise bill" in shorthand, which is because I was talking about it for a long time before it was introduced in June 2025. However, I believe that the current title of the bill represents what the bill does, and I have been clear that anything over and above that might lead to confusion or be misleading. I understand the intent behind amendment 225, but I ask Mr O'Kane not to move it. If he does, I ask members to vote against it.

Sue Webber: I will keep my remarks brief, because I know that we have lots to do.

I am curious to know where the minister thinks that information about preventative measures should be held. Given that so much of that information is already catered for in our legislative landscape in Scotland, perhaps it should not be a challenge for committee members to support my amendment 87. I am going to press the amendment, but should it fail, I will seek to work with the minister to find a way, perhaps at stage 3, to be successful in including the broader principles that I have laid out.

The Convener: The question is, that amendment 87 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
O'Kane, Paul (West Scotland) (Lab)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)
Rennie, Willie (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 7, Abstentions 0.

Amendment 87 disagreed to.

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 4 and 126. I call the minister to move amendment 1 and speak to all the amendments in the group.

Natalie Don-Innes: Moved.

The Convener: I am asking you to move amendment 1 and speak to all the amendments in the group.

Natalie Don-Innes: Sorry, convener, I was a little bit behind—I am organised now.

I welcome the opportunity to speak to this group of amendments, which relates to kinship care assistance. Amendments 1, 2 and 3 form a coherent package of Government amendments designed to strengthen the statutory framework for kinship care. Together, they introduce a clear right to a comprehensive needs-based assessment, ensure that local authorities have regard to statutory guidance, and improve national oversight through proportionate information-sharing powers.

For kinship carers and the children they care for, the amendments are about making support clearer and more reliable, so that families know what help they can ask for and how it will be considered, and can expect greater consistency across Scotland. At their heart, the amendments are about ensuring that children growing up in kinship care are properly supported, in line with our commitments under the Promise. They introduce a clear right for eligible kinship carers to request and be offered a comprehensive needs-based assessment, so that support is considered in the round and reflects families' individual circumstances. The assessment is intended to be child centred and align with existing GIRFEC practice and the child's plan, supporting rather than duplicating current assessment and planning processes.

My amendments are also intended to strengthen the role of statutory guidance and introduce proportionate information-sharing powers, helping to improve consistency, transparency and national oversight, so that we can better understand how kinship support is working across Scotland, while respecting local delivery.

I understand the intent behind Jeremy Balfour's amendment 4. Indeed, kinship carers should be properly supported and treated fairly; my amendments seek to achieve that. However, I am not able to support amendment 4. The parity in assistance envisioned by the amendment is unclear. Although kinship care assistance is a defined concept in legislation, there is no equivalent concept in respect of foster care. As drafted, the amendment would introduce a broad and undefined parity requirement that risks blurring the long-established distinction between kinship care as family-based care and foster care as a commissioned service, delivered on behalf of the state through formal arrangements. That could give rise to unintended legal, practical and financial consequences.

In particular, amendment 4 does not distinguish between assistance intended to meet the cost of caring for a child and payments associated with foster care as a commissioned care service. Ministers already have the power to specify and require payment of allowance rates for foster and kinship carers, and we are strengthening that further through amendments 20 and 21, in a later group in relation to uprating and transparency. I consider that to be a more targeted and proportionate route to fairness. I hope that Jeremy Balfour agrees and will not press amendment 4. If he does, I encourage members to vote against it.

Miles Briggs's amendment 126 appears to align closely with the commitments that are set out in the draft kinship care vision statement. That vision emphasises the need for greater transparency, clearer local offers and improved access to information so that kinship carers are better able to understand and access the support that is available to them in their local areas and nationally. One purpose of the bill is to ensure that children and families with care experience feel supported, informed and empowered. Mr Briggs's proposal contributes meaningfully to that aim. However, I seek to clarify what Mr Briggs intends in relation to local and national levels, and I would be happy to work with him to bring back a suitable alternative amendment to remedy that at stage 3.

I encourage members to support my amendments 1, 2 and 3, and I move amendment 1.

Jeremy Balfour (Lothian) (Ind): Good morning. Amendment 4 seeks to ensure that kinship carers are on an equal footing with others who provide care, such as foster carers. Both take in children at the point of need, and a relative should not be differentiated from a state-supplied foster carer. In particular, that should apply to financial support and social work support. The Social Justice and Social Committee—no, sorry. The Social Justice and Social Security Committee—on which I have sat for only nine years—took evidence on that some years ago. A number of kinship carers gave evidence in this very room. It was clear that they feel that they are a Cinderella service. I welcome the minister's amendments, but I think that we can go still further in recognising the vital role that kinship carers play in our system.

Children First has stated that kinship care

> "accounts for 35% of all children who are looked after in the community."

However, the financial contribution and other support from agencies is not the same.

Many kinship carers will stop or reduce working to take on those additional caring responsibilities. Eighty per cent of kinship carers report financial hardship. Even in this parliamentary session, kinship carers were being paid different amounts,

depending on the local authority area in which they lived. I appreciate that the Scottish Government is dealing with that issue at the moment, and that some of the amendments that we will discuss later seek to address it. However, I am still concerned that, during the tenure of future Governments, kinship carers could end up not getting the amount of money that they require to meet the financial needs that come with the responsibility they have been given.

My other concern, which, again, comes from kinship carers directly, is that they find it very difficult to access the services that they require, be those in social work, education or health. A distinction is made in most local authorities between foster carers and kinship care. I fully accept the minister's point that definition is an issue, and I accept that amendment 4 is very broadly written. That was deliberate, so that we could start a conversation. When the minister winds up, I will be interested to hear about how we can look at not just the financial need but how we get the right support in social work, education and health.

John Mason: I accept that the issue is not just about finance, but it partly is. Does Jeremy Balfour have any idea about what the proposal would cost?

Jeremy Balfour: At the moment, the cost is being met by each local authority, because the Scottish Government is funding it, so there is no cost. In addition, it cannot be budgeted for, because we do not know how many people will go into kinship care annually. It is a bit like the social security payments that we make. It is an open budget. We can give estimates. There should be no greater cost than at the moment, because kinship carers should be getting the moneys that they are due. It is about whether they are aware of that and whether they are accessing those services.

09:30

To be honest, putting a financial cost on this is coming at it from the wrong end. These families are taking in very vulnerable children at a very difficult time in their lives. Whatever the cost of that is, it will be far less than if those children had to go into care or fostering. The overwhelming majority of people who provide kinship care do not do it for financial gain; they do it to protect some of the most vulnerable people in our society.

I hope that we can look at something, perhaps at stage 3, around social work, health and education to make sure that those who take in vulnerable children are given the support that they need.

Miles Briggs (Lothian) (Con): Good morning. I am pleased that we start by, I hope, putting kinship care at the heart of the bill, as Jeremy Balfour said. I recognise what the minister said about wanting to improve the situation. I was a member of the Social Justice and Social Security Committee alongside Jeremy Balfour—and, I think, the minister—when we took evidence from families. That was some of the most compelling evidence that I have heard. As a committee, we promised that we would take that with us through Parliament, so I am pleased that we have this opportunity to start that process as part of the bill.

The intention behind my amendment 126 is to require the Scottish Government to take steps to make sure that kinship carers can more easily and accessibly find and access support. "The Promise" says:

> "The Care Review has heard from many kinship families about the lack of support they have in caring for children and the fear they sometimes have of asking for help."

It also says:

> "Support must recognise the particular challenges that can exist for kinship carers. There must be a recognition that kinship carers may be caring for deeply traumatised children and that they may experience their own pain at the consequences of family breakdown."

As has been said, Scotland's care system depends heavily on kinship carers. It is already the most common care arrangement in the country, covering 35 per cent of looked-after children in our community, so it is important that we consider how the bill will strengthen arrangements and information sharing.

The minister highlighted the use of the word "local". I included that in amendment 126 because it is important to look at support for kinship care nationally. In my region of Lothian, such support is more easily accessible than it is in the Highlands and Islands, for example. We need to consider how support is provided at a local level and nationally co-ordinated. I wanted to capture both of those aspects in the amendment.

From evidence that parliamentary committees have taken over many years, it is clear that the offering to kinship carers is not what it should be. The informal arrangements around kinship care often present issues in that regard, but that should not prevent the bill, or all of us, from trying to improve the offering to ensure that support is provided not only in a crisis situation but in a preventative way.

I am happy to work with the minister on tidying up the amendment and to have further discussions before stage 3. I hope that, at the end of the process, the offering for kinship carers will be a really improved part of the Promise and the bill. We need to turn some of this on its head, and we need

our public services to intervene earlier. For the Promise to be a success, we need to radically change the way in which kinship carers are supported and seen by public services. Amendment 126 seeks to do that, and I am happy to work with the minister to try to improve it.

The Convener: I call the minister to wind up the debate.

Natalie Don-Innes: I thank members for their comments. I will keep this brief. On support for kinship carers, I am pleased to have lodged the amendments on that at stage 2, as members will be aware. I have been on many visits and, of course, my interest goes back to my time on the Social Security and Social Justice Committee, when we took evidence from kinship carers. I knew then that something needed to change to support kinship carers further.

Kinship carers play an absolutely vital role in keeping children with their families. Kinship care is a preventative measure. As Mr Briggs or Mr Balfour highlighted, it leads to a reduction in the number of children going into care. We absolutely need to ensure that those families are appropriately supported.

In December, we published our draft vision for kinship care, which sets out a clear national direction for how such care should be supported in Scotland. It sets out a shift towards earlier, clearer and more consistent support, rather than families having to reach crisis point, as Mr Briggs highlighted. The vision is currently a working draft and we are continuing to test and refine it through engagement ahead of the final publication in spring. That goes hand in hand with the amendments and the legislative changes. I believe that, in taking both those approaches, we are presenting a strong package for kinship carers that will mark a step change in support and, as I said, I will be pleased to work with Mr Briggs ahead of stage 3.

Amendment 1 agreed to.

Amendments 2 and 3 moved—[Natalie Don-Innes]—and agreed to.

Amendments 4 and 126 not moved.

Section 1—Aftercare etc for persons looked after before age 16

The Convener: Amendment 88, in the name of Roz McCall, is grouped with amendments 127, 89, 128, 5, 90, 6, 91, 7 and 86. I point out that, if amendment 128 is agreed to, I cannot call amendments 5 and 90, and if amendment 5 is agreed to, I cannot call amendment 90, due to pre-emption.

Roz McCall (Mid Scotland and Fife) (Con): I thank the committee for considering my amendments. I will speak first to my own amendments rather than the others in the group. I will take them individually and give the committee an idea of where they are coming from.

Amendment 88 goes to the heart of whether aftercare is a right or a favour. At present, the bill proposes to retain the wording in the Children (Scotland) Act 1995 that allows the local authority to decide that a young person's "welfare does not require" aftercare. In practice, that wording gives too much room for subjective judgment and—to be frank—for financial pressures to influence the decision.

My amendment would remove that discretion and make it clear that aftercare should not be a starting point or something that a young person has to justify or fight for. In the real world, care-experienced young people already face instability in housing, education and mental health. They should not face uncertainty about whether the support that is promised to them in law will be there when they need it. If we leave that discretion in place, we risk enshrining inconsistency in statute. At present, the support depends not on need but on geographical budgets, which undermines the fairness of provision and the intent of the bill.

I come to amendment 89. Turning 26 does not magically resolve the trauma or the instability that a young person has gone through, so this amendment proposes to remove the fixed age limit and put in a needs-based approach. It recognises that care-experienced people tell us repeatedly that their journey does not follow neat timelines and that they need support when they need it. Some young people may be ready to step away from support earlier, so this amendment would simply allow the system to respond to the reality.

Ross Greer: I have a lot of sympathy with what is intended here. However, it strikes me that amendments 88 and 89 are actually trying to do the opposite. With regard to amendment 88, the member rightly pointed out that, where local authorities are given too much discretion, things such as financial pressures come into play. My concern is that amendment 89, in giving the local authority the discretion to judge whether support is necessary, would result in local authorities cutting off support earlier than would have otherwise been required. Does the member share my concern about what might happen if we empower local authorities more to make that judgment themselves? We would be having the system, rather than the young person, make the judgment.

Roz McCall: I thank Mr Greer for the intervention, but I think that it is the other way round. When we have such restrictive processes in place, they end up being a tick-box exercise. The lines are so precise that, if someone falls on

one side of the line, support is given, and if they fall on the other side, it is not. If we gave local authorities the ability to vary their approach in looking at that, they would be able to provide the support that is required. That is what these amendments are trying to achieve.

I turn to amendment 90. If we accept that needs, not birthdays, should drive aftercare decisions, the principle must apply consistently throughout the legislation. Amendment 90 would ensure that we do not undermine one part of the legislation by leaving a contradictory age threshold elsewhere. Finally, amendment 90 would, by strengthening a needs-based approach across the section, give practitioners clarity and young people confidence. It would protect the legislation from future challenges and ensure internal consistency.

I turn to other amendments in the group. On amendment 6, in the name of the minister, I ask for information whether, given that we are looking at an ability for the Parliament to change the age range, the minister would be willing to have the regulations changed to the affirmative rather than the negative procedure, so that the scrutiny of any age-range changes could come back to the Parliament. I just want to highlight that.

I move amendment 88.

Martin Whitfield: Good morning. In this group, I will talk predominantly to amendment 127, as amendment 128 is consequential to it. In doing so, I look to the minister, who has an amendment to move in this group and a speaking slot, to find out where the Government sits on a lacuna that exists within the law that circulates around the 16th birthday.

If a young person sails off out of the care system before their 16th birthday, they have far fewer rights to advice, assistance and support than those who travel out of it on their 16th birthday or, indeed, the day after. Having spoken to people, my understanding is that the issue arose in the various original legislative slots because, when people talked about children under 16, rather than contemplating teenagers who bring their unique characteristics to the world, their thoughts were more of babies who might spend a short period of time in care then go back to families. The position seems not really to have been considered until this bill, which is very specifically drafted in that the difference occurs on the 16th birthday, which is inconsistent and unhelpful—and, frankly, I am sure, not what anyone expected until the reading of the bill was done.

The purpose of my amendments is to clarify that problem. Amendment 128 would be needed as a consequential amendment. It will be interesting to hear from the minister any other proposals that the Government may have to solve that problem, and I look forward to doing so.

Natalie Don-Innes: I will speak first to my amendments 5, 6 and 86. Those are interrelated and are needed to deliver quality care for young people in a well-planned way through the gradual roll-out of aftercare.

Amendment 5 would ensure the affordability and deliverability of the expansion of aftercare to formerly looked-after children who have ceased to be looked after before the age of 16. Stakeholders have indicated concerns over the pressure in staffing and resourcing that the expansion of aftercare might place on children's services. I understand the need to be given time to adjust to the increase in the numbers of children and young people who will request and receive aftercare support, so that it does not impact on the quality of support for them or the support that is already offered to children and young people who currently receive aftercare. Amendment 5 would allow for such expansion in a managed way.

Amendment 6 is a technical amendment to give the Scottish ministers the power to accelerate the expansion of the new eligibility for aftercare to older age groups in the future by specifying a date that is earlier than the date of commencement of section 1 of the bill. In response to Roz McCall's request, I see no issue with that happening through the affirmative procedure.

Amendment 86, too, is a technical amendment, to allow for maximised accessibility of section 29 following commencement. It is required for the same reasons as amendments 5 and 6. I hope that members can support all those amendments.

I am concerned that Roz McCall's amendment 88 would be detrimental to the delivery of aftercare for young people leaving care between the ages of 16 and under 19, as it would place a duty on local authorities to provide aftercare for care leavers who do not need or want it. We have consulted extensively with young people and young adults about aftercare provision. At every stage, they have emphasised the importance of their voices being heard and respected in decisions that affect them individually and in the policy decisions that are made nationally. Creating additional provision for aftercare in the bill is not the best route to ensuring that throughcare and aftercare teams are able to support those whose welfare requires it. The best way to provide that clarity would be through strengthened guidance. The Government is already working with stakeholders on that.

I hope that that reassures Roz McCall, and that she will not press amendment 88. If it is pressed, I would ask members not to support it.

09:45

Martin Whitfield's amendments 127 and 128 would also have the potential to negatively impact the delivery of aftercare for children and young people between the ages of 16 and under 19 who left care prior to their 16th birthday. Aftercare is, by design, an approach that recognises the importance of relationships and puts the needs and wellbeing of the young person at the very centre of the support that they receive. Section 1 seeks to promote a rights-respecting approach, including for young people who choose not to approach local services on turning 16 or who choose to make an approach at a later time.

I absolutely recognise the importance of ensuring that information about aftercare is clear, with good signposting to ensure that young people know their entitlements. There is a place for advocacy in there as well. As I outlined above, work is under way to expand and strengthen the guidance on aftercare, including to support the changes that we are making through the bill.

Martin Whitfield: Does the minister accept that the bill creates a difference between those young people who leave care before their 16th birthday and those who leave after, and that the purpose behind my amendment is to even the playing field for all young people who leave care?

Natalie Don-Innes: I have already outlined some of my concerns with that approach. I have been clear that I recognise the importance of ensuring that information about aftercare is clear. As I have outlined, work is under way to expand and strengthen the guidance on aftercare. I believe that the provisions that we are taking through in the bill will improve the rights to aftercare for children and young people who have been previously looked after. The guidance that has been developed will continue to promote the need for collaboration in order to ensure that a person-centred approach is delivered, acknowledging that every young person's journey is different.

I would hope that that would reassure Mr Whitfield, but I assume, from his intervention, that it does not.

Martin Whitfield: I am grateful for the minister's patience in this regard. In her contribution, she talked specifically about those children over 16. I am talking about those children who leave care before their 16th birthday, and the fact that a difference exists. I respect and understand the discussion about guidance but, fundamentally, a different statutory requirement will be set down and, as we have heard in other contributions, it is probable that it will be approached differently.

Natalie Don-Innes: I would be grateful if Mr Whitfield could clarify that point further. Is he referring to the assessment in relation to children and young people who have left care prior to their 16th birthday coming back for aftercare?

Martin Whitfield: I am grateful to the minister for taking a third intervention. Indeed, the provision as described in the statute is that, if the young person leaves when they are under 16, they are, in effect, entitled to assistance, whereas if they leave after 16, it is assistance and more. The challenge is that, unless they fight hard and stay until they are 16, they have fewer rights, and that in turn will potentially lead to a United Nations Convention on the Rights of the Child claim that a differential approach is being applied to those young people.

Natalie Don-Innes: I respectfully disagree with Mr Whitfield on that point. I believe that the assessment that will take place will take into account that every child's needs will be different and that support will be provided based on the individual child's needs. I do not believe that those young people will have any less of an entitlement; the provision will be what that child or young person needs to be supported. Given the concerns that Mr Whitfield raises, I will look at the matter again ahead of stage 3. However, I believe that what I have laid out is the position, and it is my position.

I will move on. Amendments 89 and 90, in the name of Roz McCall, would remove the upper age limit for those who are currently eligible to apply for aftercare and would give local authorities the discretion to determine the age range within which people may apply for aftercare.

My concern with those amendments is that they would create inconsistencies in different local areas for what we are trying to establish as a national entitlement that is the same for young people who need and would benefit from aftercare, no matter where they live in Scotland.

The amendments might also have unintended consequences that would affect the aftercare support that is currently received by young people with care experience. It is possible that some young people who are currently eligible by virtue of their age to apply for aftercare may no longer be able to do so if a local authority determines that they do not need it. The spirit of aftercare is to support young people with care experience as they transition to adulthood and to provide them with the tools and support that they need to be successful, independent adults. Local authorities already have the power to provide aftercare beyond age 26, and they already use it.

There is a danger that opening up aftercare to anyone over the age of 16 who was ever looked after could put real, unforeseen pressure on children's services, rendering them perhaps

unable to provide aftercare to the young people with care experience who most need that support while transitioning to adulthood, and for whom the support in section 1 was designed.

There are also more appropriate routes through which adults with care experience can seek support—such as adult services, trauma-informed services, lifelong advocacy and more—that do not necessarily involve pulling them back into the care system. I therefore cannot support amendments 89 and 90.

Roz McCall's amendment 91 might have a similar effect, in so far as some young people who are currently eligible for financial support and assistance towards expenses of education or training may no longer receive it, as it would be up to local authorities to determine the upper age limit for support based on an individual's needs, including for children and young people who are currently receiving that support. The same arguments regarding inconsistency and differential treatment apply, as they do for amendments 89 and 90.

I am conscious of how important financial support such as the care leaver payment, the job start payment, the care experience education bursary and the summer accommodation grant is in helping care-experienced children and young people to thrive. I propose to look in more detail for stage 3 at how local authorities can complement that support for those who are in receipt of aftercare using section 30 of the Children (Scotland) Act 1995. I therefore ask Roz McCall not to move her amendment 91 at this time.

Convener, I would be grateful if I could listen to Jeremy Balfour's comments—

The Convener: I am sorry, minister—the procedure is that you can speak to Jeremy Balfour's amendments even though he has not spoken to them yet, but I have to take them in order.

Natalie Don-Innes: That is fine—thank you. I thought that I would ask.

I understand the rationale behind Jeremy Balfour's amendment 7 and I thank him for lodging his amendment, which allows us to debate these issues.

The landscape surrounding transitions is complex and young disabled people, in particular those who are moving on from care into adulthood, face multiple challenges. Aftercare already includes support for health and wellbeing needs, including any needs arising from disability. Currently, young disabled people leaving care from age 16 who need and want aftercare have the right to an assessment of their needs and a plan to meet those needs. Through the bill, that right will be extended to more care-experienced disabled children who left care before the age of 16, from their 16th birthday.

The type of aftercare advice, guidance and support that is required, and the way in which it is provided, will be specific to a young person's needs. Any assistance by way of accommodation must have regard to the suitability of that accommodation to meet needs arising from any disability.

Only those young people who were looked after by social work would be eligible for aftercare, meaning that the vast majority of young disabled people would not be eligible for that support.

I share Mr Balfour's ambitions in seeking to improve transitions for young disabled people, but I do not necessarily consider that making further provision in respect of aftercare is the best way to achieve that.

In June 2025, the Scottish Government and the Convention of Scottish Local Authorities published the national transitions to adulthood strategy to improve transitions to adulthood for all young disabled people in Scotland, including care-experienced young disabled people. The strategy emphasises that improving transitions needs a co-ordinated, collaborative approach that integrates the efforts of all relevant sectors and partners, for all young disabled people and not just those who are care experienced. That group of young people is one of the most vulnerable groups in society and I welcome all discussions around strengthening the support that they are given.

If Mr Balfour agrees, I propose to look at the matter in more detail ahead of stage 3, including to see whether there is more work that we can do in a non-legislative space to address those issues. I ask, therefore, that he does not move his amendment.

In summary, I encourage members to support my amendments 5, 6 and 86 and to vote against amendment 88 if it is pressed, and against all other amendments in the group, if they are moved.

Jeremy Balfour: As a teenage boy—a long time ago, in the previous century—I remember my father being approached by another parent of a younger disabled child, who asked, "What one piece of advice would you give to another parent of a disabled child?" Without thinking, my father said, "Never take no as the first answer from a medical professional."

My father was an educated professional who could stand up to most individuals, and I was very fortunate that I had two loving parents and supportive siblings, and that I went to a good school that supported me through my teenage years. However, from speaking to many disabled

people and disabled people's charities over the past nine years during my time as an MSP, I think that I am the exception, not the rule. That is particularly true for disabled children who are in some form of care in relation to their needs and relationships.

Amendment 7 seeks to ensure that all disabled children receive appropriate support from their local authority to assist their transition into adulthood. They should not be pushed to transition earlier than is necessary, which happens a lot. I have spoken to a number of charities, children and those who look after children, and there is real concern that disabled children are being moved into adult services too early—earlier than non-disabled children are moved into adult services. That is happening because it seems that, from a professional perspective—not from a child's perspective—it is easier to manage a child's case in those services. Due to pressure on social workers, disabled children are taken off orders more quickly than they should be, and they do not get the same level of advocacy, either.

Disabled children are perhaps the most vulnerable people in the system. At the moment, many of them are not getting the transition that they require, either in the way that they want it to happen or in the way that would be best for them. I think that we all agree, in principle, that a disabled child should not be treated any differently from how any other child of their age is treated. Amendment 7 would simply put that into law.

I hear what the minister has said, but there needs to be a statutory backbone to this; it is not enough to simply put it in guidance or policy documents. In the light of what she has said, I am willing to not move amendment 7 and seek further discussions with her before stage 3, but I will seek to lodge a similar amendment at stage 3 if those conversations prove to be unsuccessful.

Willie Rennie (North East Fife) (LD): The minister is aware that The Promise Scotland has indicated its support for Martin Whitfield's amendment 127 and that it believes that there is a gap that needs to be closed, so I am puzzled as to why she is so firm in her opposition to that quite reasonable amendment. If young people leave care before they are 16, they will not get the support that they need.

I know that the minister will probably not move from her position today, but I appeal to her to have a discussion with The Promise Scotland, because it believes that Clan Childlaw raised valid concerns in its evidence about how things should be articulated, so it supports amendment 127. I hope that the minister will take that into account when we come back at stage 3. I suspect that she will not change her position today, but I am concerned that she is opposing something for which The Promise Scotland has indicated its support.

Natalie Don-Innes: In light of our back and forth, I gave Martin Whitfield a commitment and said that I am happy to reconsider the matter at stage 3. I would like to understand members' concerns, and I know that The Promise Scotland has concerns about the issue. There are a number of such areas in the bill. I do not think that I have been firm on anything; I will take away anything of great concern and look at it ahead of stage 3. My position on amendment 127 remains the same, but I give the commitment to discuss the matter further with Mr Whitfield and any other member who wishes to discuss it.

10:00

Willie Rennie: It sounds like the minister is saying that her position on amendment 127 will remain the same, even though she is open to further discussion with Martin Whitfield. I do not want to be pedantic about this, but—

Martin Whitfield: Will Willie Rennie give way?

Willie Rennie: Certainly.

Martin Whitfield: We have heard that the Government's position will not change on this—that is on the record—but, as always, the minister has been very reasonable and she often indicates a desire to speak about things.

I understand that the Government's position will not change on amendment 127, but it is happy to talk about it. I say that to give an indication of what I will do in a few minutes.

Willie Rennie: It is a unique form of negotiation to say, "We can talk, but I am not going to move."

Natalie Don-Innes: I am saying today that I will not support a lot of amendments at stage 2, but I am happy to discuss them further as we move towards stage 3. I do not believe that that is a unique approach.

Willie Rennie: If the minister's position today is to oppose the amendment, that is fine, but I hope that there is flexibility when the issue comes back for discussion. I will conclude on that point.

The Convener: I call Roz McCall to wind up and to press or withdraw amendment 88.

Roz McCall: I thank the minister for agreeing to make the regulations that are set out in amendment 6 subject to the affirmative procedure. That is very reassuring to hear. It is important that there is scrutiny of any changes that involve varying, by age, eligibility and what can be offered.

I will give members an idea of where I am coming from with my amendments. Who is the

parent of care-experienced children? I went through a horrific year last year, when I had to go home. For me, home was my mum. I am 56. I managed to go back to an environment that I knew and understood because it was there for me. When we talk about care-experienced people, we must recognise the variations in their home, their parents and who they can rely on.

In some ways, the bill blends child and adult services, which is why the minister is looking at utilising integration joint boards. There cannot be a hard line with aftercare. We have to look at moving forward in this country in a way that means that people who have gone through the care system can always go back to find the support and help that they need—and that is who their parents were. That is what my amendments try to achieve.

I will not press the amendments today—I will go back to work on them and see what I can do for stage 3. However, if we are really serious about what we are trying to achieve as we move forward, we have to accept where care-experienced children are and what they need. Hard lines do not allow for that. I will not press my amendments today, but I reserve the right to bring them back at stage 3.

Amendment 88, by agreement, withdrawn.

Amendment 127 moved—[Martin Whitfield].

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0. As the outcome of the division is tied, I will use my casting vote as convener in order for the committee to reach a decision. I vote in favour of amendment 127.

Amendment 127 agreed to.

Amendment 89 not moved.

The Convener: Amendment 128, in the name of Martin Whitfield, has already been debated with amendment 88. I remind members that if amendment 128 is agreed to, I cannot call amendments 5 and 90 due to pre-emption.

Amendment 128 moved—[Martin Whitfield].

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

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

As the outcome of the division on amendment 128 is tied, I will use my casting vote as convener so that the committee can reach a decision. I vote in favour of amendment 128.

Amendment 128 agreed to.

Amendments 6 and 91 not moved.

The Convener: Amendment 92, in the name of Roz McCall, is grouped with amendments 93, 94, 178 to 184 and 217.

Roz McCall: Amendment 92 seeks to replace section 1—it is a biggie—because the structure of section 1 is fragmented and overly complex. At its core, the support provided should be based on the individual needs of the child, who should be at the centre. The current system does not facilitate that, and amendment 92 seeks to change that. It would bring the legislation into line with the UNCRC. Given that the Parliament has passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, it is incongruous that the Government has not introduced legislation to comply with that.

Amendment 92 brings together the duties, applications, assessments and assistance into a single coherent framework. That matters because complexity in the law often translates into barriers in practice. For young people who are leaving care, clarity is not a luxury; it is essential. Amendment 92 would ensure that young people understand what assistance they are entitled to, how to access it and how long it will last. If we do not simplify and strengthen these provisions,

aftercare will remain confusing and it will be de-prioritised all too easily.

Amendment 93 would restore the power to provide financial assistance for education, training, accommodation and maintenance, and it recognises that care-experienced people are far more likely to face financial barriers when they are trying to progress. In reality, that can mean the difference between someone completing a course and dropping out of it, or the difference between independence and crisis.

Amendment 94 is about making a good law. Section 2 adds complexity without adding clarity or protection, so removing it would streamline the bill and avoid duplication and confusion. Good legislation should be as clear as possible for those who must use it, particularly young people who are navigating systems that they did not choose to enter. Those are my amendments.

The only other amendment that I want to speak to is Martin Whitfield's amendment 181, on which I seek some clarity. It seems to me that he is suggesting the incorporation of a new body to run the register, which could add another layer—another quango—to the myriad bodies that we have at the moment. I would therefore appreciate it if he could give me a little bit more information about what he is suggesting. Is it about using the current system? Is it about incorporating a new board, and, if so, how would it operate?

I move amendment 92.

Martin Whitfield: The amendments in my name in this group fall into two categories. There are a substantial number that run from 178, and there is one that sits—and stands—on its own.

Before getting into my contribution, I point out that it is incredibly beneficial, although sad, that we have a group of amendments that again address the UNCRC act—in this case, in relation to restatement and application. On numerous occasions, First Ministers, the Scottish Government, ministers and this Parliament have undertaken to ensure that the UNCRC act, which we struggled to get on to the statute book, would be respected and that opportunities would be taken to bring Scottish law into its scope.

Let me make that more meaningful. Bringing Scottish law into the scope of the 2024 act would open up a vehicle for all our young people if they feel that their human rights have been challenged or taken away from them and would give them what I genuinely believe the people of Scotland want, which is a country, a legislature and a society in which young people's rights are respected. As that has not happened in the drafting of the bill, I lodged amendments 178 to 184, using the process that the Scottish Government has adopted in relation to the UNCRC act. I refer to the ability to restate the law and bring the provisions on fostering into the bill to give young people who feel that their rights have been challenged or not fulfilled the right, should they wish to exercise it, to pursue that without the challenges and difficulties that exist at the moment and have existed for a substantial period of time. This is about restating various aspects relating to the register so that the UNCRC act would apply.

Roz McCall asked about amendment 181 and whether it seeks a new board. The amendment would provide for an appropriate board to hold the register if necessary in the future. We will all have been approached by individual fosterers and groups that represent the fostering community about the challenge that they feel in terms of parity not only with regard to whether fostering is or is not employment and whether it is paid or unpaid, but the postcode lottery—that is, where the fostering family lives in relation to where young people coming into fostering go. The purpose behind amendment 181 is to allow for something that is akin to the teaching register—I am thinking of a register that would be held by a non-Government body that would represent and speak on behalf of foster carers. It would also guide entry and retention in, and departure from, the register. It is a founding amendment that seeks to ensure compliance with the UNCRC act.

Amendment 217 allows me to wear two hats, the first of which relates to post-legislative scrutiny, which is important. During this session, we have started to recognise its importance for the first time in the Scottish Parliament's history and we have started to build it into legislation.

I will put my UNCRC hat back on. I hope that amendment 217, which is effectively a sunset clause, will create an impetus. There is strong agreement—I hope that there is still universal agreement—that we seek to comply with the Promise by 2030. Amendment 217 is a gentle indicator that that should happen or else challenges will be made at that time. If acting on such a sunset clause is required, Scotland will be in a sad and disappointing place, but for reasons of clarity and to act as an incentive, it should appear in the bill.

Natalie Don-Innes: I understand the intention behind Roz McCall's amendments 92 to 94 and Martin Whitfield's amendments 179 to 184. They all seek to strengthen the protection of children's rights by extending the reach of the 2024 act's compatibility duties. I have given careful consideration to introducing the provisions on aftercare and the register of foster carers as stand-alone provisions that separate this legislation from the 1995 act, but I am not able to support the amendments in this group.

As I have explained previously, the approach taken in the bill to amending the Children (Scotland) Act 1995 is deliberate and necessary to maintain coherence with the existing legislative framework governing aftercare and foster care. Re-enacting those provisions as freestanding ones in this bill would introduce significant complexity, require duplication of related secondary legislation and risk fragmenting closely connected provisions across multiple acts.

In relation to the register of foster carers, the provisions are administrative in nature and do not substantively determine individual placement decisions, which will continue to be made under the 1995 act.

Martin Whitfield: We have reached this point with UNCRC compatibility on a number of occasions and the Government's approach has been to say that it is just too difficult.

The choice to answer the challenges that the Supreme Court levelled at the 2024 act and the approach that was taken by the Parliament to ensure that that legislation went through was founded on an understanding that the Government would use every opportunity to bring legislation within the scope of the UNCRC act. Is that genuinely still the Government's intention, or are we just going around in circles and expecting our young people to eventually need to go all the way to Europe to enforce their rights?

10:15

Natalie Don-Innes: I strongly disagree with Mr Whitfield on that. I advise that that is still the intention and absolutely still a commitment from the Government. I will get into this when I come to my speaking note, but there is work that will be getting under way on the review of the landscape by Professor Kenneth Norrie as well as the work that has been laid out in the children's rights scheme.

The aftercare provisions in the bill will amend sections 29 and 30 of the 1995 act. Those provisions are closely connected to other parts of that act. Piecemeal change would add to the cluttering of the landscape that some bodies, including The Promise Scotland, have raised as an issue. It would also make it harder, not easier, for those who will benefit from the provisions—people who are entitled to aftercare, foster carers and children in foster care—to navigate the law.

As I have stated, the Scottish Government's commitment to the UNCRC and to delivering the Promise also underpins the commissioning of an independent review of the legislative landscape that relates to the care system, led by Professor Kenneth Norrie and CELCIS. The review is responding to concerns that the current framework for care-experienced children and young people has become complex and difficult to navigate in practice. It provides an opportunity to consider the concerns that have been raised regarding the applicability of the UNCRC act and whether re-stating existing laws more broadly might be more appropriate. The review will report later this year and will inform the next Government on whether further legislation is needed and what other practical activity would help to support children, families and those who support them as they interact with the law.

That is in addition to commitments that we have made through the children's rights scheme, which was laid before the Parliament in November. The scheme includes a commitment to on-going engagement with the United Kingdom Government to explore whether there might be a straightforward and effective way to ensure that key legislation that impacts children and young people is within the scope of the UNCRC act. I would welcome the support of members from across the political spectrum in finding such an overarching solution. Subject to progress in that regard, the children's rights scheme also includes a commitment to potentially review key UK legislation in devolved areas to determine whether re-enactment is necessary to bring them within the scope of the UNCRC act.

It will be for the next Government to decide how to proceed in light of any progress that is made with the UK Government and in light of Professor Norrie's recommendations. Proceeding with a new children's bill to replace some or all of the Children (Scotland) Act 1995 could be one of the possibilities at that time. Certainly, such an approach would assist with legislative decluttering and bringing functions that were conferred by the 1995 act within the scope of the UNCRC act. However, it would be premature to commit to doing so now while those other pieces of work remain in progress.

Ross Greer: I hope that the minister can help me out, because I am honestly struggling with what to do with the amendments in this group. I understand that a lot of the issues were caused as a result of a Supreme Court judgment, which was obviously outwith the Scottish Government's hands. However, they have also, in part, been caused by the fact that a legislative review initiated by the Government should have taken place long before now. There is a bill in front of us now, while the Government is saying that there will be a legislative review, which will conclude at the start of the next parliamentary session, and that it will be for the next Parliament and Government to make decisions in the light of that.

I accept the minister's point that the approach that has been taken with the amendments in the

names of Martin Whitfield and Roz McCall in this group is not an ideal way to make law. I accept that there would be additional fragmentation from agreeing to those amendments. However, I am weighing that up against the fact that, if we do not make those amendments, young people will lose the recourse that they would have had if there were to have been a UNCRC-compliant version of these particular provisions in the bill.

The minister said that the amendments would risk fragmenting provisions across different acts. Will she specify what the practical negative effect of that would be for care-experienced young people and others who are in the system? I am trying to balance that negative effect with the negative effects that there would be if we were to pass a law that is, in part, not compliant with the UNCRC, and which would therefore cause young people to lose the ability to try to take action to receive redress via the UNCRC's provisions.

Natalie Don-Innes: The aftercare provisions are tied up with other aftercare provisions in the 1995 act. In relation to fostering, decisions about the placement of children in foster care will still be made under the 1995 act and so will be outside the scope of protections for children's rights in the UNCRC act. That is why I am saying that the amendments would build in further fragmentation.

I absolutely understand where Mr Greer and other members are coming from in relation to the UNCRC. On the timing, I respect Mr Greer's comments about the fact that the review should perhaps have taken place before now. However, we have work to build on. There has been on-going work by The Promise Scotland on the legislative landscape, which is the work that the review by Professor Kenneth Norrie and CELCIS intends to build on. I have laid out a clear plan for that work and for when the review will report back.

Coupled with that, I have laid out points in relation to the children's rights scheme and given an assurance that that process will take place. Obviously, there is engagement with the UK Government but, if we remain unsatisfied in relation to maximising coverage for children's rights—Mr Greer is correct on the need for that, and my chosen way forward would have been to ensure maximum rights across everything—I have laid out a clear pathway for what the Government will do to ensure that the provisions fall within scope in future, taking into account a number of other matters that need to be considered. That is an appropriate way forward. I understand the temptation around the amendments, but I believe that they would lead to further fragmentation. We are on a course of resolving the issue once and for all.

Willie Rennie: To paraphrase, the minister has said that the amendments would create an untidy landscape with fragmentation, but I have not heard that there would be any disadvantage to young people with care experience. If her plan for the Norrie review results in another bill in future, and if the landscape is untidy, she can tidy it up at that point. We need to try to make improvements now, even if things are a little bit messy, to ensure that we give the best possible rights to care-experienced people.

Natalie Don-Innes: I understand Mr Rennie's points. However, I am being told by some people that the landscape is too cluttered and complex, and I am being told this morning that we can add to it further—for what I would say is no real benefit. The practical impact of bringing aftercare provisions within UNCRC scope is limited, because only 16 and 17-year-olds fall within the age range to which UNCRC requirements apply and, of course, aftercare extends to age 25, so there is a limitation there.

Proceeding to bring individual provisions within the scope of the UNCRC act on a piecemeal basis would quickly scatter the provisions—I have referred to the material across a number of acts. The amendments would undermine the clarity and coherence that people are calling for and run counter to the calls from stakeholders. I have tried my best to provide assurance that the concerns that the committee has relayed about the scope of the provisions will be considered and reviewed in line with the work on the review of the legislative landscape and the children's rights scheme. I hope that that provides assurance. We should not add to the complexity of the landscape on a short-term basis.

Willie Rennie: The minister has accepted that there will be some improvement for some people.

Natalie Don-Innes: Yes.

Willie Rennie: I think that it is worth doing at this stage, even if it adds further complexity, which can be resolved later, following the Norrie review. I would say that it is worth it. Does the minister agree?

Natalie Don-Innes: As I say, the difficulty with many aspects of the Promise bill is that I hear different calls from different stakeholders. I imagine that some people would agree with Willie Rennie, and I imagine that some will think that the amendments would complicate the landscape even further and could have a negative impact on children and young people. I cannot weigh up the benefits there.

The committee needs to consider that and the assurances that I have put on record on the work that the Government is going to undertake, and the

potential to consider a new children's bill, which I mentioned earlier, and that would address all of these issues in the round. I hope that the committee will agree that that would be a much neater and better way to proceed, so as to declutter this area—

The Convener: I am struggling to understand why we are at this stage at this point. In response to Ross Greer, you accepted that the Government could have done things differently and earlier. There have been alarm bells ringing from the very beginning, going back to the time when the bill was introduced. This issue featured heavily in our committee report, as it came up time and again in our evidence.

Why did the Government not do more on this issue sooner, rather than complaining or raising concerns now that members' attempts to rectify it are not perfect? Why did the Government not try to rectify it far earlier?

Natalie Don-Innes: I will not sit here making excuses. I understand and appreciate the point that we could have embarked on this work earlier. Other work has been under way in relation to the review that The Promise Scotland was undertaking, and the Government had to consider whether we felt that that was full enough for us to begin on this path of re-enacting the legislation, or whether that work would have to be built upon further. Through the review by Professor Kenneth Norrie, that is the position that we have taken.

I do not have to tell the committee about the raft of work that is under way to deliver on the Promise. When I speak to children and young people, they talk to me about things that they want to be changed, and those are the things that the Government has been moving on. My focus has been on trying to deliver real change for children and young people, right here and right now.

Decluttering of the legislative landscape is of course important, for all the reasons that I have laid out, and noting everything that the committee has been discussing this morning, but our attention has been focused on where children and young people have told us it is important to move.

That does not take away from the importance of the work that has been done, and that is why I have set out assurances that the Government will be moving on the issue further.

Roz McCall: This has been a very interesting discussion; I have been very quiet, listening to what has been going on.

We are in a chicken and egg situation here, especially with this group of amendments. We have a cluttered landscape and a legislative problem here. On the point about not taking the UNCRC into consideration and adding another layer of clutter, I would say that we have to deal with the clutter, and we will deal with it. I accept the assurances, but that does not get away from the question of the bill not aligning with the UNCRC in order to make that happen.

Having listened to the debate, I wish to press amendment 92.

The Convener: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0. As the outcome of the division is tied, I will now use my casting vote, as convener, in order for the committee to reach a decision. I vote in favour of amendment 92.

Amendment 92 agreed to.

After section 1

Amendment 93 moved—[Roz McCall].

The Convener: The question is, that amendment 93 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0. As the outcome of the division is tied, I will now use my casting vote, as convener, in order for the committee to reach a decision. I vote in favour of amendment 93.

Amendment 93 agreed to.

Section 2—Aftercare for persons looked after in Northern Ireland

Amendment 94 moved—[Roz McCall].

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)
O'Kane, Paul (West Scotland) (Lab)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 94 disagreed to.

Section 2 agreed to.

After section 2

Amendment 7 not moved.

The Convener: This is probably a suitable time to take a break.

10:30

Meeting suspended.

10:45

On resuming—

The Convener: Welcome back. Amendment 129, in the name of Martin Whitfield, is grouped with amendments 130 to 135 and 98.

Martin Whitfield: The title of this group sums up succinctly what we are looking at, which is care services for young people, continuing care and, most appropriately, return to care and housing. This group of amendments deals with the realistic and, unfortunately, all too common situation in transition, in which our young people—and not so young people—have challenges in their right to return to care.

I will speak to amendments 129 and 130 in particular. Interestingly, amendment 129 is based on Office for National Statistics data. The ONS analysed young people across the UK and found that the average age at which they leave home is 24, so the current age of 21 as the upper threshold for care provision makes little sense. Sadly, care-experienced adults are twice as likely to experience homelessness, and one and a half times more likely to have financial issues. As we heard from Roz McCall in relation to earlier amendments, the idea of home is as important to our cared-for community as it is to others. We cannot take their home away too early.

Amendment 129 would extend the upper age limit for continuing care to 26. In consultation with the sector and others, it was agreed that, when aged under 26, individuals may suffer events that would cause those who are not in the care sector to return home. However, those in the care sector do not have that opportunity.

Amendment 130, which is an important element in this group, is on the right to return to care. I am sure that many individuals, including me, have experienced that strange time when their children suddenly and unexpectedly return to their doorstep. We do what every parent and carer wants to do, which is to open the door and welcome them back in. The Promise says:

> "Young adults for whom Scotland has taken on parenting responsibility must have a right to return to care and have access to services and supportive people to nurture them."

In essence, that encompasses what all parents undertake to do, to the best of their ability, when their offspring return.

John Mason: I am very sympathetic to what the member is saying. Is there not a problem, though, in that, especially there if the staff in a care home have completely changed, that is not quite the same situation as when an individual goes back to their family home?

Martin Whitfield: John Mason picks up on an element that is frequently discussed, not only by young people but by those who work in the sector. We need to remember that the care sector is much wider than just care homes. That is not to take away the point about staff changes. I have seen young people who are two years into high school return to their primary school, only to discover that there are no faces that they know left there.

It also speaks to something that the Promise encapsulated. My understanding is that, possibly for the first time anywhere in the world, there needs to be a genuine concept of love underlying the approach. If a young person returns to a care home in which there are no familiar faces, they should still expect the door to be opened and for them to be brought in, because the world of corporate parenting is not about individuals—although individuals are very important in young people's lives—but about the moral drive that sits behind it. That is a challenge, and it might be a greater challenge with those children than it is in

more usual family situations, unless a child returns home to discover that their parents have moved, as I have been tempted to do on a number of occasions.

It is about trying to encapsulate—I emphasise the word "trying"—and to achieve what has sat behind the Promise since it was made all those years ago: allowing those who support our cared-for community to offer the sort of support that other people get in their family home. I absolutely admit that that is a challenge—there could be challenges in how we might define, teach and assess that support—but, if an individual's last resort is to go back to a foster family that they have not seen in a while or to go back to a care home that might have moved, the Parliament can send an important signal that that door should open when that individual knocks on it.

John Mason: I am sorry to intervene again, but you mentioned foster families. Would they have to take the person back?

Martin Whitfield: It would depend on what happened. If someone turned up at the door of a foster family and that family was capable of helping them, that should absolutely happen. I have spoken to a significant number of adults who take on fostering responsibilities, and they have all said exactly the same thing: of course they would open the door. Whether the individual would remain in that care is a different question, because, as we have talked about, what was right for that individual would need to be considered. What would be needed? What had caused the return? In the immediate instance, I hope that every person would put their hand out to someone who was facing challenges, but that immediate support could involve simply opening the door and letting the person come in and have a cup of tea.

Whether the right to return to care equals the right for someone to return to the specific situation that they were in before they left care is a different argument. It is right that we have that debate, because what happens needs to be right for the individual and—this goes back to the UNCRC—for the human rights of the other individuals in that environment at the time. We have a skill set to deal with that, when the legislation allows for that.

Jackie Dunbar (Aberdeen Donside) (SNP): My intervention is similar to the question that John Mason asked. I do not know whether you have come to this point yet, but I am genuinely not sure whether you are suggesting that foster parents would need to sign up to opening their door 20 years or more down the line. I worry that that would stop foster parents coming forward.

Martin Whitfield: That is not what I am proposing. I am proposing that individuals should have the right to return to the environmental system that we call "care". Returning to that system might involve someone returning to a foster family that they were previously with. In an emergency, it might involve a door being opened to them and a cup of tea being given while contact is made. Different situations could arise. In any situation, it is impossible for someone to return to exactly the same support as they had previously. If you redecorate your child's bedroom when they go away, they might say that they do not like the wallpaper when they come back, but they are not entitled to have their old wallpaper back.

However, that is not what these individuals are seeking, and it is not the purpose of all the amendments in this group. It is about having a system that says to individuals that they will not be abandoned or thrown away because they are care experienced and that they have a right to return to care. They do not have an absolute right to return to the exact care package or care environment that they had before they left, because they might have been much younger, for example.

If we talk about 20 years' difference, we could be talking about a child who leaves the care system at the age of six or seven. However, they would have a right to return to the system that we call "care", which is being redefined by that which underpins the Promise. As we have talked about, that would actually affect a very small number of children, but they should have the same expectation of support from their parent, albeit a corporate parent, that individuals have from their own parents.

Miles Briggs: I think that there is a lot of sympathy for what the member is trying to achieve. In North Yorkshire, for example, there is a core offer for care leavers that brings together information that people would be likely to want to access on accommodation, health, relationships and job opportunities. Is that what the member envisages that his amendments would provide, so that there would be "no wrong door" for someone to go to and access information?

Martin Whitfield: The phrase "no wrong door" is very useful. We also have amendments coming down the line about responsibilities with regard to corporate parenting. I think that the situation needs to be looked at as a whole; that challenge has been articulated by people with lived experience of care across the board, predating the bill, and almost from the start of investigations with regard to the Promise.

The fact is that there is a cut-off after which they no longer feel attached to what others would call their family. We have heard about the idea of home. What home means to individuals is very subjective and can be very different. I like the

concept of there being “no wrong door”, so that the right advice can be put there.

To go back to amendment 130, “The Promise” states:

“Young adults for whom Scotland has taken on parenting responsibility

—that is an important element—

“must have a right to return to care and have access to services and supportive people to nurture them.”

The part about “supportive people” goes back to John Mason’s point about who opens the door to a young person, but the most important element of all, of course, is “to nurture them”.

I move amendment 129.

Nicola Sturgeon (Glasgow Southside) (SNP): I will speak to amendments 131 to 134 in my name. I say at the outset that I also support the intention of the amendments in the names of Martiin Whitfield and Willie Rennie, although I believe that my amendments would more effectively achieve the objective of incorporating a statutory right to return to care. Amendment 98, in the name of Roz McCall, complements my amendments, and I would support that, too.

In introducing these amendments, I want to take a step back and answer this question: in a nutshell, what is the Promise? When people ask me that question, my answer is that an important principle of the Promise was always to ensure that young people growing up in care get the same support from their parent, which is the state in its various forms, as other young people would get from their own families.

It is a really important part of any young person’s life when they make the transition from childhood to adulthood. We all know that that process can be difficult, it is often gradual and very often it can be non-linear. As Roz McCall commented in speaking to an earlier group, someone can be well into adulthood and still have the need to return to their parental home. Those who grow up in care should have that same right, and that is at the heart of the amendments in this group.

I will speak to each of my amendments in turn. Amendment 131 would strengthen what is an existing duty in section 25 of the Children (Scotland) Act 1995 by making it explicit that any child under 18 who is homeless or living in accommodation that “is not suitable for” their welfare must be accommodated as a child. That is intended to deal with the issue that if 16 and 17-year-olds, and in particular those with care experience, find themselves homeless, they are often routed through homelessness services, not through children’s services. I do not think that that aligns with the Promise.

Amendment 132 would change what is currently a discretionary power to provide accommodation to care-experienced young people aged 18 to 21 into a mandatory duty, where accommodation is needed to “safeguard or promote” their welfare.

11:00

Amendment 133 would ensure that young people who return to care or accommodation are eligible for continuing care on the same basis as those who never left care. It would also allow continuing care to be provided in alternative accommodation where staying in the original home is not possible.

John Mason: I think that the member has answered the question that I was going to raise, which was about how that would tie in with a foster care situation. There might be new foster kids in a family and, in that situation, accommodation might simply not be available.

Nicola Sturgeon: I strongly agree with Martin Whitfield’s response to that question. This is about a duty on the system to provide a young person with the ability to return to care.

All of us who grew up in loving families may be able to return to that environment. As Martin Whitfield said, it might not be identical and we might not be able to get exactly the same love and care that we got years previously, but the ability to return to that environment is what these amendments seek to incorporate in the bill. I think that is important.

Amendment 133 would deal with a gap in the current system. At present, young people who return to care can lose access to continuing care entirely, and that creates the kind of cliff edge in support that I think we would all recognise we need to deal with.

Finally, amendment 134, which is important, would create a discretionary power—I stress the word “discretionary”—for local authorities to continue providing continuing care up to age 25 where that would safeguard or promote a young person’s welfare. It would not impose a blanket duty, but it would allow flexibility where young people might not be ready to move on from care at age 21.

Again, that approach encompasses the notion that a care-experienced young person should have the same opportunities, at various stages of their life, that most of the rest of us are able to take for granted.

I will listen carefully to the minister’s response. I make it clear, however, that I am very strongly minded to press or move my amendments today. I recognise that they might need further work ahead

of stage 3, but, in my view, they are so important to the final package that the bill represents that I have a strong desire to see us put these commitments into the bill at stage 2—we can then, by all means, work to improve any flaws ahead of stage 3—rather than leaving a gap at this stage in the hope that we might do something at stage 3. That is why I am strongly minded—subject, of course, to listening to the minister—to press or move these amendments this morning.

Willie Rennie: On my amendment 135, I have been working with Duncan Dunlop, who is a witness who previously appeared before the committee and spoke very powerfully about his experience and offered his advice. He drew attention to North Yorkshire Council's approach, which Miles Briggs has talked about today.

Whatever we do, the legislation needs to say clearly that we are always here, and that is what has been done in North Yorkshire. People will not have the time to read legislation or even to read guidance or advice sheets; they just want to know whether the system will be there for them when they need it.

All these amendments, and others, are aimed at trying to provide that collective assurance to people that we always will be here. My amendment 135 in particular seeks to give young people who leave care prematurely the right to return to a place of safety and belonging, recognising that a child's need for care does not end on their 18th birthday. The child or young person who has been looked after by a local authority for cumulative periods of at least six months at any time before their 18th birthday shall have the right to request the right to return to care at any point up to their 21st birthday.

John Mason: I am now confused, because I have Martin Whitfield's amendments, Nicola Sturgeon's amendments and Willie Rennie's amendments before me. I am sympathetic to them all, but are they alternatives to one another?

Willie Rennie: I am prepared to be pragmatic about all this. I recognise that there are competing alternatives, and that is why I am keen to hear what the minister has to say before I decide whether to move my amendments.

Roz McCall: This has already been a very interesting discussion on a subject that we have broached previously. I am very much in agreement with the concept of there being "no wrong door", which Miles Briggs mentioned.

On my amendment 98, I believe that housing should be a foundation and not an afterthought. We cannot talk about wellbeing, education or employment without having housing in the mix. I agree with Nicola Sturgeon. The current process is that this issue is looked at as one relating to homelessness rather than as a continuation of care. That is the fundamental point.

Amendment 98 would require statutory guidance to improve access to secure and suitable housing for care-experienced people. In real life, housing instability is one of the biggest drivers of crisis, homelessness and disengagement from services.

I tried to lodge a similar amendment to the Housing (Scotland) Bill, but I was very politely informed that that was the wrong avenue and that such a proposal should be put forward through an education bill or the Children (Care, Care Experience and Services Planning) (Scotland) Bill. I have taken the Government at its word and have lodged amendment 98, so I respectfully ask the minister and the committee to finally provide support for the housing needs that I believe the Promise lays out.

In general, on the other amendments in the group, I will comment quickly to John Mason and Jackie Dunbar. As much as a foster carer is the person who was assessed as offering the right support and care for an individual at one time, I do not believe that any of us is stating that any foster carer therefore needs to step up again, because the assessment of anybody returning would be different. Their needs, desires, hopes and requirement for support would be different. However, I have spoken to many foster carers in the course of this job, this process and over the years, and every single one has stated to me that care does not end when the placement ends.

Jackie Dunbar: For clarification, I totally understand and agree with that. My fear was that we would put pressure on future foster carers to have to step up when, as Ms McCall said, normally, there is no "have to" about it. That was what I was trying to get at. I would not want us to discourage people from coming forward to be foster carers.

Roz McCall: I accept that concern. I am sure that we will speak about foster carers further in the bill process and about anything that might cause concern about prospective foster carers continuing to come forward, because they are such an integral part of the process.

However, as has been stated, this is about a right to return to care. That door has to be open for care-experienced people. That is what my amendment 98 seeks to do.

Natalie Don-Innes: Convener, to clarify my position on the amendments in the group, it may be helpful to set out the Scottish Government's policy position on continuing care and aftercare.

Continuing care and aftercare policies are tailored to support a successful transition into

adulthood and independent living for young people who have been looked after in Scotland. As members will know, there is a range of statutory provision, through primary and secondary legislation, on both policies. The Government's focus in the bill has been to strengthen implementation so that fewer young people leave care too early, the need to return to care is reduced and young people are fully supported when they leave care.

Continuing care enables young people to remain longer in the place that they have called home and ensures they can progress in life at their own pace. Aftercare is the next step in offering independence through interdependence, to help them to continue to build the skills and resilience that they need as they become young adults.

If young people who have been looked after at home want and need aftercare, it supports them from the time that they leave care. I absolutely recognise that transitions are not linear and that some young people may seek to come back to their local authority for support after a period of independent living. Aftercare supports that, and the bill extends it to a wider group of care-experienced children and young people.

As we have discussed, existing legislation enables local authorities to provide aftercare beyond age 26 where appropriate, but it remains a support that is led by children's services. The needs of many care-experienced or otherwise vulnerable adults are better supported through trauma-responsive universal and targeted adult services. However, I hear loud and clear the concerns from members and stakeholders.

Martin Whitfield's amendment 129 would extend continuing care up to age 26 and enable young people to return to continuing care after they have decided to leave. I will come back to some of the bulk of the issue in a second, but I accept that there is a need for more consistency on allowances for continuing care and I advise that the Government will work with local authorities and other stakeholders to provide clear guidance on the matter.

As drafted, amendment 130 would create a right to return for young people who have ceased to be looked after or be subject to a kinship care order, extending that from age 16 to an upper limit that is yet to be specified, with specific provisions on accommodation by children's services, whereas other services and provisions would be far more suitable, perhaps, for their age, stage and circumstances.

I welcome Nicola Sturgeon's careful consideration of how young people can be better supported out of care and into adulthood. I have carefully considered all members' amendments in the group. We have had a question from John Mason about the similarity of some of the amendments and what they intend to achieve. Essentially, we want to ensure that young care-experienced people are supported in every way necessary. Therefore, although I believe that further work will be needed ahead of stage 3, the Government will support amendments 131 to 134 in the name of Nicola Sturgeon. As a package, they most closely align with the Government's preferred overall approach.

It would be good to have further discussions ahead of stage 3, as clarity is still required. It would be helpful to understand whether Ms Sturgeon intends to give local authorities a power to provide different accommodation to young people up to the age of 25 if the original accommodation is no longer available.

I have other questions, but the Government is intent on supporting amendments 131 to 134 today. I ask other members not to press or move their amendments on the issue, but I would be more than happy to continue discussions. Members will be aware that meetings have been set up to discuss further points on the bill.

Roz McCall's amendment 98 would add care-experienced people to the "reasonable preference" categories for social housing allocations. Care leavers already have reasonable preference if they are homeless or threatened with homelessness and have unmet housing needs. The Scottish Government's practice guide on social housing allocations sets out that

"landlords will want to consider awarding priority to looked after young people."

I recognise that care leavers encounter challenges in their housing situations, so I intend that my officials will refresh guidance for local authorities and corporate parents, improve information on the financial support that is available and continue engagement with the Department for Work and Pensions on how young people who leave care access its services in Scotland.

I believe that the issue was debated in proceedings on the Housing (Scotland) Bill. Amendment 98 gives rise to a risk of discrimination under the Equality Act 2010 or in terms of article 14 of the European convention on human rights by elevating the needs of care leavers above those of people who flee domestic abuse or leave prison—those are just two examples. It is not obvious how that can be objectively justified for the purposes of article 14.

I urge members not to press or move their amendments in the group, other than amendments 131 to 134, which, as I have intimated, the Government will support.

The Convener: Normally, if the Government wants something to be improved or clarified before stage 3, it asks the relevant member not to push their amendment at stage 2 but bring back a revised amendment at stage 3. Is that not the normal practice? Why is the Government not taking that approach today?

Natalie Don-Innes: That may be the normal practice, convener. However, I think that I have been clear. I have heard very strong calls from the committee about the need for continuing care and the right to return. This is the approach that I have taken, much in line with all the other conversations that I have had this morning about continuing discussions ahead of stage 3. That is exactly what I plan to do with Ms Sturgeon in relation to those amendments.

The Convener: Can I clarify whether it is the minister's view that, if Ms Sturgeon's amendments are passed at committee today, the same amendments or wording will not presented to MSPs for a final vote at stage 3? Alternatively, is it the minister's view that the wording is okay but that there needs to be more discussion about it? If the minister is saying that the Government wants to see changes to the amendments, I am just a bit confused about what we, as committee members, are being asked to support.

11:15

Natalie Don-Innes: I cannot confirm that today. I imagine that small tweaks might be required, as is usually the case and as I have said to other members about amendments that have not been pressed. As I said, this is the position that I am taking today. It is not far off some of the other conversations that we have had this morning.

Nicola Sturgeon: For my part, I want to be very clear that, if the final bill at stage 3—the bill that the Parliament is ultimately asked to vote on—contains the amendments as they stand now, I would be perfectly happy. I am indicating—I think that this is reasonable—that if the Government thinks that the amendments can be improved in some way, I am open to that discussion. It would then be for the Parliament as a whole to judge the stage 3 amendments when it sees them.

Natalie Don-Innes: I have nothing further to add. I am looking to strengthen the provisions in any way that I can. I believe that there is support across the committee for the provisions, and I will work to make them as strong as they can possibly be.

The Convener: I call Martin Whitfield to wind up and press or withdraw amendment 129.

Martin Whitfield: To echo Roz McCall, who is perhaps on the other end of the debate, this has been a very interesting area to discuss. I am glad that the Government has accepted at stage 2 that we need to discuss including in the bill the right to return to care and continuing care. It is perhaps late in the day, but I welcome the Government's confirmation on where it stands on the matter. It is important to include amendments to the bill at stage 2 that can then be worked on.

I have some concerns about the extent of the amendments that the Government has agreed to support and with regard to—I always have concerns about this—with regard to the UNCRC. However, given the minister's assurance that discussions will continue, and on the basis that the bill will be amended today, I seek to withdraw amendment 129, and I will not move amendment 130.

Amendment 129, by agreement, withdrawn.

Amendment 130 not moved.

Amendments 131 to 134 moved—[Nicola Sturgeon]—and agreed to.

Amendment 135 not moved.

Section 3—Corporate parenting duties in relation to persons looked after before age 16

The Convener: Amendment 95, in the name of Roz McCall, is grouped with amendments 136 to 138, 140, 141, 166, 169, 221 and 224.

Roz McCall: Amendment 95 seeks to align section 3 with the needs-based approach. The child is meant to be at the centre of the process, whether assistance is needed or should remain in the background. Having a process in which the person's individual needs are not accommodated does nobody any favours.

Amendment 95 seeks not only to broaden the age range but to allow local authorities the flexibility to ensure that the needs of the individual are placed at the centre. Consistency matters, and my amendment seeks to ensure that section 3 reflects the same needs-led principle that is applied elsewhere. Without it, we risk sending mixed messages about who qualifies for support and why.

I will not speak to any of the other amendments in the group. Those are my reasons behind amendment 95.

I move amendment 95.

Martin Whitfield: The amendments that I have lodged in this group relate to unusual instances and instances in which identifying the age of the young person can be challenging. I lodged them in relation to the corporate parenting duties and guidance provisions in the light of the purpose behind the Promise, which is to give our cared-for young people the best opportunity to be loved and

set up for the future as they progress through life. My proposals form part of the obligation that I seek to place on corporate parents to do their best for those young people and to ensure that they have all the necessary legal paperwork and the best emotional and empathetic support.

My amendments 136, 140 and 141 relate to specific areas in which questions can arise. They seek to place on corporate parents an obligation to ensure that they do the best for the young people who come before them.

Ross Greer: Section 63 of the Children and Young People (Scotland) Act 2014 requires corporate parents to

"have regard to any guidance … issued by the Scottish Ministers",

yet ministers are not required to publish such guidance. Ministers may do so, and thus far they always have done, but I think that that should be a requirement. If corporate parents are required to follow the guidance, there should be a requirement that the guidance must always exist.

Amendment 137 would require ministers to issue guidance in relation to corporate parenting. It seeks to change the provision in section 63(2) of the 2014 act whereby that guidance "may" include advice or information about certain matters by providing that it "must" do so. Rather than setting out an exhaustive list, I have sought to provide a starting point or baseline for the areas that the guidance must cover.

In order to keep the Promise by 2030, the guidance that ministers produce should include regular renewal of corporate parenting training. In our stage 1 report, the committee recommended

"that consideration should be given to mandatory training for all corporate parents, and that there should be a requirement to update this training on a regular basis."

To be effective, the guidance should be accompanied by training. Alongside amendment 137, which seeks to make the change from "may" to "must", amendment 138 would therefore require

"training (including renewal of training) in relation to corporate parent responsibilities"

to be included in the guidance that is published by ministers.

I am not proposing a dramatic change in the current system; I simply want to ensure that the guidance that must be followed will always exist and that it must include training content.

Martin Whitfield: Does Ross Greer think that the areas covered in my amendments could be included in the guidance to ensure, in essence, that members of our cared-for community can expect the best to be done for them as they launch off into the future?

Ross Greer: That would probably be helpful. It would be advantageous to reconcile the two issues at stage 2. If Mr Whitfield's amendments and mine are agreed to, a little bit of tweaking might be required at stage 3, but I absolutely agree on that principle, and I will certainly be supporting Mr Whitfield's amendment 136.

Paul O'Kane: My amendment 166, along with its consequential amendment 219, would require the Scottish ministers to make regulations regarding data collection and reporting for corporate parents. It would create a more streamlined and effective data collection and reporting requirement for corporate parents, to ensure that accurate information about care-experienced people is publicly available.

The data collection requirements should include longitudinal data on the outcomes of care-experienced people throughout their lives—in particular, on their ability to access housing, employment, education and training—and equalities data on children taken into care and on the families they have been removed from, which could include information about protected characteristics and care experience, so that patterns could be identified and any systematic bias addressed. The requirements should also cover opportunities to better target early intervention and family support.

For local authorities, the requirements should cover data on the extent to which advocacy services are being utilised and on how care-experienced young people are engaging with advocacy more broadly—for example, whether they use a phone line, access information online or have face-to-face meetings with an advocate. The requirements should cover any other data that is deemed relevant, based on consultation with care-experienced children, adults, stakeholder groups and corporate parents within the state.

My amendment 166 seeks to ensure that we make progress toward keeping the Promise by having the most accurate data available and understanding exactly what the picture is across Scotland. As well as ensuring greater accountability, it would go some way towards setting out actionable parameters for what keeping the Promise actually means.

Willie Rennie: Like the convener, I appreciate the Government's new approach of accepting amendments that will be subject to change at stage 3. I fully expect all my amendments for the rest of the morning to be accepted by the minister on that basis, and I am prepared to work with her at stage 3 to improve them even further.

I worked with Who Cares? Scotland on amendment 169, which provides for streamlined data collection, reporting and planning duties for

corporate parents in relation to the bill's existing provisions on corporate parenting responsibilities and other outcomes of the Promise that are to be produced in agreement with the Scottish Government and COSLA. That data, which would include information on how care-experienced people view their relationships with their siblings, would support existing data collection and internal decision making. Amendment 169 is intended to provide a greater and clearer record of decisions that are made about sibling relationships.

The data that is collected would also include data on the provision of independent advocacy for care-experienced people. In the Who Cares? Scotland report "Is Scotland Keeping The Promise?", several areas are identified in which better data collection is needed in order to keep the Promise. The areas outlined in amendment 169 are important. It seeks to ensure that corporate parents take a more proactive approach to data collection and that accountability for future and previous legislation will be maintained.

John Mason: I almost intervened on Mr O'Kane on this same point. How onerous does Willie Rennie think that such a requirement would be for corporate parents? We do not want a huge bureaucracy to be built up around it.

Willie Rennie: The level of data is insufficient as it currently stands. We do not fully understand outcomes for care-experienced people, which might result in an unnecessary burden in that area. My amendment 169 represents a reasonable approach to the issue, given the data vacuum. We need that data in order to make better decisions about the public services that we provide for those people. Ultimately, my amendment is about improving public services for the longer term, which will lead to greater efficiency and effectiveness.

Natalie Don-Innes: Section 3 of the bill expands corporate parenting duties and responsibilities to all current and formerly looked-after children and young people from birth to age 26, which will mean that corporate parents can support the needs and ambitions of all those who have been looked after within the framework of care, continuing care and aftercare.

Roz McCall's amendment 95 would remove the age range and give local authorities discretion to determine whether an individual no longer needs support before the age of 26. It would mean that local authorities would no longer be required to hold corporate parenting responsibilities towards children and young people who leave care. That goes against the grain of what we are trying to achieve with the bill, so I hope that Roz McCall will not press the amendment. If she does, I encourage members to vote against it.

Martin Whitfield's amendment 136 would require local authorities, when they are uncertain about a young person's age and have reason to believe that they are under the age of 26, to assume that that is the case. While I understand the intent behind the amendment—it pertains to unaccompanied asylum-seeking children—I hope that I can assure members that it is unnecessary.

Detailed age assessment guidance is already in place to enable it to be determined whether an unaccompanied child should be accommodated by the local authority as a looked-after child or placed in adult dispersal accommodation. The age assessment generally materialises for children and young people around the age of 18 rather than 26, when their age status would very likely be settled and they would be afforded advice, guidance and support by local authorities.

I hope that that reassures Martin Whitfield that he will not need to move—

Martin Whitfield: Will the minister take an intervention?

Natalie Don-Innes: Yes.

Martin Whitfield: Is it not the case that, under current regulations and legislation, local authorities are expected to accept age assessments made by others rather than undertake that responsibility themselves?

Natalie Don-Innes: There is specific guidance on age assessment, so what Martin Whitfield says about being expected to take the age assessment from somewhere else—[*Interruption*.]

If Mr Whitfield wants to make another intervention, I would be happy to take it, as I would like to understand his point.

11:30

Martin Whitfield: My understanding is that the age assessment that is made prior to the local authority's involvement is made under guidance that relates to other areas of legislation and regulation and the local authority is essentially invited to accept that, irrespective of any evidence that is placed before it.

One of the purposes behind my amendment 136 and the other amendments is to remind corporate parents that they have the responsibility to undertake the assessments in the appropriate way. It might well be that they accept a previous assessment, but they should not take as a blanket fact something that is presented to them when the young person might present contrary evidence.

Natalie Don-Innes: I clarify that local authorities have to do their own assessment, so accommodation would not be granted on the basis

of someone else's opinion or another form of assessment.

I hope that that reassures Martin Whitfield that he does not need to move amendment 136. If he moves it, I encourage members to vote against it.

I thank Mr Greer for lodging amendments 137 and 138. I welcome any proposal that will help to strengthen corporate parents' understanding of how they can support the rights and the wellbeing of children and young people with experience of care. I fully support those amendments, which will ensure that ministers provide all corporate parents in Scotland with advice and guidance on how to fulfil their duties, and I hope that members will support them, too.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 already makes it unlawful for a public authority to act or to fail to act in a way that is incompatible with UNCRC requirements when exercising functions conferred by acts of the Scottish Parliament, Scottish statutory instruments made under powers under acts of the Scottish Parliament, or common-law powers. That duty also applies to functions of a public nature carried out under a contract or other arrangement with a public authority.

The corporate parenting duties or responsibilities under part 9 of the Children and Young People (Scotland) Act 2014 are within scope of the compatibility duty in the 2024 act, so Mr Whitfield's amendment 140 is unnecessary. I hope that he will agree and not move it.

Mr Whitfield's amendment 141 would require certain further matters to be included in corporate parenting guidance and would require ministers to ensure that adequate training was provided on those matters. The Scottish Government is committed to supporting corporate parents and to publishing statutory guidance on corporate parenting responsibilities as well as on aftercare and the definition of care experience to support the bill's implementation, and we would expect relevant corporate parents to follow such guidance. Although it is for corporate parents to undertake staff training to ensure that they can fulfil those functions, the Government funds training and networking opportunities for all corporate parents in Scotland.

Ross Greer's amendments 137 and 138 cover similar matters to amendment 141, and I hope that Martin Whitfield will not move his amendment but will support those amendments instead.

I understand the intention behind Paul O'Kane's amendments 166 and 221 and Willie Rennie's amendments 169 and 224. Reporting on progress in delivering the Promise is important, and I assure both members that work is under way in that regard through non-statutory mechanisms. "The Promise Story of Progress", which was updated in December 2025, was developed jointly with COSLA and The Promise Scotland. It already provides a strong example of the partnership working that is under way to shape our approach to understanding change. A key aspect of that is the Promise progress framework, which sets out across 10 vision statements key national metrics against which progress can be measured, including in areas such as educational engagement, attainment and restrictive practices.

Many of those metrics are drawn from data that has been published by partner organisations that supports their interpretation, and I think that that provides a strong basis for understanding progress and directing further action. However, I acknowledge that transformational change is required and that progress must be understood not only through outcomes but through the lived experiences and activities that shape them. Two additional strands of the story of progress seek to do that by focusing on organisational activity and the experiential impact on the care community.

That work is supported by the Promise data and evidence group, which was established to identify and address the data and evidence gaps that exist around the Promise, which both members spoke to. A key principle of that work is to identify, wherever possible, solutions that utilise existing data and novel data linkages to address gaps, thereby minimising additional burdens for those who work at service level.

I am grateful to Linda Bauld, Scotland's national social policy adviser, who is steering that work, and to the member organisations, including Public Health Scotland and the Improvement Service, for their productive collaboration. I definitely do not want to duplicate work, or, as Mr Mason pointed out, add unnecessary bureaucracy.

Sometimes, Government can manage to set in train actions that deliver in practice what is being sought in statute. I hope that Paul O'Kane and Willie Rennie might consider this to be one of those moments. We have already established the mechanisms to gather data and evidence, map progress and cultural change, capture experiences and make that all publicly available so that everyone can see whether we and all the delivery partners are keeping the Promise. I hope that Paul O'Kane and Willie Rennie will agree and not move their respective amendments.

The Convener: I invite Roz McCall to wind up and to press or withdraw amendment 95.

Roz McCall: I listened carefully to what the minister had to say. However, I do not believe that what she said is what my amendment 95 would do. For more than 20 years, GIRFEC has been at the

heart of everything that has been done regarding children's services. That is supposed to mean getting it right for every child and putting the child at the centre of every process. If the minister is stating that my amendment would allow councils to opt out of their responsibilities, it must be the case that every other policy that has been introduced is not working.

A theme in a lot of my amendments is consideration of the age range to which care applies. If we continue to put limits on that, there will always be a cliff edge, and that is what I am trying to change.

I do not have anything more to add with regard to the rest of the amendments in the group. I press amendment 95.

The Convener: The question is, that amendment 95 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

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

As the outcome of the division is a tie, I will use my casting vote as convener to enable the committee to make a decision. I vote in favour of amendment 95.

Amendment 95 agreed to.

Amendment 136 moved—[Martin Whitfield].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

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

As the outcome of the division is a tie, I will use my casting vote as convener to enable the committee to make a decision. I vote in favour of amendment 136.

Amendment 136 agreed to.

Amendments 137 and 138 moved—[Ross Greer]—and agreed to.

Section 3, as amended, agreed to.

After section 3

The Convener: Amendment 139, in the name of Paul O'Kane, is grouped with amendment 142.

Paul O'Kane: Amendment 139 would place duties on corporate parents

"to provide pathways and support"

for care leavers

"to find employment and training".

That includes the provision of careers guidance and support by dedicated officers, as well as the provision of dedicated work experience and traineeship opportunities.

In addition, the Scottish ministers would be required,

"as soon as reasonably practicable,"

to introduce guidance for local authorities on supporting care-experienced young people into work. That guidance would include information on

"the role of employment officers"

and how local authorities should implement employment pathways such as work experience opportunities and apprenticeships for care leavers.

The effect of amendment 139 is to require corporate parents to have dedicated employment officers who are responsible for supporting care-experienced individuals into work, and it follows examples of good practice from local authorities in Wales. In 2017, the Children's Commissioner for Wales produced the "Hidden Ambitions" report, which involved commitments from the Welsh Government to act like a large family business by providing pathways into employment for care-experienced young people who are not in education, employment or training.

As I think that we will acknowledge, one of the roles that most parents play for their children is to help them through the transitions to adulthood. That will include their entering the workplace and

moving beyond the world of formal education, and I think that that is also relevant to the duties that we place on corporate parents. If we want to do right by Scotland's cared-for and care-experienced young people, we need to ensure that people and entities are charged with acting out their corporate parenting responsibilities in all their functions, not just to care for them in the moment, but to show care by providing future and positive pathways and on-going support.

I move amendment 139.

Willie Rennie: I have been working on amendment 142 with Duncan Dunlop, to whom I referred earlier, and it seeks to build on the proven success of national education support schemes by extending the same ambition and accountability to employment, ensuring that care-experienced people can achieve economic independence and stability.

The amendment seeks to require the Scottish ministers, in exercising their functions, to ensure that every person who is care-experienced is guaranteed access to supported employment opportunities, whether part-time or full-time, up to the age of 30. Ministers would have to work with public bodies, local authorities and employers to establish a national employment scheme for care-experienced people, modelled on the successful bursary and support programmes for further and higher education; ensure flexible routes combining employment and education; and, finally, publish an annual progress report—

Miles Briggs: Will the member give way?

Willie Rennie: Yes.

Miles Briggs: The committee has just considered the Tertiary Education and Training (Funding and Governance) (Scotland) Bill. I am very sympathetic to the member's amendment, but what does he envisage being provided by the guarantee that he has referred to, if there is no guarantee of an apprenticeship opportunity or further education? I am just a wee bit concerned about the word "guaranteed" in the amendment and what it would look like in reality if something is not going to be delivered.

Willie Rennie: The guarantee is access to supported employment opportunities, and ensuring that, as with further and higher education, the range is provided on an employment basis. It is up to individuals whether they wish to take that employment, but it is a guarantee that opportunities will be available to ensure that they can advance.

I will end by saying that the final element of the amendment is the publication of a progress report on the number of care-experienced people supported into employment, training or apprenticeships.

Natalie Don-Innes: I absolutely recognise the intention behind amendment 139, in the name of Mr O'Kane, but I believe that it duplicates support that already exists in Scotland. The no one left behind approach, for example, has established an employability system, which is delivered through local employability partnerships; the Scottish Government provides funding to those partnerships so that key workers are in place to provide employability support that is tailored to the circumstances and the needs of its participants. They include care-experienced people, who are set out as a priority group for that funding. Indeed, since April 2019, almost 7,000 care-experienced people have accessed no one left behind support.

The amendment would place an unfunded additional requirement on corporate parents without sufficient clarity on the additional benefit that it is intended to create. Many corporate parents already engage with devolved employability services through local employability partnerships, as employers, as anchor institutions and as referring organisations, and creating a separate statutory responsibility risks upsetting the good practice that is already happening and is funded. Worse, it would create duplication of provision.

I do appreciate the intention behind Willie Rennie's amendment 142. Of course, we all want young people who have been in care to thrive in adulthood and to have good employment opportunities open to them. However, the amendment, in part, appears to extend beyond the employability powers that are available to the Scottish Parliament.

Over and above issues of legislative competence, the amendment would again risk placing unfunded duties on the person specified in the provision without consideration of how that should be resourced, and it would also duplicate aspects of existing devolved employability provision that, as I have just set out, are already in place.

Like amendment 139, amendment 142 ignores the funded provision that is already available to care-experienced young people as a priority group. We just need to be a little cautious in assuming that employment is always the best or first option or priority for care-experienced young people. As we have heard, it might be that an apprenticeship or further or higher education is a better fit for the aspirations of the young person before they move into employment.

11:45

We undoubtedly share the common objective of ensuring that every young person leaving care has opportunities to fulfil their potential and that they get the appropriate targeted advice and support, and to help them to do so. The 2015 aftercare regulations already expect care leavers to be given advice, guidance and assistance on education and employment opportunities. However, given the intent behind their amendments, I am happy to discuss with Paul O'Kane and Willie Rennie what more we might do in this area, whether in a legislative or non-legislative fashion, to build on the work that is already there so I ask Paul O'Kane not to press amendment 139 and Willie Rennie not to move amendment 142. Should they do so, I encourage members to vote against them.

Paul O'Kane: I realise that there is a shared ambition on the agenda and I recognise what the minister has said about existing services. However, I suggest that putting this on a statutory footing would allow for a far more dedicated focus on the specific requirements for care-experienced young people in particular.

In my opening remarks, I pointed to the good practice in Wales and what has been done there in taking a dedicated corporate parenting approach and family business. That happens in certain authorities in Scotland, such as with the family first team in East Renfrewshire, which I know particularly well. We could do more, which is why a provision in the bill is the right place to set this on a statutory footing and to formalise some of the supports that the minister refers to.

I appreciate that the minister wishes to have further discussion and debate, and that seems to be the tenor of this morning's debate. I am, of course, willing to do that, but given the importance of this issue, I will press amendment 139 at this point.

The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 139 disagreed to.

Amendment 140 moved—[Martin Whitfield].

The Convener: The question is, that amendment 140 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

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

As the outcome of the division on amendment 140 is tied, I will use my casting vote as convener in order for the committee to reach a decision. I vote in favour of amendment 140.

Amendment 140 agreed to.

Amendments 141 and 142 not moved.

The Convener: Amendment 143, in the name of Ross Greer, is grouped with amendments 157, 100, 158, 99, 159, 101, 160, 161, 165, 102 and 124.

Ross Greer: I start off the group by briefly quoting the section of the Promise that is relevant to it. It says that

"all of Scotland's institutions, organisations, national bodies and Local Authorities who have responsibilities towards care experienced children and young adults, must be aware of, understand and fully implement all their parenting responsibilities.

What care experienced children and young adults need must be at the heart of decision making, so that all of Scotland can live up to its parenting responsibilities."

Section 5 of the bill requires ministers to

"issue guidance for the purpose of promoting understanding, by public authorities … of … care-experienced persons"

Obviously, I support that, but I do not think it goes far enough. Being care-experienced is not a protected characteristic under the Equality Act 2010, so there is no public sector equality duty obligation on public bodies to consider the impact of their decisions on care-experienced people in

the way that they are required to for people who do have such characteristics.

I do not think that guidance alone will solve that issue. There is a live debate and a live question about making care experience a protected characteristic, but that is outwith our devolved competence. However, we can put general duties on public bodies to have regard to and to consider the impact that they have on care-experienced people as they go about discharging their duties in any matter that would affect those people.

Amendment 143 would put that requirement in law and would ensure a more systematic approach to considering the needs of the community. It would not predetermine decisions or the outcome of any decision making about how public authorities discharge their duties, but it would force those bodies at least to consider what impact they will have on care-experienced people. I think that that is a broad, quite simple and not particularly restrictive duty on public bodies that will force them to ask themselves that question before going about discharging their duties.

I move amendment 143.

Paul O'Kane: My amendments in this group would strengthen the duty placed on public authorities by ensuring that they must have "due regard" to guidance. Those amendments were called for by many stakeholders, including The Promise Scotland, in recognition of the well established and understood meaning of "due regard" in law.

Amendment 157 would have the effect of ensuring that people can self-identify as being care experienced, rather than being subject to a top-down definition of care experience, and of ensuring that they can access the support that they need and are entitled to. The effect is self-explanatory.

I acknowledge the on-going work to progress a universal definition of care experience, but without a clear timeline for that work, and without knowing the expansiveness and inclusiveness of the final definition, it is important for us to talk about an inclusive approach to ensure that the definition gets to where it is needed as quickly as possible. I am open to hearing the minister's update on those efforts, which I am sure she will provide shortly.

I also acknowledge the concerns that self-identification is an open process that may be abused and that people might wrongly identify themselves as care experienced. I acknowledge the risk of those unintended consequences, but I think that risk is far lower than the risks that would be caused by not having a definition as quickly as possible to allow people to access the support that they require.

Amendment 157 probes those issues and I am willing to engage in debate.

Roz McCall: I will begin by speaking to amendment 100. Trauma-informed practice should not depend on a postcode or a leadership culture. Amendment 100 would embed such practice in statutory guidance, making it an expectation rather than an aspiration. In the real world, that would shape how children and families experience services and whether they feel heard, respected and safe. That is what amendment 100 tries to do.

Amendment 99 would protect infants through informed decision making. Decisions about family time for infants have life-long consequences. The amendment would ensure that any guidance reflects the evidence on attachment, trauma and development and would not remove professional judgment but strengthen it. Without that, we risk inconsistency and the making of decisions that prioritise process over a child's development needs.

Amendment 159 would ensure that support and advocacy entitlements follow the person and are not tied to the postcode. The purpose is to prevent any loss of support when care-experienced people move between local authority areas.

Regarding amendment 101, there is a world of difference between a requirement to "have regard to" and one to "give due regard to". The amendment would strengthen the legal weight of guidance so that it must meaningfully inform any decisions. Without that, there is a risk that guidance will be acknowledged but ignored.

I have some comments with regard to amendment 157, in the name of Paul O'Kane, with which I am having some difficulty. We do not have a comprehensive definition of care experience, so it is impossible to self-identify. I think that there needs to be a better assessment process, and better support when support is needed, but muddying the water by including self-identification will maybe make the situation worse, not better.

I am supportive of the other amendments in the group, but I would like to hear more from Mr O'Kane on amendment 157, if possible. I will certainly listen to what the minister has to say, because I am concerned that what he is proposing will make the situation worse, not better.

Miles Briggs: My reason for lodging amendment 158 relates to the evidence that we had from the Social Justice and Social Security Committee, and one particular story that has stayed with me. One grandparent told us about the police coming to their home in the middle of the night to hand over their half-naked granddaughter. Obviously, the family stepped up in that instance;

in private, though, there was a lot of conversation about the concerns that kinship carers, who are most often grandparents, have about social work and the potential for children to be taken off them. As a result, they often do not reach out for help, and a crisis situation can build.

The intention behind amendment 158 is to promote a normalised offer of whole family support to kinship carers across Scotland. The independent care review said that it

"heard from many kinship care families about the lack of support they have in caring for children and the fear they sometimes have of asking for help. …

The principles for intensive family support that wrap around a family must be as accessible to kinship families as to families of origin. Support must be offered freely without kinship carers having to fight for it. Kinship carers should not feel the need to professionalise their role in order to access support."

Kinship carers continue to tell us that they struggle to find and access offers of whole family support. The Scottish Government has said that kinship carers in informal, or formal, arrangements will be included in the scope of the guidance, and that provides an important opportunity to be clear about the support that should be available to kinship carers and children and what that should look like.

If the Promise is to succeed, more children will have to be supported to live with their families. However, if kinship is relied on more and more without any investment in the supports that those children and families need to thrive, those people will feel as though they are being set up to fail. Promoting good practice with regard to whole family support offers to children in kinship care arrangements, as part of the work that the Scottish Government plans to carry out on the guidance, will, I think, help move things forward.

I will be pleased to move amendment 158.

Martin Whitfield: My amendment 165 deals with the question of restraint and seclusion. The Restraint and Seclusion in Schools (Scotland) Bill has already been discussed in the chamber, and my amendment relates to guidance on restraint and seclusion in care settings. It is very important that all of those involved in the system, not just our young people but the adults who surround and support them, are given proper and full guidance on the expectations in this respect, on the collection of data and on what is understood by these things.

I go back to some of the speeches that were made in the debate on the Restraint and Seclusion in Schools (Scotland) Bill, and the example of a child coming home from school with injuries that have no explanation, but which have happened because of seclusion, and the fact that parents will automatically have questions about what happened. However, in the settings that we are talking about, there is no physical parent for the child to go home to—they have a corporate parent. In such cases, guidance is needed all the more.

I wait to hear what the minister has to say, and I do so in hopeful anticipation that we are pushing at an open door with regard to the notion of guidance set out in the amendment, if not its wording.

Sue Webber: Scrutiny of the bill at stage 1 highlighted some concerns about inconsistency in access, funding pressures and the need for clear expectations around availability of services. My amendment 102 would place a duty on local authorities to ensure that any eligible child—who is defined as one who is

"at risk of becoming looked after"

or is otherwise specified in regulations—in their area is able to access such services if it is appropriate for them to do so. Right now, prevention is not a statutory duty and, as a result, local authority children's social work spending is increasingly skewed towards care services, with a significant proportion of resources being absorbed by servicing the demands of the care system itself.

12:00

A social worker may recommend that a child can be taken into care but has no authority over budgets for alternative services that might keep a child safely within their family home or the wider kinship network. Taking a child into care can entail costs of hundreds of thousands of pounds, whereas preventative support is often treated as an unaffordable expense. That dynamic transfers scarce resource out of poorer families and communities and increasingly into private provision. The reality means that, if there is a condition of a CPO or compulsory supervision order for a child to go into care, resources are made available. For complex residential placements, that can be hundreds of thousands of pounds, which is paid to mostly to private providers.

John Mason: Will the member take an intervention?

Sue Webber: Not at this time, as I am concluding.

A social worker cannot access the necessary services and resources that might be available to prevent that child from going into care, and that is not addressed in the bill. My amendment 124 would turn that into an affirmative procedure and, together, amendments 102 and 124 move the bill towards obligation, capability and the equity of access across Scotland.

Natalie Don-Innes: Ross Greer's amendment 143 would, through regulations, require public bodies in the exercise of their duties to have regard to the needs of care-experienced persons. The bill as introduced already contains provisions that would more appropriately take forward the definition of how and which public authorities would have regard to the needs of care-experienced persons through the development of guidance. Section 5 places a duty on public authorities to have regard to that guidance when exercising their functions in relation to care-experienced persons. I hope that that reassures Ross Greer and that he will not press his amendment 143. If he does, I encourage members to vote against it. I believe that further amendments that I intend to support in this group will appropriately meet the intention of his amendment. However, I am happy to discuss any further concerns that the member may have.

Paul O'Kane's amendment 157 would include those who self-identify as care experienced within the ambit of the guidance under section 5(1) of the bill. Although I recognise that section 5 does not explicitly include people who may self-identify as care experienced, section 5(6) enables the guidance to specify other circumstances in which someone who is cared for or supported could be considered as care experienced. That would enable provision to be made in that regard. The guidance will provide clarity on how that works in practice, ensuring that actions are proportionate and respectful, but I am happy to look again at section 5(6) to see whether further clarification could be provided on that. Mr O'Kane asked for an update on the definition of "care experienced". He will be aware that there was a consultation on that and a long period of engagement. I am more than happy to write to the committee if members would like an update on the progress so far.

I welcome Roz McCall's amendment 100 and am happy to support it, although minor adjustment may be required at stage 3. The amendment would make it explicit that rights-based, trauma-informed best practice may be promoted in the statutory guidance for care experience. The guidance will shape day-to-day practice and ensure a shared, consistent understanding of care experience across services, and set a national and consistent direction for the language used in and around the care system. Embedding rights-based, trauma-informed practice is essential to reducing stigma and improving outcomes for care-experienced people.

I agree with Miles Briggs on the importance of ensuring that kinship families receive the guidance and support that they need, but I cannot support amendment 158. My concern is not, by any means, the principle of whole family support for kinship families; it is that the guidance that will be published under section 5 of the bill is not the right place for his proposal. More appropriate guidance—some of which I have spoken to this morning—is already in place and is being developed to address kinship care more directly. I want to avoid the potential for confusion and conflation of those two important issues. I believe that guidance that is focused on care experience and kinship families is given the stand-alone prominence and direction that it rightly deserves. For those reasons, I ask Miles Briggs not to move amendment 158.

Roz McCall's amendment 99 highlights the importance of sensitive decision making for infants and their families. I assure Roz McCall that we are working to address that. National material on infant contact already exists, including Children's Hearings Scotland's infant guidance, which is aimed specifically at panel members. The forthcoming Association for Fostering, Kinship and Adoption Scotland's permanence guide, which is due for publication in April, will provide advice for practitioners. My concern about amendment 99 is that introducing infant contact into section 5 could change the focus of the guidance and create uncertainty about its intended role. On that basis, I cannot support the amendment.

I recognise the intention behind Roz McCall's amendment 159, which is to ensure consistency when care-experienced people move between local authorities. However, the amendment fails to account for variations in local capacity and service delivery models within local authority areas and does not consider the nuances and differences in service provision between local authority areas, which could potentially create a national approach. For that reason, I ask Roz McCall not to press the amendment. If she does, I ask that members vote against it.

There are three amendments with broadly the same intent: Roz McCall's amendment 101 and Paul O'Kane's amendments 160 and 161. All three seek to change the duty on public authorities to "have regard to" care experience guidance that is published as required by section 5 of the bill to either "give due regard to", under amendment 101, or "have due regard to", under amendments 160 and 161. I support the intention of the amendments, as they respond to the views raised by stakeholders during stage 1 that the duty should be to have due regard to the guidance. Although both members' proposed amendments aim to have the same effect, Paul O'Kane's amendments 160 and 161 would provide more consistency in section 5. If Roz McCall is content to accept that approach, I invite her to consider not moving her amendment 101.

Martin Whitfield's amendment 165 allows us to debate an important issue, which I thank him for. The Scottish Government supports the Promise's ambition that Scotland will be a nation that does not restrain its children unless in exceptional circumstances. For that reason, we are currently funding the holding differently project, which aims to strengthen our evidence base about practices that work in reducing restraint and, therefore, allow for better training and support for staff in care settings. We had originally seen merit in waiting to see the results from that project before legislating on restraint in care settings. However, we recognise that the Parliament is currently considering legislation on restraint in relevant education settings, which is likely to create a statutory basis for guidance on restraint in those settings. We also note the views expressed by Mr Whitfield, The Promise Scotland, the Children and Young People's Commissioner Scotland and others that we should take the opportunity to legislate on restraint in care settings in the Promise bill.

I want to do that, but there are two reasons why I am not able to support Mr Whitfield's amendment 165. First, the scope of the amendment needs to be considered carefully. As drafted, Mr Whitfield's amendment would cover home-based settings such as foster care and kinship care. We know that home-based care is fundamentally different from institutional care. Applying statutory guidance to family homes, as well as to institutional settings, risks blurring that distinction. I am not convinced that Government guidance on restraint in home-based settings would be practicable or workable.

Martin Whitfield: If the minister is able to confirm that an amendment relating to guidance on restraint and seclusion in care settings will appear in the Promise bill, I confirm that I will not press the amendment.

Natalie Don-Innes: Absolutely, I give that assurance—I am coming to that.

Secondly, the amendment as currently framed does not address important issues such as what the guidance would cover, who it will be addressed to and what duty they should be under to apply it. I think that it would be helpful to cover those and others issues in primary legislation, along with provisions on other matters. I acknowledge that, by the end of the parliamentary session, we may well have separate legislative provisions for statutory guidance on restraint in educational settings and children's residential care settings. There is a risk of both applying to a setting that provides both education and residential care. How we implement those provisions will need to be carefully considered. It will be important, in the next session, for Parliament to ensure that provision in those settings and in mental health settings is aligned.

Although I cannot accept Martin Whitfield's amendment at stage 2, I commit that the Scottish Government will work on an amendment at stage 3 that will provide for statutory guidance on the use of restraint in care settings. At the very least, that amendment will cover children's residential care settings and secure care settings. On that basis, I ask Mr Whitfield not to move his amendment 165, and I understand that he is not going to.

In relation to amendments 102 and 124, I absolutely share Sue Webber's ambition to keep families together in Scotland, where it is safe to do so, and to ensure that they are well supported. I value and understand the importance of ensuring that any decision made in relation to family separation is carefully considered and is based on robust assessment. There are currently statutory duties on local authorities to assess looked-after children and to provide a plan for their long and short-term needs, and there are also duties on local authorities to provide services to children in need who may be at risk of becoming looked after and to promote the upbringing of such children by their own families.

Supporting families to stay together is important, but, for some children, continuing or resuming residence with a parent would not be safe or in their best interests and the law must preserve professional judgment to act where separation is necessary. The best interests of the child are absolutely paramount and should be the prime consideration for local authorities in their assessment of a child's needs. I am committed to continuing to improve the experience of care for children across Scotland and to promoting awareness of the services that are presently available. I ask members to resist amendment 102, on the basis that the provision would not enhance or improve the support that children and families receive to remain together.

Group 8 covers a wide range of important concerns across the bill and I thank members for lodging these amendments and enabling us to debate them. In conclusion, for the reasons that I have set out, I ask Ross Greer not to press amendment 143, Paul O'Kane not to move amendment 157, Miles Briggs not to move amendment 158, Roz McCall not to move amendments 99 and 159, Martin Whitfield not to move 165 and Sue Webber not to move amendments 102 and 124. I also ask members to support amendments 100, 160 and 161.

The Convener: I call Ross Greer to wind up and to press or withdraw amendment 143.

Ross Greer: I am still inclined to think that a simple, broad provision for public bodies to have due regard is the ideal option, but I take on board what the minister has said. I am glad that she has

accepted a couple of the other amendments in the group, particularly in relation to the language of "due regard". On that basis, and in the light of her offer to continue discussions ahead of stage 3, I am content not to press amendment 143 at this point and will support the amendments that she has indicated she supports.

Further discussion will be required ahead of stage 3, because having regard to specific guidance is unlikely to be sufficient and it would be better to have a broad duty to have regard to the needs of care-experienced people and the impact that decisions can have on them.

Amendment 143, by agreement, withdrawn.

Section 4—Advocacy services for care-experienced persons

The Convener: Amendment 144, in the name of Jackie Dunbar, is grouped with amendments 146, 147, 8, 151 and 97.

Jackie Dunbar: I have carefully reflected on the evidence that we heard during stage 1 and on stakeholders' concerns regarding the lack of clarity about the definition of independent advocacy in the bill and I believe that my amendments 144 and 151 will address those concerns.

If passed, the amendments would create a requirement that the regulations that are currently provided for under section 4(1) must specify that care experience advocacy services should be independent and that those regulations will set out what criteria care experience advocacy services must meet in order to be considered as independent.

I have carefully considered the amendments from Roz McCall, Martin Whitfield and Ross Greer, which all seek, in varying ways, to add a more prescriptive statutory definition of independence to the bill. I am sympathetic to the intentions behind those amendments and their desire to provide greater clarity about how independent advocacy services will be delivered under the bill. However, I believe that, given the intended breadth of the lifelong right to access independent advocacy services under the provision, and its application across a range of circumstances, the inclusion of a restrictive definition might significantly impact on the range of persons who would have the capacity and competence to provide those services.

When we held a private session one evening with young people from Who Cares? Scotland, I heard them saying that they wanted to be able to choose who their advocate was. That person might be a teacher or a social worker. One young person said that a social worker could read by the expression on her face whether she wanted something or not. I think that some of the amendments that are before us might prevent young people from having such a person as an advocate. Local authorities have many different departments and services, but if we lump local services together as one—

John Mason: Will the member take an intervention?

Jackie Dunbar: Yes.

12:15

John Mason: Does the member accept that, although a young person might choose not to have an independent advocate and might choose, as the member has suggested, to have someone with whom they already have a good relationship, it is still important that they should be offered an independent advocate?

Jackie Dunbar: In my eyes, a teacher could be an independent advocate, if we were not limiting it by saying that the advocate had to be independent—in other words, someone from outwith the local authority. It is the young person's right to have independent advocacy, and they should always be offered it.

Ross Greer: There is broad agreement that we all want there to be some kind of independent advocacy, but, at some point, whether the provision is contained in primary legislation or in secondary legislation, which I think is the direction that Jackie Dunbar is headed in, it needs to be defined what "independent" means. Whether an independent advocate is offered or it is a requirement to have one, we need to decide what "independent" means. Before I decide whether to move my amendment, I am trying to get a sense of what the settled view of the committee is.

I am a bit concerned by what Jackie Dunbar has just said about teachers being a source of independent advocacy—

Jackie Dunbar: I said that they could be.

Ross Greer: —because they are employees of the local authority. At one end of the spectrum, there is the argument that even someone from a third sector organisation that has been contracted by a local authority could not be considered to be independent, although I think that that probably goes too far. I acknowledge that, at the other end of the spectrum, there is the argument that there are local authority employees, such as teachers, who could be regarded as independent, but I cannot see a definition of independence that a teacher, as an employee of the local authority, would meet.

Will Jackie Dunbar elaborate a bit on what she believes an appropriate definition of independence would be? Whether we include the provision in the bill or we give ministers the power to introduce it

through secondary legislation, at some point we need to define "independent".

Jackie Dunbar: A teacher would not make decisions on the care-experienced person's care, but they would be there to listen to the care-experienced person, if needed. I am not saying that the advocate should be a teacher. I am saying that the young person should have the right to choose. I was just using a teacher as an example, given what we heard in our evening session with young people. One young person said that they would want their social worker to be their advocate. Whether that is right or wrong is not for me to decide—that is for the young person to decide for themselves. It is a case of ensuring that we get it right for every child.

Miles Briggs: Will the member take an intervention?

Jackie Dunbar: I feel as though I am going down a rabbit hole.

Miles Briggs: No, I do not think that you are. I was privy to the same conversation as you were, and I completely appreciate the fact that a young person will see someone whom they trust, whether that is their teacher or their social worker, as a suitable advocate. However, Ross Greer's point was about where the conflict of interest lies in relation to who employs them. How could it be decided that the advice that they gave that young person was 100 per cent independent and was based on what the young person needed, rather than on workforce or budget pressures? That is why I have a concern about allowing someone to be the young person's advocate regardless of the organisation that they have their contract with.

Jackie Dunbar: You have just said it—the local authority would have to have a contract with anybody who performed the role. Does that mean that nobody could be an independent advocate, because the local authority would be paying for their services? In my view, you have just blown the whole argument out of the water, because, at the end of the day, the local authority would be paying for an independent advocate. Those services would be paid for.

Nicola Sturgeon: Jackie Dunbar has spoken about choice. A crucial element is that a young person should be able to choose the advocate they feel is best able to advocate for them. However, the point is that, in all circumstances, they should have the option of somebody who is genuinely and truly independent and does not have any other caring responsibilities for them. I take her point about the local authority paying—ultimately, that is a requirement—but the crucial point is that there needs to at least be the option, even if the young person does not take it, of somebody who has no other responsibilities, such as those that a teacher would have. Is that not the key point?

Jackie Dunbar: I agree, but I also believe that they should have the option of the person they trust the most, if that is their wish. I do not want them to be prevented from having the person they trust just because of, if I am being honest, a consideration about who pays that person's wages.

I move amendment 144.

Martin Whitfield: This section of the bill goes to the heart of what the Promise should be about for our cared-for and care-experienced community. In primary legislation, we are giving a young person the right to an independent advocate.

Jackie Dunbar talked about the challenge in relation to it being the local authority that pays. The reality is that civil and criminal legal aid, for example, is paid for by the taxpayer through the Government, but those advocates are independent.

We are talking about a different type of advocate. We are not talking about a friend or a confidant, such as a teacher or a trusted adult, that a young person chooses. In this case, we are talking about an individual who is there to represent the voice of the care-experienced person. The need for that individual to be independent is important on a number of levels.

Most importantly, the care-experienced young person needs to know that they have someone on their side who does not answer to anybody else, and they should be able to choose that person. Similarly, the advocate, as an experienced and professional person, needs to be able to advocate on behalf of the child without any other influences coming into play.

In relation to the comments about the roles of teachers and employers, there could be a conflict of interest with a significant number of individuals. It could be incredibly challenging for such an individual to explain that to the young person and for them to remain in the role of advocating for the young person while remaining independent. The fact that it has taken us to this stage to try to identify what "independent" means speaks to the challenge.

A number of amendments in this group are, quite frankly, not dissimilar to each other. It could be suggested that great minds think alike or, alternatively, it could be said that we have a very experienced drafting team that can see through politicians' gobbledygook. A number of options are available, but key to them all is the point that the advocate should be separate from and independent of an agreed group, including the local authority, the health board, the national

health service trust, members of those bodies, the corporate parent and a lead children's service planning body, although that list is slightly more extended in my amendment 146 than it is in others. Everyone who has lodged amendments in the group in this vein has considered that, even though the care-experienced young person might not be able to see it, society should be able to say that the advocate is independent of people who are making judgments and taking decisions on behalf of that young person.

I look forward to hearing from other members and the minister, but I feel that the point about independence needs to appear in the primary legislation, in part, as a result of some of the amendments that have been agreed to. We can then look forward to coalescing around that at stage 3.

Ross Greer: I will try to avoid repeating all the arguments that have been aired already, and I thank Jackie Dunbar for allowing us essentially to have a debate during her contribution. It is, however, worth repeating that it is clear from a lot of the evidence that we have received and the representations that many of us have received over the years that there is often a chronic lack of trust between care-experienced young people and those whose job it is to support them but who are also employed by the same local authority that the young person is in conflict with or struggling with in some way. There is a clear conflict of interest—or, at least, and equally importantly, the perception of a conflict of interest—if someone is advocating for a position that is not in their employer's best interests, especially where there is a financial implication.

Independent advocacy has been a key ask of the care-experienced community for years, and this bill is our opportunity to deliver it. The two questions that the Government needs to answer are what independent advocacy is and whether we can put it in the bill. Given that we have waited so long for the bill, it is frustrating that it does not include a definition of independence, although I accept that that is contested.

Some argue that advocacy should be provided by those who have no connection to a council whatsoever—that it should not be provided by council staff or by those who have been contracted from third sector or private organisations. That would essentially require the Scottish Government to procure advocacy services and provide them nationally. If the concern is that councils would put pressure on service providers to reduce costs, that probably only applies slightly less so to the Scottish Government, but it does still apply.

Amendment 147, which is supported by Nicola Sturgeon, uses the same language as the Mental Health (Care and Treatment) (Scotland) Act 2003 and, as Martin Whitfield has already mentioned, is very similar to other amendments in this group. I agree with him that great minds think alike, but the great minds are not sitting around this table—they are in the Parliament's legislation team. Amendment 147 uses the same definition as one that already exists in law to define independent advocacy.

I do not pretend that the language here is perfect. I lodged the amendment to see what level of consensus we can achieve, and whether we will accept a group of amendments at this stage and reconcile them at stage 3 or collectively agree not to press them, based on what the minister says. No matter what, we will clearly need to come back at stage 3 to settle this.

My decision on whether I move amendment 147 will depend on what the minister can say about whether the Government believes that we can, to some extent, define independence in the bill or whether it argues that that would have to be done at a later point in regulation. I would really struggle with that, particularly given the length of time that it has taken us to get to this stage, the opportunity that we have and the expectations of the care-experienced community about this point in particular.

Martin Whitfield: Given the discussion on previous amendments this morning, does the member agree that it might be useful to put something in the bill at stage 2 to allow those discussions to go forward rather than to stay silent and potentially end up with the same challenge that we have found ourselves facing?

Ross Greer: That is certainly the position that I am erring towards at this point. To be completely honest with the minister, from the position of an Opposition member, I can say that it is useful for something to have been agreed at stage 2, because it puts a greater degree of pressure on the Government to make proposals for stage 3 if it believes that what has been agreed at stage 2 is not adequate.

As I said a moment ago, given the length of time that it has taken for us to get to this stage and the fact that the issue has still not been resolved, my inclination is to see something agreed at stage 2 that forces us, at the very least, to revisit the issue at stage 3.

Jeremy Balfour: I start where Ross Greer finishes. There is a mass frustration in the community that we have not been able to come up with the definition of an independent advocate so far. Amendment 8 is a pragmatic solution to that.

Barnardo's has said that independent advocacy should be defined in the bill. I absolutely agree, but

we do not have a definition in the bill. Even in discussions between members this morning, there does not seem to have been clarity about what "independent" means. The Promise says that clarity about the definition is vital and needs to happen, but I do not see us, either this morning, or even in the two or three weeks before stage 3, being able to agree on a definition.

12:30

John Mason: Amendments 146 and 147 seem to give a pretty clear definition. It could be tidied up a bit, but I am inclined to support one of those amendments. I do not see what the member's problem is with amendments 146 and 147 and why he feels that we do not have a definition.

Jeremy Balfour: That definition is not necessarily inclusive enough. In fact, it may be the opposite—it may exclude others from carrying out the role. There is a genuine debate to be had. Are teachers, social workers and citizens advice bureaux equally independent?

John Mason: I think that we all agree that they are not independent. It says "a local authority" in both amendments.

Jeremy Balfour: My problem with the definition in those two amendments is that some young people will want those bodies to advocate for them. If you hang around here long enough, these things come round again. During the passage of the Social Security (Amendment) (Scotland) Bill, there was a similar debate about the definition of an independent advocate to represent a person before Social Security Scotland or a tribunal.

John Mason: Will the member allow me to intervene for a third time?

Jeremy Balfour: Why not?

John Mason: That is very kind.

Surely the point is that we need to define what is independent, and then it is up to the young person or whoever to choose whether they want to be represented by someone who is independent or someone who is not independent, such as a teacher or social worker. They would still have that choice.

Jeremy Balfour: I absolutely agree, but the definition should be broader.

Nicola Sturgeon: Will Jeremy Balfour take a further intervention?

Jeremy Balfour: Why not?

Nicola Sturgeon: To aid my understanding, is it Jeremy Balfour's position that amendments 146 and 147 are the minimum that he would require or that they do not go far enough? I wonder whether, at stage 3, we could take the current definition as a minimum and build on it. Who Cares? Scotland, for example, thinks that the definition should go slightly further. There will be other views, but is there an emerging consensus that this is a starting point?

Jeremy Balfour: I suppose that my worry is that, even if we can expand the definition further at stage 3, it will not include everyone. With respect to my colleagues and myself, I am not sure that we are the best people to make that choice. That is why the matter should be addressed through regulations at a future date. If the minister is at all sympathetic, it would be helpful if she could set a date for that to happen, so that this does not go on for too long.

Martin Whitfield: Does the member agree that, as he has witnessed this morning, the purpose behind his amendment could still be taken account of at stage 3, even if, for example, amendment 147 was agreed to?

Jeremy Balfour: Absolutely. The committee could, in theory, agree to amendment 147 and my amendment, and then we could tidy up the definition at stage 3.

My final point, without trying to labour it, is that, although we need independence, the definition needs to be broader and we need to consult further with the third sector, COSLA and those who have lived experience. The quickest and best way to do that would be by regulation at a future date. I might also come back at stage 3 to put some kind of time limit on that, so that the issue does not hang around for ever.

Roz McCall: The joy of coming last in such discussions is that you are either repeating what everybody has said or you have nothing to add. It is interesting that the phrase "great minds think alike" has been used a couple of times—we are all trying to come together to make sure that we have a definition of independence and put it in the bill. Unfortunately, the opposite is "fools seldom differ", so I do not know where we want to go with that.

My amendment 97 tries to define a genuine independent advocacy position, and I understand that it might be a little stronger and more structured than some of the other amendments in the group. I think that we have progressed in the debate today. It seems that we are in agreement that there needs to be something tangible and that we want something to happen now. Based on that, I am minded to agree to amendment 147 and not move amendment 97, but I am interested to hear what the minister has to say.

Willie Rennie: If care-experienced people had independent means and finance, that would ultimately be true independence. What we have

now is too dependent on those who have responsibilities for care-experienced people to determine who their advocates are. We are looking for something in between, because we will not get the perfect answer.

It is frustrating that we have got to this stage without that clarity being worked out. I know that there is an advantage in leaving things to regulation once legislation has passed but, too often in this place, we agree the outline before we see the detail. The bill process is the maximum point of leverage for those who want to influence things because, when something is dealt with in regulations, it often does not get the limelight or spotlight that it deserves.

Ultimately, I would coalesce around Ross Greer's amendment 147, as a staging post and so that we can come back at stage 3 to try to make a bit more progress. However, we need to try to get such issues worked out beforehand. Jeremy Balfour is right that we are not the people who should decide. Those who have much more of a stake in the issue need to determine the approach. It is disappointing that the issue has not been resolved before now.

Natalie Don-Innes: I knew that this would be a good debate, and it has been. I sense that there are mixed feelings on the issue, and it is good to air some of those. I will give some of my thoughts and then speak to points that have been raised in the debate.

The Promise tells us the importance of independent advocacy services and the role that they play in supporting and upholding the rights of children who are in care and people with experience of care. That is why we put into the bill a commitment to provide such services on a lifelong basis. I thank everyone who informed the development of the provisions in section 4, including The Promise Scotland, through its advocacy scoping report.

I recognise that the issue of independent advocacy generates strong feelings. I understand that there is a desire for greater clarity in the bill on what constitutes independence. I want to set out clearly my position on the amendments and explain why I think that Jackie Dunbar's amendments 144 and 151 strike an appropriate balance on this important matter. The bill places a duty on the Scottish ministers, through section 4, to make arrangement by regulations conferring rights of access to care experience advocacy services. The intention has always been to set out how independence is defined through regulations. Those regulations will be developed in close consultation with the care community and service providers, as required.

Jeremy Balfour: I do not want to speak too much against my own amendment, but why has that not happened already? The bill has been coming for the past two years, and you now say that we need to consult appropriate parties. Why did that consultation not take place earlier, to allow you to include a provision in the bill or lodge an amendment with a clear definition, to which Parliament could have said yes or no? I am not sure why we are having to do that after the bill is passed.

Natalie Don-Innes: There was engagement with children and young people—and, equally, with stakeholders—on a whole number of issues in the consultations that were carried out on the bill. I think that there was an underestimation of the mix of opinions with regard to the definition of "independent", and it is something that we have now come to an understanding of through the stage 1 evidence and having heard the clear mix of views of stakeholders and members across the chamber. Obviously, it is an issue that I am committed to working on now, but we have what we have in front of us today.

As I have said, I would like the regulations to be developed in close consultation with the care community and service providers, and I would have been happy to go away and look at timings in that respect. The voice of care experience is absolutely at the heart of the Promise, and I would have thought it vital for that voice to continue to set the direction in the implementation of its key measures. How the right to advocacy is defined and delivered would be one such issue.

That said, I understand the comments that have been made this morning about the definition of "independent" and whether a child or young person has to take up that offer of independent advocacy. However, that will not necessarily impact on a definition being put in the bill.

John Mason: That is an extremely good point that the minister has made, if I have understood her correctly. We can come up with a definition of "independent" somewhere, but, at the same time, the person will have the choice of an independent person or someone else.

I would also suggest that the notion of independence has been debated. We debated it in relation to the issue of commissioners at the Finance and Public Administration Committee, and we have debated it with regard to accountants in my own profession. It is a spectrum—it is not some black-or-white issue. We will never reach a clear definition of independence that everyone accepts, but at least we will have something.

Natalie Don-Innes: I absolutely agree. As I have said, I have followed the debate closely. I still have some concerns about the definition of

independent advocacy in the Mental Health (Care and Treatment) (Scotland) Act 2003. I know that it has provided a model for Mr Whitfield's amendment 146 and Ross Greer's amendment 147, but I know, too, that it was developed for the specific context of the provision of mental health care, with particular safeguards and timeframes in mind. I hear what Mr Greer has said about tweaking his amendment for stage 3.

I had been intending to support Jackie Dunbar's amendments in relation to taking the term "independent" out of the bill, but given the committee's strength of feeling, I would ask members to support Mr Greer's amendment, on the understanding that we will have to come back at stage 3 to consider the issue further.

Moreover, to ensure that nobody is excluded from being able to provide advocacy services, I want something to be included in the bill about a child not having to take up the offer of an independent advocate—

Miles Briggs: Will the minister give way?

Natalie Don-Innes: Just one second, Mr Briggs. I want to ensure that a child will not have to take up the offer, if they have a better and proven relationship with another advocate who is not defined as independent under whatever definition we get to in the bill. They would be able to continue that relationship, and it would put their choice at the heart of things.

I will take Mr Briggs's intervention and then I will sum up.

Miles Briggs: I just want to put on record a conversation that we have been having as this committee meeting has gone on. A lot of young people are looking to that trusted person to be almost a facilitator in accessing services. I would not want to take away from what Jackie Dunbar has been highlighting with regard to the person in question being the trusted person whom the young person would want to be their advocate, but there is a conflict of interest issue to take into account, too.

I think it wise that we agree to amendment 147 today, but its definition of "independent", and who the individual in question could be, could still be looked at in terms of that facilitator role. That will be for stage 3, though, and we could also reach out to the sector to see what it thinks. We have all heard the voice of care-experienced young people, and the fact is that they want that individual, even if there is a conflict of interest.

Natalie Don-Innes: Thank you, Mr Briggs. That is something that can absolutely be taken into consideration in advance of stage 3.

To sum up what I imagine may have struck members as quite a complicated speaking note, I encourage members to support amendment 147 and not to move the other amendments in this group.

12:45

Jackie Dunbar: I am absolutely of the opinion that my amendments 144 and 151 would have provided certainty that the independence of an advocacy service is required as part of the regulations. Listening to the room today, I am still of the opinion that it is not up to us to decide on behalf of young folk who is the best person to advocate for them.

Willie Rennie said something that I agreed with, which was that we should not be agreeing the outline of something without the detail behind it—I totally get that. I would worry that, if I pushed this proposal today, we would end up curbing the choice of the person, so I will not press amendment 144 and hope that the matter gets resolved at stage 3.

Amendment 144, by agreement, withdrawn.

The Convener: Amendment 145, in the name of Paul O'Kane, is grouped with amendments 148, 9, 10, 96, 149, 150, 154 and 155.

Paul O'Kane: Amendments 145 and 154 would ensure that the right to access advocacy services is extended to include parents who are in contact with the care system. We know that many parents of care-experienced people struggle to effectively interact with the process around hearings.

The Promise states that advocacy must be readily and quickly available to all families who are in contact with the care system. I believe that the amendments would ensure that that could be realised.

The Promise Scotland and National Youth Advocacy Services Cymru argue that, often, parents who interact with the children's hearings system and social work services have great difficulty engaging with the system. I think that many members will recognise that through their discussions with care-experienced people and their families and with many of the support organisations that are set up around them, and through evidence that has been led here and elsewhere.

Amendment 145 would enable families to access advocacy. It would make the system more equitable and go to the heart of delivering a fairer system that can deliver on keeping the Promise.

I move amendment 145.

Martin Whitfield: I have three amendments in the group: amendments 148, 149 and 155. They concern the geographical challenges of our rural communities, which the committee heard strong evidence about during stage 1.

The purpose of the amendments is to specifically highlight that consideration needs to be given to rural and deprived communities, so that full access is available. To pick up on Willie Rennie's earlier comments, if everyone was independently wealthy, we would not have this challenge, but that is not the case, and the reality is that those in our rural and deprived communities face some of the greatest struggles. The amendments would place in the bill an acknowledgment both that that fact has been noted, as was done by the committee at stage 1, and that it must also become a specific consideration in the provision of services.

Amendment 155 would define deprived areas by making reference to the Scottish index of multiple deprivation.

Jeremy Balfour: Amendment 9 is designed to put something in black and white so that everyone is absolutely clear that advocacy services for care-experienced children must be provided on an opt-in basis. Children should always be made fully aware of their rights and options, but advocacy should never be forced upon them. If we go for an opt-out model, children might feel pressured to have to share their story with yet another individual whom they do not know and have no connection to, and might create a forced demand for the service of advocates.

Advocacy helps people to express their views and to make informed decisions. Advocates help children and their families navigate the complex landscape and support them to make their own choices. Advocacy is different from advice, and the two things should not be put together. It is different from having a friend or somebody else with you whom you want to be there, but it should never be forced on people on an opt-out basis. That goes against what advocacy means, and it could be viewed with suspicion. Aberlour says that insisting on advocacy will add more professionals to a cluttered landscape, and I believe that amendment 9 puts the child's best interests at the heart of a consideration of what is good for them and what they understand to be good for them.

Amendment 10 seeks to ensure that advocacy is offered to children and their families at the earliest opportunity in the hearings process. Children need to be aware of their rights at the earliest point, not at some later point when someone else decides to tell them. Informing them at the earliest opportunity is key to ensuring that children and their families get the right support up front.

I hope that amendments 9 and 10 do what the Promise is meant to do, which is to give some of the most vulnerable people the best opportunity to progress.

Roz McCall: I will not speak for long. Amendment 96 is designed to ensure that we have the right type of trauma-informed advocacy available, to ensure that the right focus is given to care-experienced people and to ensure that that provision is there across the board, rather than looking at alternative forms of advocacy that are not quite as specific or are delivered by people who are not as trained as others.

Willie Rennie: Jeremy Balfour's contribution was a devastating and pre-emptive move against my amendment.

Amendment 150 covers an awful lot of what was covered in the previous group, on independence, so I will not go back over that space. What is central to amendment 150 is the opt-out element. There is a balance to be struck because it might be that, in a very confusing and stressful environment, care-experienced people will not ask for independent advocacy. There needs to be not quite an insistence that they take it, but a full awareness that it is in their best interests to take that independent advocacy at that moment of stress. That is why I wanted, with the help of Duncan Dunlop, to use this amendment to explore that opt-out and opt-in balance.

Jeremy Balfour has set out compelling arguments around the issue, but I am keen to hear from the minister how she thinks that we can get the correct balance between those two elements. Every person will be different, and each person will require a different response from the authorities. The approach needs to be sensitive, but, equally, the service needs to be available to people who are stressed and might not want to seek advice from anybody, even though it might be in their best interests to do so.

I will leave it there and wait to hear from the minister.

Natalie Don-Innes: Group 10 covers a range of amendments relating to how the right to access care experience advocacy services should be delivered. A number of the amendments are connected, and I want to address the areas that they cover and explain my position clearly.

As drafted, section 4 seeks to provide a right to access advocacy services for care-experienced people, in order to ensure that their voices are heard and that their views are accurately represented. Paul O'Kane's amendment 145 would expand that right to advocacy support to the

family members of people with care experience. I agree that families should be properly supported, but I am mindful that advocacy is not always the answer. It is important that we understand the role that other routes to providing support to families, such as through whole family support, can play. I have concerns about whether a widening of the right to access advocacy support that will be designed for the specific needs of people with care experience is the most appropriate route to making sure that families have the support that they need.

Paul O'Kane's amendment 154 would place a requirement on Scottish ministers to consult with families of care-experienced people when developing regulations. However, section 4(7) of the bill already provides that Scottish ministers may consult with other persons in developing regulations. That allows Scottish ministers to consult with family members if they deem it appropriate. There is no need for an additional requirement on the face of the bill. I hope that that reassures Paul O'Kane and that he will not press his amendments.

Martin Whitfield's amendments 148, 149 and 155 seek to ensure that care-experienced people in rural and deprived areas have access to advocacy services through the bill. I know that the delivery of advocacy services in rural and island communities can be particularly challenging and that there are often fewer advocates covering vast geographical areas.

Section 4(3) will already place a duty on Scottish ministers, stating that

"It is the duty of the Scottish Ministers to ensure that care experience advocacy services are available … to each person who has the right."

That duty does not distinguish between urban or rural areas or between deprived and less deprived areas—it is universal. To fulfil that duty, Scottish ministers must ensure that every care-experienced person, wherever they live, can access advocacy services. Therefore, the amendments are unnecessary, although it is important to highlight those points.

Martin Whitfield: I am grateful to the minister for articulating what already exists in the bill and the proposals, and the absolute obligation that rests on Scottish ministers to ensure the availability of advocacy and other services across Scotland. I welcome that undertaking.

Natalie Don-Innes: I thank Mr Whitfield for that intervention.

In developing the regulations, we will consult carefully with the care community and service providers, including those from rural and deprived areas, about the challenges that they face. If we need to address the specific circumstances of care-experienced people, including where they live, that can be addressed in the regulations under section 4(4). Regulations are a more appropriate way to enable a tailored and future-proofed approach to meet the needs of the care-experienced community, both now and in the future.

I understand the intention behind amendments 9 and 10, which were lodged by Jeremy Balfour. Amendment 9 would require that regulations conferring rights to care experience advocacy services ensure that those rights are conferred on an opt-in basis. That reflects what we have heard consistently from stakeholders about the importance of choice and autonomy. Amendment 9 would preserve that choice. Care experience advocacy will not be a one-time offer. If someone chooses to opt in at a later stage, they will absolutely have the right to do so.

Amendment 10 would require that regulations make provision

"to ensure that care experience advocacy services are offered … at the earliest appropriate opportunity."

That would help to ensure that care-experienced people have access to advocacy support when they need it most. We know that care-experienced people have diverse needs and circumstances, and that they enter the care system at different points, through different routes and with different vulnerabilities. Therefore, what is the "earliest appropriate opportunity" will vary depending on an individual's circumstances. Amendment 10 would allow the regulations and guidance to be tailored to those diverse circumstances. It would help to ensure that care-experienced people have access to advocacy support when they need it most and in the way that is most appropriate for them.

However, I have concerns about how the amendments are drafted. I would like to work with Mr Balfour ahead of stage 3 to reflect the intention, because I believe that they reflect the priorities of the provision.

Jeremy Balfour: To go back to the point about opting in and opting out, would the minister be happy to have the amendments accepted today and to redraft the provisions? That would be my preference, so that they are not forgotten about, rather than the amendments not being moved today and something else coming forward.

Natalie Don-Innes: Yes, I would.

Roz McCall's amendment 96 would prohibit regulations from taking into account the availability of other advocacy services when determining access to care experience advocacy. Scotland has a complex landscape of existing advocacy provision, and care-experienced people might already have access to advocacy under existing

entitlements. The intention of the bill is not to cut across those existing entitlements; rather, it is to establish a new lifelong right, while recognising that existing entitlements might be more appropriate in particular circumstances.

If amendment 96 is accepted, it could create a risk of duplication and confusion. We could end up with a situation where someone has, for example, a mental health advocate and a care experience advocate supporting them at the same time. I do not think that that is good for the care-experienced person or a good use of resources. I have repeatedly heard from stakeholders about the importance of ensuring that advocacy is relationship based and responsive to individual needs. In some cases, the most appropriate route might be for a care-experienced person to access existing advocacy services, particularly if that is their preference.

The bill will already give Scottish ministers the power to specify in regulations the circumstances in which the right to care experience advocacy can be exercised. Amendment 96 would also remove the flexibility that the bill's structure provides to develop a nuanced approach that will ensure that care experience advocacy services are available while not cutting across existing entitlements. I therefore ask Roz McCall not to move amendment 96. If she is minded to move the amendment, I ask the committee to vote against it.

13:00

I understand the intentions behind Willie Rennie's amendment 150 and I know that some stakeholders have argued strongly for the approach that is in the amendment. This is another contested issue with differing opinions. We all want to ensure that care-experienced people have access to high-quality, relationship-based advocacy, and I agree with some of the inherent principles behind the amendment.

I agree with Willie Rennie that advocacy should be relationship based and built on trust and continuity. Advocates should be able to attend key meetings where decisions are made, and there should also be transparent monitoring of effectiveness. Those are operational matters that should be covered by the regulations and, following consultation with the care community and service providers, I hope that that would be the case.

However, I cannot support the other matters that he considers should be included in those regulations. The requirement that advocacy services be

"fully independent from local authorities and care providers"

is a point that we have gone over and will come back to.

There is another serious concern with the opt-out model, which is that it could create a power imbalance, with pressure falling on care-experienced individuals to dismiss or resist the allocation of a professional advocacy worker. That would be problematic for children or care-experienced people who have complex communication needs and who might find it difficult to actively refuse advocacy support. The right to advocacy should be based on informed consent and not on assumed consent that individuals must actively refuse.

Therefore, although we might agree on some matters that are in the amendment, I cannot support others.

Willie Rennie: Does the power imbalance not operate equally in the other way as well? If a care-experienced person believes that they must ask for something, is it not in itself daunting to need to choose where to go? How do we get the balance right between those two opposing elements?

Natalie Don-Innes: I agree that it is difficult to strike the right balance—that is a good point. However, having an opt-in will still leave the choice in the child or young person's hands, rather than making them feel that they need to say that they do not want to take the option of advocacy. An opt-in will be more centred around their opinion. As I said, we agree on some points in the amendment—but not all of them—so, ahead of stage 3, we could consider what could be done.

Although I cannot support some of the drafting in amendments 9, 10 and 150, I welcome the opportunity for further discussion on them ahead of stage 3 so that we can reach a point at which we are confident that they are drafted in a way that best reflects the intentions behind them.

If Paul O'Kane, Martin Whitfield and Roz McCall are minded to press or move their amendments, I urge the committee to vote against them. If Jeremy Balfour moves amendments 9 and 10, I would be happy to support them, given the agreement to have further discussion. If Willie Rennie moves amendment 150, I ask members to vote against it.

Paul O'Kane: This has been a fulsome debate on the importance of advocacy and understanding the scaffolding and ancillary services that are required to support care-experienced people. I acknowledge much of what the minister said regarding her willingness to engage with other colleagues ahead of stage 3. It is important that we explore the issue of the wider role of advocacy, particularly for parents and families. I recognise what the minister said about provisions that already exist to support advocacy and the

differences that exist in how people access and require advocacy.

Given the minister's undertaking to engage ahead of stage 3, and also the undertaking that she gave to Mr Whitfield in relation to his amendments, I am happy to withdraw amendment 145 and re-engage ahead of stage 3.

Amendment 145, by agreement, withdrawn.

Amendment 146 not moved.

Amendment 147 moved—[Ross Greer]—and agreed to.

Amendments 148 and 8 not moved.

Amendment 9 moved—[Jeremy Balfour].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Adam, George (Paisley) (SNP)
Briggs, Miles (Lothian) (Con)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

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

Amendment 9 disagreed to.

Amendment 10 moved—[Jeremy Balfour].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Briggs, Miles (Lothian) (Con)
Greer, Ross (West Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)
Rennie, Willie (North East Fife) (LD)
Ross, Douglas (Highlands and Islands) (Con)

Against

Adam, George (Paisley) (SNP)
Dunbar, Jackie (Aberdeen Donside) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Mason, John (Glasgow Shettleston) (Ind)
McLennan, Paul (East Lothian) (SNP)

The Convener: The result of the division is: For 5, Against 5, Abstentions 0. As the outcome of the division is tied, I will use my casting vote as convener in order for the committee to reach a decision. I vote in favour of amendment 10.

Amendment 10 agreed to.

Amendments 96 and 149 to 151 not moved.

The Convener: That concludes today's consideration of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at stage 2. I thank the minister, her supporting officials and members for their attendance. The committee will continue its consideration of the bill at its meeting on 11 February.

Meeting closed at 13:07.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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