OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Education, Children and Young People Committee

Wednesday 11 February 2026

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 11 February 2026

CONTENTS

EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
6th 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)
Aisha Pereyra (Scottish Government)
Fulton MacGregor (Coatbridge and Chryston) (SNP)
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 11 February 2026

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Care Leaver Payment (Scotland) Regulations 2026 [Draft]

The Convener (Douglas Ross): Good morning and welcome to the sixth meeting of the Education, Children and Young People Committee in 2026. We have received apologies from Willie Rennie.

The first item on our agenda is consideration of subordinate legislation that is subject to the affirmative procedure. The committee will take evidence from the Minister for Children, Young People and The Promise and her officials on the draft Care Leaver Payment (Scotland) Regulations 2026. The minister will then move the motion to approve the instrument.

I welcome Natalie Don-Innes, the Minister for Children, Young People and The Promise; Gavin Henderson, deputy director for keeping the Promise; Aisha Pereyra, team leader for the care leaver payment; and Susan Bonellie, a lawyer from the Scottish Government legal directorate.

I invite Ms Don-Innes to speak to the draft instrument.

The Minister for Children, Young People and The Promise (Natalie Don-Innes): I thank the committee for inviting me to give evidence on the draft Care Leaver Payment (Scotland) Regulations 2026 and welcome the opportunity to assist the committee in its consideration of the regulations.

The Scottish Government is absolutely committed to keeping the Promise to all our children and young people and to making Scotland the best place in the world to grow up. That commitment resonates strongly with me personally and I remain dedicated to ensuring that that commitment extends to all children and young people with care experience as they transition from care and move on into adulthood and independent living.

Moving into adulthood is extremely challenging for any young person of any age, but the challenges can be exacerbated when there are limited support networks in place. Many young people who move on from care do not have the same informal support networks that other young people have during the transition points in their lives. Financial stress and strain for young people moving on from care can quickly escalate to create a multitude of challenges and can lead to financial hardship. Our intention with the care leaver payment scheme is to provide additional financial support for young people who are moving on from care and into adulthood in order to help reduce some of the challenges faced during that transition.

The regulations will allow local authorities to make a one-off £2,000 payment to care leavers at the point when they leave care or continuing care. The payment will be made by the local authority that last looked after the young person and the regulations allow the young person autonomy over how they wish to spend or save the payment.

I have listened to the voices of care-experienced young people and understand how important it is for their experiences to be reflected in policy design. I want to get the new payment right and to ensure that its structures are based on solid evidence and real-time feedback from the care community and workforce. My officials have consulted extensively on the design and development of the care leaver payment and have co-designed it with people who have experience of care and those who provide support to care leavers in order to ensure that the voices of lived experience and of those with professional expertise have been incorporated into the design of the payment.

A full public consultation, a series of safeguarding workshops with practitioners and our targeted engagement with care-experienced young people have all contributed to the development of the payment to best meet the needs of our young people as they move on from care. Stakeholders have welcomed the new payment as providing an additional opportunity to reduce the vulnerability and financial barriers that young people face when moving on from care.

The Scottish Commission on Social Security has scrutinised the draft regulations and produced a report. I thank the commission for that thorough consideration and welcome the first observation within the report, which is that the new payment is a welcome addition to the existing support available to young people who are leaving care and is another step the Scottish Government has taken towards keeping the Promise. The Scottish Government's response to the commission's report was laid alongside the draft instrument.

I welcome the committee's questions on the draft regulations and would be happy to provide any further information.

The Convener: Minister, you mentioned the public consultation. That closed in January 2024.

Why has it taken two years since then to bring the instrument forward?

Natalie Don-Innes: I will bring in my official, Aisha Pereyra, to say more in a moment, but a number of things had to be considered following the consultation, including the delivery vehicle and the safeguarding of children. We had to deal with a number of matters to really ensure that we got the payment right, based on what we heard during the consultation and on our engagement. Aisha may be able to say more about the full timeline.

The Convener: Before we come to your official, were those issues things that ministers and officials had anticipated? When you were carrying out your consultation, which went on until 26 January 2024—which is almost two years ago—did you think that there would be a two-year break? Did you anticipate that, or did unexpected issues that were raised during the consultation lead to the payment sitting in abeyance for a couple of years?

Natalie Don-Innes: I will have to ask my officials to clarify that.

Aisha Pereyra (Scottish Government): We had to create an enabling power in primary legislation for the payment, and the enabling power in the Social Security (Amendment) (Scotland) Act 2025 did not commence until 10 May 2025. That work was going on concurrently with our consultation procedure.

After the consultation, which had a very good response rate—there were more than 70 responses—we held in-person engagement sessions with 62 practitioners and young people. We thought that, in addition to that, it would make sense to hold safeguarding workshops, given that we will be giving a payment to young people. We held three safeguarding workshops with practitioners and people who support care-experienced young people. Following those workshops, we also engaged with more than 35 young people.

Each of those processes took time, but, primarily, we had to wait for our enabling power to go live on 10 May 2025.

The Convener: But we are now in February 2026. I am just curious as to why the process seems to have been quite elongated.

My other concern relates to the consultation. You said that you had a good response to the consultation, with more than 70 people responding, so have they been waiting for a couple of years wondering what will happen next? What updates have they been receiving? I assume that you would expect something to happen fairly quickly after holding a consultation. Minister, do you accept that more than two years from the consultation closing to the regulations coming to the Parliament is quite a long time?

Natalie Don-Innes: I accept that that is a lengthy period, but the committee has been given an answer on the legalities relating to the timescale. My focus was on getting the payment right for young people. Given that we are giving £2,000 to help young people to transition out of care, safeguards are needed to ensure that the child is effectively supported with the payment. My main priority was getting things right for young people.

In addition to the timings that we have already provided, as I said, the Scottish Commission on Social Security scrutinised the regulations. That took three months, so that added to the timescale, too.

A number of things added to the timescale, but I appreciate that, as the convener pointed out, there has been quite a lengthy period since the consultation.

The Convener: Are you aware of young people having missed out on the payment as a result of the lengthy period between the consultation and the regulations being introduced?

Natalie Don-Innes: There was no guarantee that the young people who engaged in the consultation would get the care leaver payment. No specific timescale was set for the payment being introduced. Obviously, there will be children who have not had the payment since the consultation, but lots of care-experienced young people prior to the consultation did not receive the payment.

The payment is a key aspect of delivering the Promise. I appreciate that we have had to wait until 2026 for the regulations, but I highlight that the introduction of the payment is an extremely positive move that will support young people when they leave care.

The Convener: What was the issue in May?

Aisha Pereyra: The enabling power commenced in May 2025.

The Convener: Could the regulations have been introduced in May or June before last year's summer recess? What is the reason for the delay until February 2026?

Natalie Don-Innes: I am not able to clarify the point about the parliamentary timescale, so I will need to ask my officials.

Aisha Pereyra: As I said, the enabling power commenced in May 2025. Once we knew that we had that power and the bill became an act, we continued at pace with the draft regulations, which,

as the minister said, went through a three-month scrutiny process with SCOSS.

The Convener: Earlier, you said that the work was running concurrently.

Aisha Pereyra: Yes. We were, of course, thinking about the draft regulations at the same time as we were going through the consultation process and holding the safeguarding workshops. The safeguarding workshops not only fed into the creation of the national practitioner guidance, which will sit alongside the regulations, but informed our thinking about having, for example, instalments in the regulations. Young people specifically said that receiving the payment in instalments would help them, and practitioners at the safeguarding workshops agreed with that. That work fed into our thinking on the draft regulations, because we wanted the regulations to be as thorough as they could be.

The Convener: Were those workshops held before or after the enabling power was granted to the Government in May?

Aisha Pereyra: Sorry—I do not have my calendar with me.

The workshops were held after the consultation; they were running concurrently—[*Interruption*.]—Yes. We ran workshops prior to the commencement of the power and maybe also once we had the commencement. They fed into the draft regulations. Once we had had the final safeguarding workshop and we were content with our draft regulations, we started the SCOSS process.

The Convener: It sounds like there was an opportunity from when the Government had the enabling powers. Most of the workshops and consultations had taken place. We still have a gap from May 2025 to February 2026, before the draft regulations were brought before the committee. Am I right in understanding, minister, that you are saying that that was because of pressure with parliamentary time? Was that the biggest issue?

Natalie Don-Innes: I could not say that for certain, although I believe that that was an aspect—as well as the further work that had to take place in preparation for bringing the draft regulations to the committee.

The Convener: Perhaps you could write to us on that, if you want to.

Natalie Don-Innes: I would be happy to do that, to clarify the point about the time between May 2025 and bringing the regulations to the committee today.

The Convener: There are no further questions. Is there anything more that you wish to say in response to the questions that have been asked, minister?

Natalie Don-Innes: I have nothing further to add.

The Convener: I invite the minister to move motion S6M-20537 in her name.

Motion moved,

That the Education, Children and Young People Committee recommends that the Care Leaver Payment (Scotland) Regulations 2026 [draft] be approved.—[*Natalie Don-Innes*]

Motion agreed to.

The Convener: The committee has agreed to the draft regulations, on which it must now produce a report. Is the committee content to delegate responsibility to me, as convener, to agree the report on behalf of the committee?

Members *indicated agreement*.

Education (Scotland) Act 1980 (Modification) Regulations 2026 (SSI 2026/19)

The Convener: The next item on our agenda is consideration of two items of subordinate legislation under the negative procedure.

Members have no comments on the regulations. Do members agree that they do not wish to make any recommendations to the Parliament on the instrument?

Members *indicated agreement*.

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2026 (SSI 2026/30)

The Convener: Members have no comments on the rules. Do members agree that they do not wish to make any recommendations to the Parliament on the instrument?

Members *indicated agreement*.

The Convener: I suspend the meeting briefly to allow for a change in the minister's supporting officials.

09:12

Meeting suspended.

09:14

On resuming—

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

The Convener: Welcome back. The final item on our agenda is day 2 of stage 2 proceedings for the Children (Care, Care Experience and Services Planning) (Scotland) Bill. Again, I welcome to the meeting the Minister for Children, Young People and The Promise, who is accompanied by her supporting officials. I remind members that the officials seated at the table are here to support the minister but are not able to speak in the debate on amendments. Therefore, members should direct their comments and questions to the minister.

As we did last week, we welcome a number of non-committee MSPs who are attending for all or part of the meeting to speak to their amendments and to participate in the debates.

09:15

Section 4—Advocacy services for care-experienced persons

The Convener: Amendment 152, in the name of Ross Greer, is grouped with amendments 153, 156 and 162 to 164.

Ross Greer (West Scotland) (Green): As the amendments in this group introduce a new topic into the debate, these will not be the briefest of remarks. I promise, though, that all my contributions in subsequent groups will be far briefer.

Estranged young people fall into a black hole at the moment, but they still have important and largely unmet needs. Those needs are often similar—and, in many cases, identical—to those of young people and young adults who are care experienced.

When the state takes children into care and therefore takes on parenting responsibilities, we recognise the need for support into adult life, generally up to the age of 25, although I realise that such aspects are up for debate as part of these proceedings. The same applies even if someone leaves care at 16, so years of additional support in some manner are still available. If someone has a family breakdown on their 16th birthday, they have at least a decade more of the need for parental support, under the Government's own logic, even though they are already of an age at which they could live independently.

On advocacy, the needs of 16 to 25-year-olds are obvious. We do not expect 16, 18, 21 or even 25-year-olds to be completely self-sufficient in all circumstances. In fact, as Roz McCall said last week, the need for advocacy or support can arise at any point throughout one's adult life. Many young adults continue to receive housing, food, clothing and financial support from family members, but there is also the bigger-picture stuff such as crisis support, housing guarantors, emotional support and general life guidance. If you are 18 and you have just moved out to go to university, the prospect of securing funding, housing, jobs and healthcare without somebody giving you some kind of advice, guidance or advocacy will be really daunting, and most young people get that sort of thing from their family.

Care-experienced young people are entitled to at least some support, and through this bill we are trying to improve the support that is available to them. However, the transition to adulthood is often the point at which family breakdown and estrangement happen in a way that does not result in a young person entering the care system. Sadly, it is often the first opportunity for those who have experienced abuse in childhood to escape that abuse, but, as a result, they are simply, and usually quite suddenly, alone in their life. They often have obscure or complex needs due to neglect and abuse that they have survived, and they are at far, far higher risk of homelessness, poverty, addiction and other health issues. They typically do not know what they are entitled to—for example, crisis grants through the Scottish welfare fund—and the lack of advocacy and support often compounds the harms that are already done to estranged young people. If you are estranged because of coercive control or similar and your healthcare records have been withheld from you, you will often not know how to access them for yourself, and it is then far harder to access the healthcare that you need.

A number of colleagues will know Blair Anderson, who works with me in Parliament but is also a campaigner for estranged young people who have survived abuse in childhood. He mentions his own example, in which his community health index number was withheld from him to prevent him seeing a general practitioner other than his own family's doctor, as part of the coercive control that was inflicted on him. Like many people—probably like most people, and certainly like most 18 and 19-year-olds—he did not know how to get that information for himself. However, unlike most young people, Blair did not have anyone to advocate for and support him at that point, as he was going through estrangement. As a result, he went through the first 18 months away from home without any treatment for severe, life-threatening depression and substance abuse.

The lack of awareness of sources of financial support very often results in young people maintaining partial contact with their abusers, who maintain control by being the source of money that they need for things such as food and housing.

I have lodged these amendments to test the interest of Parliament and the Scottish Government in doing something for estranged young people. I am certainly not wedded to the approach that I have proposed, but the fact is that, when I raised issues that affect estranged young people a number of times in this parliamentary session, I was told repeatedly that they were not the right points at which to raise them and that the bills to which I was lodging such amendments were not the right ones. I do not think that there are any bills that are more appropriate than this one; it is not the perfect bill, but there are no more appropriate bills. Indeed, there are no more bills in this portfolio area, so this will be the last opportunity to have this debate, and it is an opportunity for us to commit to doing something for estranged young people.

I am looking for a commitment from the Government to take on further work in the area. As I said, I am not wedded to the amendments, and I would not be particularly taken aback if the Government did not support them. However, we have got through this entire session of Parliament and we have gone backwards on support for estranged young people. In 2021, there was one charity in Scotland that supported such people, but I believe that it folded in 2023. No one is advocating for and supporting that group in our society, and I think that the Government needs to take on some responsibility for doing that.

I move amendment 152.

Natalie Don-Innes: I thank Ross Greer for lodging the amendments in this group. The amendments, and Mr Greer's comments, highlight the impact that estrangement can have on young people who do not have the same family support network as their peers. I have spoken with Mr Greer about my keenness to ensure that we plug that gap, which I recognise exists. However, we need to do so in a way that does not impact on the rights of the care-experienced community.

Amendments 152 and 153 would include in the bill children who are, and people who were as children,

"cared for or supported as a consequence of being estranged from their family"

as having the right to access care-experienced advocacy services, which will be implemented through regulations under section 4. However, it is important to be clear that the reasons for estrangement can be wide ranging and go far beyond the aims and the reach of the Promise and care experience.

The regulation-making powers in section 4(6)(a) that will enable Scottish ministers to set out that care experience for the purposes of section 4 can include those who are

"cared for or otherwise supported in such circumstances as may be specified".

That means that, if it is deemed appropriate, following consultation and engagement, Scottish ministers can make provision for people who are estranged from their families without express amendments to that effect being required, so far as those people are considered to have been in receipt of formal care or support in some way, such as through arrangements with a public authority. Amendments 152 and 153 would pre-empt the consultation that will inform the regulations, but I can commit to ensuring that consideration is given to estrangement during the engagement that will inform development of the regulations.

Amendment 156 seeks to provide Scottish ministers with the power to define by regulations those who are cared for or supported as a consequence of being "estranged from their family", for the purposes of section 4. That is beyond the guidance-based approach to defining care experience that is being taken forward in section 5. The amendment would set out a stronger position on estrangement than on care experience when the purpose of the guidance is to promote best practice and understanding of care experience and language use in interacting with and supporting people with care experience. I am keen to explore whether there is a suitable way to include estrangement while developing the wider guidance on care experience, and I would welcome further discussion with Mr Greer ahead of stage 3.

I am also concerned about the need to define "family" that would arise through amendment 156. We know that the term can have different meanings to different people, and particularly for care-experienced people, so we would need to be careful to avoid setting what could be seen as arbitrary parameters around that.

Amendments 162 and 163 relate to the care experience guidance under section 5. The amendments seek to take a prescriptive approach by including in the bill that additional category that must be covered in the guidance. However, that would move away from the flexibility that a guidance-based approach provides. Amendment 164 raises similar concerns.

I want to put on record and assure Mr Greer that I am very sympathetic to the intention behind his amendments. I recognise the importance of ensuring that people, especially young adults, who are estranged from their families are properly

supported and that public authorities fully understand the difficulties that they can face. That is why I have suggested looking at provisions in the bill relating to child support plans and at whether there is scope to address issues of estrangement in that way. I am happy to confirm my intention to work with Ross Greer and with advocates for estranged young people to develop amendments for stage 3. I therefore ask him not to press the amendments in the group, given the assurances that I have laid out.

Ross Greer: I am grateful to the minister for her remarks, and particularly for her commitment to work with me and others who are interested in the issue ahead of stage 3. As I said, I am not wedded to the approach that I have set out in the amendments. I wanted to raise the issue and gently challenge the Government on it. Given the minister's very welcome commitment, I will not press amendment 152.

Amendment 152, by agreement, withdrawn.

Amendment 153 not moved.

Amendment 154 moved—[Paul O'Kane].

The Convener: The question is, that amendment 154 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)
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 4, Against 5, Abstentions 0.

Amendment 154 disagreed to.

Amendment 97 not moved.

Amendment 155 moved—[Martin Whitfield].

The Convener: The question is, that amendment 155 be agreed to. Are we agreed?

Members: No.

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)

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

Amendment 155 disagreed to.

Amendment 156 not moved.

Section 4 agreed to.

After section 4

Amendment 98 not moved.

Section 5—Guidance in relation to care experience

Amendment 157 moved—[Paul O'Kane].

The Convener: The question is, that amendment 157 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)
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 4, Against 5, Abstentions 0.

Amendment 157 disagreed to.

Amendment 100 moved—[Roz McCall]—and agreed to.

Amendment 158 moved—[Miles Briggs].

The Convener: The question is, that amendment 158 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)

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

Amendment 158 disagreed to.

Amendment 99 moved—[Roz McCall].

The Convener: The question is, that amendment 99 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)

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

Amendment 99 disagreed to.

Amendment 159 moved—[Roz McCall].

The Convener: The question is, that amendment 159 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)
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 4, Against 5, Abstentions 0.

Amendment 159 disagreed to.

Amendment 101 moved—[Roz McCall].

The Convener: The question is, that amendment 101 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)
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 4, Against 5, Abstentions 0.

Amendment 101 disagreed to.

09:30

Amendments 160 and 161 moved—[Paul O'Kane]—and agreed to.

Amendments 162 to 164 not moved.

Section 5, as amended, agreed to.

Section 6 agreed to.

After section 6

Amendment 165 not moved.

Amendment 102 moved—[Miles Briggs].

The Convener: The question is, that amendment 102 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)

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

Amendment 102 disagreed to.

Amendment 166 moved—[Paul O'Kane].

The Convener: The question is, that amendment 166 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)

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

Amendment 166 disagreed to.

The Convener: Amendment 167, in the name of Martin Whitfield, is grouped with amendments 196 and 222.

Martin Whitfield (South Scotland) (Lab): Good morning. I remind everyone of my entry in the register of members' interests in respect of having been a teacher in a period that overlapped with this parliamentary session.

This group of amendments is entitled "Permanence". The amendments are about the situation when young people—in particular, very young children and babies—go into care and the time that is taken for a decision to be made about what the future holds for the young person. One of the most important elements of stability for a young person is understanding what their future will hold, because having stability, even at a pre-verbal age, allows a level of security to develop; without it, the young person constantly questions the unknown that is coming down the line.

I recognise that different views are taken, not about the importance of permanence but about the time for a decision to be made and whether there should be provisions in the bill to force the system to deal with the question of permanence in an acceptable time. It is of note that, in England, decisions about permanent care are taken four and a half times faster than in Scotland.

Looking at the history of the care-experienced community, even predating the Promise, we see that there have been discussions for 20 years about the need for permanence to be discussed early on, appropriately and in the best interests of the child. Throughout that time, Governments and individuals—certainly those who support the care-experienced community—have said that this is an outstanding sore that has not been addressed. We have received promises in the past on how the system would be sped up and how we would ensure that we get it right for every child, yet we find ourselves at the tail end of this parliamentary session with, to quote Ross Greer, the "last opportunity" to deal with this crucial issue.

Different standpoints as to whether setting a time limit in primary legislation is the answer are taken by those outside of this place—and, indeed, inside of this place. If we set a time limit in primary legislation, it has to be kept to by the system. The question then arises as to what happens if, in an individual case, that time limit means that a decision is taken that perhaps will not be in the best interests of the child. I suggest that the overriding philosophy, if not quite yet the statutory provision, is that we should get it right for every child and that there would be an opportunity to make it right. However, I understand those positions.

I am grateful to have had the opportunity to speak with the minister about the matter, and I look forward to what the minister can say by way of reassurance. We should all agree that, in the right circumstances, permanence at the earliest date in a child's life is crucially important. However, there are situations in which that is challenging. The Government, the Parliament and those that support the more formal way in relation to our cared-for community have an obligation to meet that responsibility. In the right case, permanence is the right decision, and it should not be lost because it is kicked down the line to the point at which permanence ceases to have any substantial function in supporting the development of a child. With that, I will move my amendment and I look forward to other contributions.

I move amendment 167.

Natalie Don-Innes: Permanently removing a child from their family is never an easy decision. Supporting families so that fewer children need to enter care is central to the Promise and to the intentions behind the bill, and remains a shared priority for us all.

However, as Mr Whitfield has laid out, for too many children, especially very young ones, it can still take too long to reach decisions that give them stability in their care and family arrangements, and drift and delay can occur in permanence planning. I thank Mr Whitfield for lodging the amendments in this group to enable us to discuss this important issue. However, any move to accelerate processes has to be grounded in what is best for children and young people, and shaped by the lived experience of the families who are affected by permanence decisions.

As I have communicated to Mr Whitfield, fixed deadlines risk pushing decisions to fit an arbitrary timetable, rather than responding to an individual child or young person's needs, especially where work to support a return home is still under way. Setting statutory timescales may not deliver the improvement that we all want to see. Stakeholders such as The Promise Scotland and Social Work

Scotland have been very clear in their concerns that legislating for a regulation-making power at this stage, without fuller consultation, evidence and system-wide understanding, would be premature. Permanence must also be driven by the views of a child or a young person, and setting such timescales risks forcing a system that is not child centred.

Although amendment 167 would require ministers to consult before making regulations, it would still bind ministers to introducing a statutory scheme before that wider work has taken place. A clearer understanding of where delays arise, informed by children, families and the workforce, and of the implications for practice and capacity, is needed before legislating in this area.

In addition, to promote consistent and effective practice in permanence, and to help to tackle drift and delay, the Scottish Government commissioned the Association for Fostering, Kinship & Adoption Scotland to develop three national good practice guides on permanence and kinship care, foster care and adoption. Those will be published next month and it will be important to allow time for those guides to bed in and to understand their impact.

It is also important that we monitor the impact of the changes that the bill will introduce, in order to ensure that they address Mr Whitfield's concerns about permanence. However, from my discussion with Mr Whitfield yesterday, I am aware that the work that is underway on the bill's provisions will not necessarily be enough. I believe that the bill will have an impact, but I understand that Mr Whitfield would like to see us go a little bit further.

For the reasons that I have laid out, which reflect the strong position of stakeholders, I am not able to support amendment 167. However, I advise the committee that it would be this Government's intention urgently to consult and gather evidence early in the next Parliament to build that understanding and to consider the potential role of statutory timescales in addressing drift and delay.

Finally on amendment 167, I am conscious that the committee has received correspondence from CELCIS. Officials have had constructive discussions to understand its views, and that engagement has informed the Government's position. Following those discussions, CELCIS accepted our position and welcomed the commitment to consultation and evidence gathering in the next parliamentary session.

I cannot support Martin Whitfield's amendment □222, which is contingent on amendment□167.

Martin Whitfield's amendment 196 risks significant confusion around roles and responsibilities. Put simply, the principal reporter makes decisions on the need for compulsion and does not have an active role in relation to permanence. To extend their functions into that area would be a significant and inappropriate change to the role of the reporter and to the permanence process. It would blur the lines of the role of the reporter in the decision-making process for a child or young person.

The amendment might speak to a wider misapprehension of the role of decision makers in the children's hearings system in relation to permanence. Many referrals to the reporter, and the decision-making tests themselves, do not engage at all with the issue of permanence. Those could include grounds such as school attendance and alcohol and substance misuse. Permanence is mentioned once across the 17 grounds of referral in the Children's Hearings (Scotland) Act 2011, and even then, only with respect to a need for special measures on an existing order.

Children's hearings apply a minimum intervention principle and consider the welfare of the child throughout their childhood when deciding whether to make an order and which measures to apply. They do not themselves deliver permanence, although they will often contribute. Therefore, in my view, amendment 196 does not have the right area of focus. A proper examination of the issue and an effective full-spectrum improvement programme to address permanence would have to go much wider. Courts, local authorities, other agencies and third-sector partners would all have a role to play in that.

The amendment would also create a significant administrative burden without improving the experiences of children and families. It would take vital resources away from the relational work that the Promise has told us is so important.

For those reasons, I hope that Martin Whitfield will understand why I cannot support his amendments. As we take forward the consultation and evidence-gathering work that I referred to earlier, I would welcome working with him and other members to arrive at suitable mechanisms. If the amendments are pressed, I encourage members not to support them.

Martin Whitfield: I will not take up too much of the committee's time.

I thank the minister for her contribution. Contained in it is the challenge that we face in respect of the amendments. Over the past 20 years, as the minster has pointed out, we still have not found out why there is so much delay. We do not know why things take so much longer. The good practice guides will be published next month, which, unfortunately, is after the passage of the bill.

I do not undermine what the minister has said. Throughout the entire process of the bill, we have heard words of good intention about the children's hearings system in relation to permanence. It is an incredibly challenging question that has to be answered because it is about fracturing a family and re-establishing a future for a young person. We must be grounded in what is right for the young people, and I am not convinced that placing an arbitrary timeline would put us in a worse position than the one that we are in at the moment. There may be situations in which people have to push the decision about permanence to a different venue, because of a timetable. However, we have a system that is not working.

I am mindful of the proposal that the minister has put. We cannot bind future Parliaments or Governments, but if the minister wishes to intervene to talk about lodging an amendment at stage 3 that would indicate an obligation to review the system, I would be more than happy to take that intervention.

Natalie Don-Innes: A later group of amendments covers a review of the bill as a whole, and I will set out my stance when we get there. However, there are options for considering permanence in relation to the wider review and we would want to have a stronger evidence base to go on. Hopefully, we will put something a little more firmly in place, which is what Mr Whitfield would like to see, as I understand it.

Martin Whitfield: I welcome that intervention. I absolutely agree—it would certainly not be for this section of the bill, but there are other sections in which the matter can be dealt with.

With that assurance, convener, I seek to withdraw amendment 167.

Amendment 167, by agreement, withdrawn.

09:45

The Convener: Amendment 168, in the name of Willie Rennie, is grouped with amendments 185, 103 and 104. I call Paul O'Kane to move amendment 168 and speak to all amendments in the group.

Paul O'Kane (West Scotland) (Lab): I am speaking on behalf of Willie Rennie, and will speak primarily to amendment 168, which was developed at the suggestion of Duncan Dunlop. Mr Rennie has spoken about Mr Dunlop's involvement with the Promise, both at stage 1 and in our initial stage 2 proceedings. It is important to recall his evidence to this committee prior to stage 1, in which he highlighted many of the complex issues that he hoped the bill would explore. He also highlighted many persisting issues with understanding how we support care-experienced people, improve their lives and deliver the Promise.

During Mr Dunlop's stage 1 evidence, he highlighted—quite starkly—that the number of premature and avoidable deaths among care-experienced people remains significant, and that we still do not have the range of data that is needed to understand why and how those happen, or how we might design and shape services to improve outcomes in that regard.

Amendment 168 is intended to ensure transparency, accountability and learning. One of the most urgent indicators of systemic failure is the premature deaths of care-experienced people. Where the state acts as a corporate parent, it is incumbent upon it to know when children die and why, and to act to prevent further loss. The amendment would require the Scottish ministers to lay before Parliament an annual report on the premature deaths of care-experienced people under the age of 65. The report would include the total number of deaths in the reporting year; the cause of death as officially recorded; the type and location of care setting in which the person lived during their time in care, where known; and any identified trends or learning, to inform prevention measures and policy development.

I am sure that colleagues on the committee, and more widely, would recognise the importance of that level of data. We certainly gather that on other groups in Scotland. It is crucial that we take action and take forward work to understand, when a tragedy occurs in which a care-experienced person dies, why that happened and how to prevent it.

I understand from Mr Rennie that he is willing to hear what the minister has to say and to consider working collaboratively in advance of stage 3.

I move amendment 168.

Miles Briggs (Lothian) (Con): Amendment 185 is a probing amendment that I lodged following discussions with a number of social workers as we developed our approach to the bill. Those conversations have been about reducing the bureaucracy that many of them face when carrying out their work. Through this amendment, I want to probe where ministers intend to review the bureaucracy surrounding the delivery of services. If we consider the example of North Ayrshire and the progress that has been made there, we can see that positive work has been undertaken to reduce the level and burden of reporting placed on many social workers in that part of the United Kingdom.

I really want to really hear what the minister has to say. The issue was raised consistently by social workers at a number of the events that I attended.

This is a real opportunity to declutter some of the extra workload that we place on them, if we are to give them the time to deliver the additional work that will arise from the Promise and the bill.

As I said, this is a probing amendment and I am interested to hear what the Government's approach is to the issue.

Roz McCall (Mid Scotland and Fife) (Con): Good morning—it is nice to be back. I will talk solely about my own amendments.

We are sometimes in a position of not knowing what we do not know. The minister will be well aware of my concern about the housing issues that care-experienced young people, and care-experienced people in general, face. We hear regularly that there is a serious problem, but we do not have much data on it.

My amendment 103 is intended to provide transparency with regard to housing outcomes. It would introduce annual reporting on housing outcomes for care-experienced people, which would allow us to see whether the policies that we are putting in place are actually working. What is measured tends to get improved.

Amendment 104 is intended to close an accountability loop. It would require reporting on spending priorities and outcomes that are aligned with the Promise. The Government is committed to the policy—we can see that large investments are being made—and the amendment seeks to allow us to have an idea of how the money is being spent and what the results are.

By lodging my amendments, I hope to shed a bit of light and transparency on what is happening.

Natalie Don-Innes: I thank Mr Rennie for lodging amendment 168. I share his desire to prevent the premature deaths of anyone in Scotland, and—in the context of the Promise—to prevent the disproportionate number of early deaths that are linked to outcomes from being care experienced.

However, I am concerned about the scope of the proposed duty and how it would actually work in practice. Amendment 168 assumes that the Scottish ministers would readily have access to relevant information about such matters for all care-experienced persons who are under the age of 65. However, that is not the case, especially in relation to adults who might have left the care system many years ago and whose care records might no longer be available.

As well as its being unworkable, I am concerned that, as proposed, amendment 168 could be detrimental to the privacy of care-experienced people, and that it could cause trauma and stigmatisation to their families. In addition, defining "premature death" is a medical matter. For some people, unknown or later-diagnosed health conditions can cause death earlier than might be the case in the general population.

It is important to continue to gather data on the deaths of children who are looked after and to seek to prevent more such deaths. Under regulation 6 of the Looked After Children (Scotland) Regulations 2009, notification duties are already in place in the event of the death of a child who is looked after. Further detail on reporting was set out in an update to national guidance in 2024.

Since October 2021, a national hub has been in place to review and learn from the deaths of all children and young people in Scotland. A principal aim of the hub is to channel the learning from child death reviews to inform change and improvement and, ultimately, help to reduce the number of future preventable child deaths. The national child protection/adult support and protection learning review group also meets regularly to ensure that learning is better shared between partners and to drive national improvements.

The law and processes that we have in place must be proportionate, flexible and timely to ensure that learning is relevant to the current practice context and is systematic in approach. There must be a strengthened focus on how learning can be actioned and implemented to improve outcomes for all. However, I recognise the need and collective desire to prevent as many preventable deaths as we possibly can, and I agree that there is more work to do to ensure that such learning from the information that we hold can support increased preventative activity.

I will be happy to explore the issue further with Mr Rennie ahead of stage 3 and to consider what more can be done to build on the existing work that I have set out, with a particular focus on the deaths of looked-after children and people under the age of 26 who are receiving continuing care or aftercare.

I agree with the intent behind Miles Briggs' amendment 185. Ensuring that children's care services are effective, accessible and free from unnecessary barriers, including unnecessary bureaucracy, is central to our commitment to keep the Promise. However, the issues that Mr Briggs seeks to address, including bureaucratic barriers to access or delivery, are already covered by a robust statutory framework for children's services planning, reviews and reporting. That framework is further supported by annual reports and inspection that form a core part of the children's care system. There are amendments in a later group that also relate to that and which are relevant to amendment 185.

My concern is that introducing a separate statutory

review would duplicate existing legal duties and would add complexity and, potentially, more bureaucracy to the system, almost as an unintended consequence, whereas our focus should be on delivery and improvement.

I assure Mr Briggs that the Scottish Government is committed to strengthening the existing framework, including through enhancing scrutiny of children's services plan annual reports, supporting local engagement in that scrutiny, refreshing statutory guidance and ensuring that there are clearer expectations for identifying and reducing unnecessary bureaucracy.

Miles Briggs: With the establishment of the national social work agency, what work will be undertaken here, specifically? I agree with the minister: I do not want inadvertently to create more of the bureaucracy that my amendment 185 aims to reduce. It is not clear what scoping work is taking place to explore how the profession can limit the amount of reporting that it is asked to do, which—given the amount of casework that social workers have—is consistently reported to us as one of the biggest pressures, and it is the reason why many people leave the profession much earlier or do not stay in it in their careers. What work will take place in that context?

Natalie Don-Innes: There may be a place for that in the new agency. I would be more than happy to discuss that further with Mr Briggs and with Social Work Scotland, to see whether we can address the concerns that Mr Briggs has raised through amendment 185.

Roz McCall's amendment 103 would require the Scottish ministers to report on housing outcomes for care-experienced people. I know that this issue was considered during the passage of the Housing (Scotland) Bill last year. The Housing (Scotland) Act 2025 builds upon on the strong housing rights that already exist in Scotland and brings a renewed focus on prevention.

I am acutely aware of the housing challenges that care leavers face, and the Scottish Government is committed to working with partners, including local authorities, on the best approach to reducing them. That includes plans to refresh guidance for local authorities and corporate parents on supporting young people who are leaving care, to improve information on available financial support and to continue engagement with the Department for Work and Pensions on how young people leaving care can access its services in Scotland.

It is unclear how information on housing outcomes could be gathered in practice for an annual report under amendment 103, as not all people with care experience will have a housing outcome in the social rented sector. I suggest that the partnership work that is currently under way through the Promise story of progress and the Promise progress framework is the best route for monitoring and reporting outcomes. I am prepared to look further at the housing-related data and at how that might inform improved service provision.

There are similar challenges with Roz McCall's amendment 104, which would create statutory reporting duties on expenditure, service provision and outcomes related to care experience.

The extensive partnership work that is under way, and that is being continuously developed among the Scottish Government, the Convention of Scottish Local Authorities, The Promise Scotland and partners more widely provides the most appropriate route to demonstrate progress.

As was the case with amendment 103, I note that the Promise story of progress provides the jointly agreed approach to measuring change, the key metrics against which progress can be measured and a strong quantitative basis for understanding progress and directing further action.

In addition, the work that is under way, led by Scotland's national social policy adviser Linda Bauld, to connect data sources across the Scottish Government and across organisations, notably with Public Health Scotland, is effectively improving our understanding of progress. Through Plan 24-30, there is a growing understanding and a shared vision of what, when and by whom actions must be undertaken.

It is of course important to note that funding for the Promise is complex. I have been clear with the committee on this before: success comes through both targeted and universal service provision, and it can be achieved only through an increased shift in expenditure and activity, from reactiveness to prevention.

Our approach to whole family support aims to remove barriers to enable local partners to have greater flexibility. That alignment and the potential consolidation of funding will support a fuller understanding of total expenditure on Promise-related activity.

Some of the outcome indicators listed in—

Roz McCall: Will the minister give way?

Natalie Don-Innes: I will.

Roz McCall: I am listening intently to what you are suggesting. When we look at the whole family wellbeing fund, we see some disparity in spending across the country. Are you saying that the data from the other avenues that you mentioned provides the necessary information? There seems to be a small disconnect. If you are relying on that data, what reassurances can you give me that

action will be taken to ensure that we have a better understanding of where the gaps in the system are?

10:00

Natalie Don-Innes: I am laying out a clear package of on-going work that can be drawn upon to understand the data, the spending and the activity that is on-going day to day. On whole family wellbeing, the member said that spending is disproportionate across the country. That is driven by the readiness of children's services planning partnerships. Beyond the Promise, the focus on whole family support and public sector reform must have an impact on the bureaucracy and the reporting issues that have been identified.

Work is under way to enable flex in the funding and reporting. I have set out a clear package of areas that help us to gather the data and evidence that Ms McCall refers to in her amendments 103 and 104. However, imposing statutory reporting requirements in primary legislation would risk detracting from the flexibility that is required to invest in, design and deliver services to achieve the best outcomes. I therefore ask Roz McCall not to move amendments 103 and 104.

I ask Miles Briggs not to move amendments 105 and 105 for similar reasons. I encourage committee members to vote against those amendments if they are moved.

The Convener: I call Paul O'Kane to wind up and to press or withdraw amendment 168.

Paul O'Kane: I recognise the points made in the debate that we have just heard. I am speaking on behalf of Willie Rennie, so I do not have much more to add, other than that I will take the minister at her word on the commitment to further engagement ahead of stage 3. Although I appreciate what she said in relation to Mr Rennie's amendment 168 about the complexities of collating and collecting data, and the work that the Government currently does to collate data of care-experienced young people in the system, there is a wider issue when it comes to understanding demographic trends and existing challenges.

With that, I will seek to withdraw amendment 168 and commit to further work ahead of stage 3.

Amendment 168, by agreement, withdrawn.

Amendment 169 not moved.

Section 7 agreed to.

After section 7

The Convener: Amendment 11, in the name of Fulton MacGregor, is grouped with amendments 12 to 16.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am grateful for the opportunity to speak to the amendments in my name, which focus on strengthening adoption support in Scotland and, crucially, on preventing adoption breakdown.

Before I turn to the individual amendments, I place on record my thanks to the Scottish Government—particularly the minister—for its constructive and on-going engagement on the amendments, right up to late yesterday, when we were still discussing them. I also acknowledge the work of the cross-party group on social work, which I chair, and through which I have engaged extensively with practitioners, adopters and care-experienced people. That work has been instrumental in shaping the amendments. I also place on record that, as a registered social worker, my experience of working with children, families and adoptive families over a long time has influenced the amendments. Most importantly, I have been contacted directly by constituents in my area and by adoptive families and adopted people across Scotland, who have shared deeply personal experiences of the challenges that they have faced after an adoption order was granted and of the consequences when the right support is not available at the right time. Their voices are at the heart of the amendments.

Taken together, the proposals are about ensuring that adoption support is seen as an essential, sustained part of our adoption system.

Amendment 11 would add "specialist post-adoption social work" to the list of adoption support services under section 1 of the Adoption and Children (Scotland) Act 2007. Local authorities already have a duty to provide adoption support services but, too often, families report losing access to specialist expertise once the adoption order is granted. There are many reasons for that, including that families themselves may not want social work support.

The amendment seeks to ensure that adoptive families are not left without expert, trauma-informed support at the point when challenges may become more, rather than less, complex. One parent who contacted me about the lack of post-adoption social work for their child said:

> "We adopted him and love him dearly. From a more clinical perspective, adoptive parents save the system a significant amount of money over a child's lifetime, while also helping to ensure that child grows into an adult who can contribute positively to society and reach their full potential. This brings into sharp focus the lack of meaningful post-adoption support. [There are] complex neurodiverse needs common among children awaiting adoption. Yet there appears to be a 'cliff-edge' approach, where support effectively ends once the adoption paperwork is signed. This must change."

That is a long quote, but I feel that it is powerful.

I make it clear that amendment 11 is not about blaming social work adoption services. I have many ex-colleagues who now work in adoption services and I know that their work depends on the priorities in social work and case loads, as Miles Briggs mentioned in relation to a previous amendment. This amendment is about where support for newly adoptive families fits in.

Amendment 12 would take a similar approach by adding "peer support" to the list of adoption support services. Evidence from adopters consistently highlights the value of peer support, both before and after adoption, and the distinct needs that arise at different stages of the adoption journey, in particular during the teenage years. This amendment recognises the importance of structured, accessible peer support as part of a comprehensive support offer. We found, through the work of the cross-party group on social work, that a lot of adoptive parents actually found each other after adoption breakdown, through forums or other means, and they felt that it would have been more useful to have such support at an earlier stage.

Amendment 13 would require local authorities, when carrying out their duty to provide an adoption service, to have regard to

"the desirability of ensuring sustainable funding for adoption support services to prevent adoption breakdown".

The amendment reflects a clear message from both families and professionals that prevention and early support are significantly more effective, and more cost-effective, than responding after a crisis has occurred. Adoption breakdown is traumatic for children and families, and it also places additional pressure on already stretched public services. Sustainable funding is, therefore, the right and prudent approach.

In another case in which I have been involved, a parent who feared that they may experience an adoption breakdown said:

"We had been in the process of adopting again—something we were so excited about—but we've had to stop because we can't keep everyone safe right now".

They went on to say that

"living through this has shown me just how broken the system is for families like ours."

Again, that is a powerful quote for committee members to consider.

Amendment 14 would require ministers to make regulations to ensure recognition of

"care-experienced status for the purposes of accessing relevant services and support, including … mental health … services."

Although I agree—and I have discussed this with the minister—that not all services that are available to care-experienced people will be relevant to adopted children, it is vital that adopted children's care-experienced status and their rights to support are properly recognised, and that they get the support that they need.

That is particularly important with regard to access to mental health support and fast-track access to child and adolescent mental health services, in line with the commitments set out in "The Promise". I am sure that other members around the table will have had requests for support from CAMHS for adopted children. Children who have been adopted have often, by the very nature of adoption, had traumatic experiences in their early life similar to those with care experience, and they really need CAMHS support. As such, this amendment could make a real, and very big, change.

Amendment 15 would insert a new section into the 2007 act that would require ministers to make regulations setting out

"a definition of 'adoption breakdown'"

alongside

"guidance … on the collection and sharing of information.

At present, the lack of a national definition and consistent data collection makes it extremely difficult to monitor trends, learn from experience or take preventative action. This amendment would bring transparency, learning and improvement to our engagement with adoption breakdown.

Amendment 15 is more about being better informed instead of assigning blame, and I want to acknowledge the explicit welcome that The Promise Scotland and Barnardo's have given it in their stage 2 briefings.

Barnardo's has also supported my final amendment—amendment 16—which would require ministers to produce a report on funding for therapeutic support as part of adoption support services, including consideration of whether Scotland should establish a national therapeutic support fund. The amendment draws on the model of England's adoption and special guardianship support fund and responds directly to concerns raised by families about unequal access to therapeutic support, depending on where they live. A national approach has the potential to improve consistency, equity and outcomes.

These amendments are, as I said at the start of my remarks, grounded in the lived experience of adoptive families, the expertise of social work professionals and the clear message that adoption support must be sustained, specialist and preventative.

I move amendment 11.

The Convener: I call the minister to speak to this group of amendments.

Natalie Don-Innes: I thank Fulton MacGregor for lodging this group of amendments. I am aware of his long-standing interest in adoption, both in his previous professional life and as an MSP, and I believe that we share the same aim of ensuring that adoptive families receive strong, reliable and consistent support.

The amendments raise important issues regarding specialist post-adoption social work support, peer support, sustainable funding, recognition of adopted people's experiences, improving national consistency in adoption breakdown and access to therapeutic support. Such matters are important to many adoptive families, and I thank Mr MacGregor for some of the quotes that he read out and for emphasising people's real-life experiences. I, too, have heard directly from adoptive families about the challenges and the inconsistencies in support, and that is why we are driving forward actions from the adoption vision statement. However, I am prepared to go a little further today.

Although each and every one of those areas are important, we must ensure that any changes that we make are workable and deliverable across Scotland. Much post-adoption support is provided through wider children and families teams and specialist third sector organisations, and local capacity varies. In that context, placing new duties in the bill risks creating statutory expectations before we have fully clarified their purpose, scope and delivery mechanisms. It is important that any duties in this area are designed with a clear understanding of existing practice and are informed by the experience of adoptive families, so that what we put in place genuinely supports them.

I absolutely recognise the value of specialist post-adoption social work and peer support, and I understand the intention behind highlighting sustainable funding and ensuring that adopted people feel that their experiences are acknowledged. I also agree that there is merit in improving how adoption breakdown is understood and recorded, and I appreciate the intent behind the proposal for a national therapeutic support fund.

However, as drafted, several of the amendments might not achieve the outcomes that we want, and others, such as amendment 12 on peer support and amendment 15 on defining adoption breakdown and setting data requirements, would require further engagement on purpose, scope and implementation before any statutory duties could be placed in legislation.

That said, I do want to be constructive, and I know that Fulton MacGregor does, too. There might be something that we could consider in the broad space represented by amendments 12 and 15, and I would be happy to work with Mr MacGregor and other members ahead of stage 3 to refine their intent in a way that reflects established delivery models; is proportionate and workable; and is informed by adopted families' experiences.

Separate to that, I am also open to considering a review of the 2011 adoption and looked-after children guidance and to exploring whether a stage 3 enabling power for statutory adoption support guidance, which local authorities must have regard to, might offer a more coherent and proportionate route to improving consistency in the matters that Fulton MacGregor has brought to our attention. I hope that the member agrees with that approach and that he will not press or move these amendments, so that we can continue to work together ahead of stage 3.

The Convener: I call Fulton MacGregor to wind up and press or withdraw amendment 11.

Fulton MacGregor: I thank the minister for her engagement throughout the development of the amendments, including the offer that she has just made, which, as I said at the outset, she has made before. I do not intend to press amendment 11 or move any of my other amendments in this group, based on the minister's offer to work with me ahead of stage 3.

The minister and her team have demonstrated that they want to work with me in this area, not just through the passage of the bill but through the minister's appearance at the cross-party group sessions that we had on adoption. The people there were impressed with the minister's commitment to this particular area. On that basis, I withdraw amendment 11 and will work with the minister ahead of stage 3.

Amendment 11, by agreement, withdrawn.

Amendments 12 to 16 not moved.

Section 8—Children's residential care services: profit limitation

10:15

The Convener: Amendment 17, in the name of the minister, is grouped with amendments 170, 171, 18 and 19.

Natalie Don-Innes: My amendment 17 and Mr Whitfield's amendment 170 seek to amend the financial transparency provisions in section 8 by adding secure accommodation services, which would bring them within the scope of the

regulation-making powers on profit limitation and information.

The Government lodged amendment 17 following the public consultation on the profit provisions. We believe the amendment will provide greater consistency across the children's residential care sector by ensuring that we also have financial transparency in the secure care sector. As amendment 17 will achieve the aim that Mr Whitfield is also seeking to achieve, I hope that he might understand why I prefer my amendment, and that he might support that and not move his own.

On Mr Whitfield's amendment 171, although I am confident that, by adding secure care, all appropriate forms of residential care are already included, I understand why it might be considered appropriate to provide for unidentified provision that could be profit making. That future proofing of our provisions with the power to make regulations might also usefully act as a deterrent to any private sector provider moving into Scotland with an innovative form of care that is profit making. It therefore seems sensible to accept amendment 171, but we might need to tidy it up a little bit prior to stage 3.

Amendment 18 will amend section 105(1) of the Public Services Reform (Scotland) Act 2010 to update the definition of a child to be 18 years for the purposes of the application of the provisions inserted by section 8 of the bill. That is in line with the bill and with the United Nations Convention on the Rights of the Child rather than the previous default of 16 years old.

Amendment 19 will fix a technical problem with the definition of cross-border placement in the Public Services Reform (Scotland) Act 2010. The current definition's reference to cross-border placements that are made into a residential establishment is too narrow to cover placements made into school care accommodation services. Amendment 19 broadens the definition to correct that, and it will ensure that the new powers inserted into the 2010 act by the 2024 act can work as intended.

I ask members to support amendments 17 to 19, and to support Martin Whitfield's amendment 171.

I move amendment 17.

Martin Whitfield: I thank the minister for her comments. This is certainly a case of great minds thinking alike, as we are both seeking to extend the section in a similar way. However, as my colleague Jeremy Balfour says, the minister's comment that she prefers her own amendment reads like most of my school reports—"Could do better."

In the circumstances, I am content to listen and will support the minister's amendment. I welcome the Government's support for amendment 171. I had much harsher words than "innovative" for such providers coming in in the future, but I like the word "innovative", so we will stick with that for the public record. I have nothing further to add.

Amendment 17 agreed to.

Amendment 170 not moved.

Amendment 171 moved—[Martin Whitfield]—and agreed to.

Amendment 18 moved—[Natalie Don-Innes]—and agreed to.

Section 8, as amended, agreed to

Section 9 agreed to.

After section 9

Amendment 19 moved—[Natalie Don-Innes]—and agreed to.

Section 10—Register of foster carers

The Convener: Amendment 172, in the name of Martin Whitfield, is grouped with amendments 173 to 177.

Martin Whitfield: Section 10 will create a register of foster carers. My amendments 172 and 173 relate to safeguarding and the information that the register needs to contain. There is a risk that any register can be misused and, indeed, on some occasions, abused. In this day and age—as perhaps it should always have been—it is important to be clear about who owns the data on the register. It is also important that corrections to the register can be sought if errors have been made. My amendments specifically relate to that. They also concern how the information about individuals who have been considered but not approved as foster carers appears on the register. The purpose of the amendments is to ensure that the right information is provided and to protect against any erroneous information being added to the register.

Amendment 173 seeks to encourage the Scottish ministers to consider and take into account foster carers' ownership of their personal data when drafting regulations about the register. That is good practice that should, in any event, be followed.

Amendments 175 to 177 are more than probing amendments. The register would enable a developmental approach for foster carers. They are an important group but one that is, I am afraid to say, often overlooked in our care system. They often feel that they bear the brunt of difficult and challenging situations, without full and adequate support. They are also expected to go above and beyond in difficult circumstances, often late at night and over weekends.

It is time that the Parliament, the Scottish Government and, indeed, the people of Scotland recognise the incredible work that foster carers do. The register would allow a developmental approach, in that it would give professionalism to foster carers, recognise their expertise and give proper and true credit to their role in our system.

My amendments propose something that is not unlike the model that is followed by the General Teaching Council for Scotland, which governs the registration and entrance of teachers into the profession. It is governed and controlled by teachers, but other statutory bodies, including the Scottish Government, the trade union movement and COSLA, have a role to play, too.

That model has worked incredibly successfully. I absolutely admit that the model could not be adopted straight away for foster carers, but I am curious as to whether the Government would be inclined to develop the environment that would allow that to happen. We have seen the strength of non-Government and non-local authority bodies, such as the GTCS, which has worked successfully to govern entrance into the teaching profession and to monitor the skill sets of those in the profession. A similar model would ensure that the people of Scotland can be confident that foster carers are exactly the right people to deal with some of the most vulnerable children in our society.

I move amendment 172.

Roz McCall: I will speak only to my amendment 174. Our foster carers do a phenomenal job, and we know that it is a struggle to find them. I would hate for the production of a register to do anything that might inadvertently make the situation harder. The register is a good idea, but it cannot be used as a league table. Parameters must be put in place to ensure that it is purely a register of people who are foster carers, rather than a mechanism to grade them.

That is all that amendment 174 tries to do. It is designed to strengthen safeguarding while protecting the integrity and wellbeing of the foster carers who are on the register, and it recognises that transparency improves trust. I hope that the Government can support amendment 174. It is a small one that will ensure that the register, which we all agree with, does not inadvertently move into a way of grading foster carers.

Natalie Don-Innes: Section 10 is deliberately drafted as a flexible enabling power to allow the detailed design of a national foster carer register to be shaped through further consultation and co-production with foster carers, care-experienced people and fostering services. The policy memorandum is clear that that approach is essential to ensure that the final model genuinely reflects the realities of fostering and the voices of carers, services and care-experienced people.

The response to the consultation on the future of foster care showed strong support for the principle of a national register and a recognition of the potential benefits for consistency and transparency. However, the response also made clear that key decisions about scope, safeguarding information, data handling and carers' rights require substantial further engagement before they can responsibly be set in law. Stakeholders emphasised that any register must be proportionate, should not deter recruitment and must support rather than burden services. Above all, the register must work in a manner that is in the best interests of children and of the carers who look after them.

Martin Whitfield's amendment 172 would help to avoid the perception of blacklisting prospective carers, whose circumstances can change. That would support recruitment and retention, which is an issue that has been raised repeatedly by the sector. Martin Whitfield's amendment 173 would strengthen carers' ability to access and correct their personal information, which would align with clear consultation messages about transparency and strong data protection standards. I support those amendments and am grateful for the constructive way in which they have been lodged.

Roz McCall's amendment 174, however, would place detailed operational requirements for the register directly into primary legislation, which would fix key elements of how the register would operate before it has been shaped with foster carers and stakeholders. Although stakeholders may tell us that those are the sort of requirements that they want to be reflected in how the register operates, and I agree that those issues matter deeply, I am not comfortable with making those decisions at this stage without having heard from foster carers and others through the consultation and co-production processes that the bill deliberately provides for.

Likewise, I ask Martin Whitfield not to press amendments 175 to 177, which would create a Scottish foster carers council. Those amendments would fix in primary legislation the existence and certain functions of a new national body before any consultation has taken place on whether such a body is needed or what form it should take. The consultation that has taken place did not propose or test the creation of such a body, nor did any respondents identify that as a way to ensure that foster carers' voices are heard.

Martin Whitfield: I absolutely recognise the narrative that the minister relates about when the issue was raised and whether it has been looked at. At a fundamental level, is the Scottish

Government against the concept of having an arm's-length holder of the register at some time in the future? Can the Scottish Government never envisage having that, even if it came about through consultation and was seen as a way of improving the situation?

Natalie Don-Innes: I am not closed off to that. I am not saying whether that would be the right or the wrong approach. However, I have spoken with a number of organisations about the register and I know that there are competing views in that regard. The issue could perhaps be considered further in our engagement.

Martin Whitfield: I am content with that response.

Natalie Don-Innes: Okay.

Proposed new sections 30D and 30E of the Children (Scotland) Act 1995 will give ministers the flexibility to explore and develop appropriate oversight arrangements for the register. However, creating a statutory body at this stage is premature without the consultation and co-production that are provided for in the bill.

In addition, amendment 176 does not appear to reflect the distinct statutory frameworks that exist for foster care and kinship care, as it would permit kinship carers to sit on a body overseeing a foster-specific register. That risks blurring roles and responsibilities in a way that could create confusion rather than clarity for carers and services. Amendment 177 is, of course, consequential to amendment 176.

I support amendments 172 and 173 and encourage members to vote for them. I ask Roz McCall not to move amendment 174 and Martin Whitfield not to move amendments 175 to 177. If they do so, I encourage members to vote against them so that we can continue to work in partnership with the sector to design the register carefully and in a way that best supports children, young people and foster carers.

The Convener: I call Martin Whitfield to wind up and press or withdraw amendment 172.

Martin Whitfield: I have nothing really to add, except to say that I will press amendment 172.

Amendment 172 agreed to.

Amendment 173 moved—[Martin Whitfield]—and agreed to.

Amendments 174 to 176 not moved.

The Convener: Amendment 177, in the name of Martin Whitfield, has already been debated with amendment 172. Mr Whitfield, do you wish to move or not move?

Martin Whitfield: Moved.

The Convener: The question is, that amendment 177 be agreed to. Are we agreed?

Members: No.

The Convener: We are not—

Martin Whitfield: My apologies, convener. I did not want to move amendment 177.

The Convener: That is quite all right. I will just go through it again, so that it is clear on the record.

Amendment 177, in the name of Martin Whitfield, has already been debated with amendment 172. Mr Whitfield, do you wish to move or not move amendment 177?

Martin Whitfield: Not moved.

Amendment 177 not moved.

The Convener: Good. We will clip the earlier bit out of the proceedings, and no one will ever know. [*Laughter*.]

Amendment 178 moved—[Martin Whitfield]—and agreed to.

Section 10, as amended, agreed to.

After section 10

Amendments 179 to 184 moved—[Martin Whitfield]—and agreed to.

The Convener: Amendment 20, in the name of the minister, is grouped with amendment 21.

Natalie Don-Innes: Amendments 20 and 21, in my name, strengthen the statutory basis for payments to foster and kinship carers. They introduce for the first time a clear and consistent mechanism for the annual uprating of allowance rates and form an important part of our wider programme of work to improve the experience of care in Scotland.

Foster and kinship carers play an essential role in providing safe, secure and nurturing homes during some of the most challenging moments in a child's life, and to meet our commitments under the Promise and to ensure that children experience the stable relationships that they need, we must ensure that carers are not placed under unnecessary financial pressure. Amendment 20 clarifies and strengthens the legislative basis for the payments that local authorities may make to foster carers, and it ensures that ministers can make provision in relation to allowances paid in respect of the child and other payments made to carers for the role that they undertake.

It also enables ministers to require local authorities to publish the rates of payment that they pay to carers. Such transparency is vital. Carers tell us that they want to understand what they are entitled to, and the publication of consistent information will help ensure fairness

and support recruitment and retention across the country. It also lays the groundwork for future policy development, including consideration of a national approach to foster carer fee payments.

Amendment 21 introduces a robust mechanism for the annual uprating of foster and kinship care allowances, and it represents a significant step forward. It means that allowance rates must be considered each year in line with inflation, using the established, structured and transparent framework that applies to devolved social security benefits. By maintaining the value of those allowances over time, we can help ensure that carers are supported with the real costs of caring and that financial strain does not impact the stability of placements.

Together, the amendments contribute directly to the Government's commitment to eradicating child poverty. We know that children who are supported through foster and kinship care allowances are disproportionately located in communities facing the greatest socioeconomic pressures, and we know, too, that many kinship care families are living in poverty. The amendments have the potential to make a difference to those families. By supporting foster and kinship carers, we help ensure that the children whom they care for have every opportunity to thrive, and I therefore encourage members to vote for both amendments.

I move amendment 20.

Amendment 20 agreed to.

Amendment 21 moved—[Natalie Don-Innes]—and agreed to.

Amendments 185, 103 and 104 not moved.

The Convener: I suspend the meeting for about 15 minutes to allow for a comfort break.

10:36

Meeting suspended.

10:50

On resuming—

Section 11—Single member children's hearings and pre-hearing panels

The Convener: We recommence our stage 2 consideration. Amendment 22, in the name of the minister, is grouped with amendments 23 to 27, 105, 29 to 32, 106, 33, 107, 186 and 187.

Natalie Don-Innes: I recognise that the issue of single-member hearings has been a focus for members of the committee, and I welcome the scrutiny of what is undoubtedly a significant change for children's hearings.

The proposal to introduce single-member hearings comes directly from Sheriff Mackie. I welcome his progressive and positive consideration, both in his original recommendations and in his view of these provisions. I reiterate the words of Sheriff Mackie in his evidence at stage 1:

"We should not be scared about entrusting single members with certain decisions."—[*Official Report*, *Education, Children and Young People Committee*, 10 September 2025; c 54.]

I accept the committee's view that additional detail is required. That is why, in my response to its stage 1 report, I made a commitment that we would address the matters to be considered by a single-member hearing in secondary legislation and made available to all parties in the rules of procedure made under section 177 of the Children's Hearings (Scotland) Act 2011. Those rules will be further updated in the light of the bill.

However, I recognise that those changes may create some anxiety with regard to how they may be implemented. To that end, I am pleased to have lodged amendments 27 and 30, which introduce a significant safeguard to the operation of the system.

The remunerated, legally competent chairing member envisioned by the bill will play a central role in managing a hearing in the redesigned system. It is that senior tribunal member who will be trained and qualified, and therefore best placed to decide whether, in any case that could otherwise have been considered by a single panel member, that child's specific case should be considered by a hearing of three panel members.

John Mason (Glasgow Shettleston) (Ind): Does that put all the onus on the chair? What if the chair makes a decision with which others disagree that a case should be considered by three panel members?

A lot of the debate has previously centred on the view that three should be the norm, and that only relatively minor issues should be considered by a panel of one. In amendment 27, proposed new subsection 6B(2) of the 2011 act states:

"The selected chairing member must",

and continues thereafter. What happens if the single chairing member makes an error, or whatever?

Natalie Don-Innes: I believe that, as I have said, it will be a remunerated, legally competent chairing member, and that—following Sheriff Mackie's words—we are able to put our trust in that member to take the right decisions with the best interests of the child or young person at heart. I am confident that they will be able to take an

educated decision, based on the needs of the specific child in the specific case.

Jeremy Balfour (Lothian) (Ind): I do not like to show disrespect to my former legal colleagues, but lawyers make mistakes—they are not infallible. Before coming to this place, I sat on another form of tribunal; we did not always get it right, and there were three of us.

To pick up on Mr Mason's point, there is no right of appeal for the child or for anyone else if that change is made. My concern is that there could be occasions where the chair gets it wrong. In such cases, what right would the child, social work staff or anyone else have with regard to reversing that decision?

Natalie Don-Innes: I would have to write to the committee with the specific detail on what right or recourse they would have to reverse the decision. Of course, the child will have a number of different people supporting them—for example, advocates—and looking out for that child's best interests.

If there is an instance in which it is felt that the best decision was not made for the child, that can be followed up. However, as I have made clear, the single member will not be able to take a multitude of decisions that are available for disposal at a children's hearing; there are a limited number of instances in which a single-member panel would be used.

Martin Whitfield: The challenge that is being expressed is this: there is no misunderstanding of the fact that there will be a limit on such decisions, but the reality is that, if an incorrect decision is taken, that is, in essence, potentially the end of the situation, without the young person, their advocate or anyone else being able to ask for a reconsideration of that view by a whole panel.

Natalie Don-Innes: I make it clear that if a case looks as though it will be extremely complex, with the possibility of a wrong decision being made, I would have confidence in the single chairing member to refer that case to a three-member panel, before which a hearing would then ultimately have to take place.

I do not think that a single chairing member would want to proceed with something that could give rise to a degree of inconsistency—that is probably not the right word, but we would not want to put that pressure on a single chairing member if a case looks very complex. As I said, in such a case, a three-member panel would be required. The chairing member would take that forward, and a hearing with a three-member panel would have to go ahead.

There are options to appeal against the decision of a hearing. If decisions have been made that do not fit with the best interests of the child, in the view of others who are supporting that child, there are routes to be taken.

Sorry—I have some information in my notes that I have just discussed in response to the interventions. As I said, where the chairing member takes the view that a three-member panel is required, the national convener of Children's Hearings Scotland would have to select a three-member panel hearing. The chairing member will be able to request that a full hearing is convened to consider any matter that is central to the child's circumstances.

As a consequence of amendment 27, amendment 26 makes a change to the mechanism that is open to the national convener in selecting panel members. Amendments 22 to 24 are further consequential to amendments 26 and 27. My amendments 29 and 32 correct minor typographical errors.

Amendment 30 enables the chairing member of a grounds hearing consisting of a single panel member to discharge a case if they are satisfied that a compulsory supervision order is not needed. That provides an important additional safeguard to avoid unnecessary hearings where the chairing member considers that the tests for a CSO are not met. Amendments 31 and 33 are consequential on amendment 30.

I note the intention of Jeremy Balfour's amendment 25. I recognise that there is considerable interest in the chairing member role, as it is a significant development for the children's hearings system. The provisions in the bill enhance the role, and recognise the complexity that chairing members deal with daily.

Section 177 of the Children's Hearings (Scotland) Act 2011 already gives Scottish ministers powers to make rules about the procedures relating to children's hearings. Those powers will be used to review the functions of the chairing member to reflect the provisions in the legislation. Given that the existing legislation already addresses the matters in Jeremy Balfour's amendment 25, I hope that he will agree not to move his amendment.

I also appreciate the intent behind Roz McCall's amendment 105 regarding safeguarder appointments, but that is exactly the sort of decision that we would consider appropriate for a single-member hearing. The appointment of a safeguarder can be an important part of the hearing process and is made where the hearing is seeking additional information that may, for whatever reason, not be available to it at the time that it is considering that child's case. Barring a single chairing member from taking those types of decisions would remove flexibility and the potential

for expedited decision making. We are not seeking to ensure that—

Roz McCall: I am sorry to interrupt you mid-flow, minister. My concern in this regard arises from the application of the provision in rural areas. I have spoken to many panel members recently. In certain areas, such as rural areas, it is physically impossible to get three panel members, and we are finding that members are coming from other areas to sit on panels.

The proposals, as I understand them, are that, where it is practicable, somebody will be appointed to make the decisions in such a case. In rural areas, where there is a limited pool of panel members, that could mean that there is a member from another geographical area making decisions on families that could, on specific matters such as safeguarding, actually set the case back.

That issue has been explained to me, although I might not be explaining it very well here. There can be a detrimental effect such that sometimes a safeguarder can take the situation back a step rather than forward. That is how it is working on the ground.

My amendment seeks to ensure that there are three voices making such decisions, rather than one, based on the fact that rurality is causing a bit of an issue here. What are the minister's comments on that sort of specific situation?

11:00

Natalie Don-Innes: I would like to take this discussion with Roz McCall offline and discuss it ahead of stage 3, because I would need a little bit more clarity on her point.

There is no geographical dimension to safeguarders. It is a national panel. However, I think that she was also speaking about panel members and issues around rurality. We are facing those issues at the moment, given that we need to increase the number of panel members. The provisions that we are making in relation to introducing single-member panels are intended to directly impact that by reducing drift and delay and improving efficiency in the children's hearing system. I believe that those provisions will help with the issues in rural areas.

Roz McCall: I understand that, on paper, that is exactly what it would look like and if we look at the workflow, we might think, "Yes, that works". However, there is nothing in here to stop a single panel member from a different area, who does not really know the family or the circumstances to the full extent, making a decision on a family.

Panel members get very used to the people who are coming forward. They understand the process. That is why we all want to make sure that we have continuity, because that builds through time. However, in a rural situation where we do not have enough capacity, we could inadvertently have a panel member making a decision to put a safeguarder into a family that would be detrimental, because it would be a sole decision-making process.

I know that the minister wants to take the discussion offline, but how do we make sure that the bill does not inadvertently cause that issue?

Natalie Don-Innes: The issue that Roz McCall brings to me is the same in what is currently happening. As we have said, there are three members, but they could be from outwith that area. I do not understand how the provisions mean that there is any more risk with of the issue that she raises happening. I have spoken to what the provisions aim to do in relation to reducing drift and delay, which I imagine would help to increase capacity in the system and, in relation to the chairing member, would, I hope, allow for more localisation and consistency.

I am very conscious that Roz McCall and I have not spoken about this in detail, and I would be more than happy to consider the concerns that she has raised, if not the specific amendment, in more detail. I thank her for bringing those concerns to my attention. I ask Roz McCall not to move amendment 105, with the assurance that I am happy to discuss the concerns that she has raised around rurality and consistency.

I also do not agree with Roz McCall's amendment 106, which would remove flexibility from a system that deals with cases that involve significant levels of complexity. I am sympathetic to her desire to ensure safe decision making, but removing flexibility from the system is not necessarily the correct way to achieve that. There are circumstances in which it will absolutely be appropriate for a full hearing to consider the circumstances of an interim order and whether it should be continued or varied, but there are also circumstances in which it is entirely appropriate for that to be done by a chairing member who is specially recruited and trained to take those decisions. We would argue not that a single member will take those decisions at all times—and perhaps not even in many cases—but that they should be able to do so where it is appropriate, and with the relevant safeguards that we are introducing in the bill. I hope that that explanation reassures Roz McCall and that she will not move amendment 106. If she does, I encourage members to vote against it.

Martin Whitfield: In relation to the previous discussion that John Mason prompted, does the minister envisage that interim orders will be made

by a single-member panel—the chair—when everyone is in agreement with the interim order, as opposed to when the appropriateness of an interim order is challenged? I am just trying to understand when she envisages interim orders that are not controversial being made, because the problem relates to what happens when decisions are controversial. Does the minister believe that interim orders will be made by a single chair when, in essence, everyone in the room, including the child, is in agreement on the interim order? Is that the sort of area that she is thinking of for such decisions being made, rather than in cases in which there is a conflict?

Natalie Don-Innes: Yes.

I appreciate that, as I discussed with Roz McCall, continuity of panel members is a key theme that has been raised through our consultation on the bill, as well as by the many voices of children and young people who have informed our work over the past few years. Therefore, I note the intent behind Roz McCall's amendment 107 and Martin Whitfield's amendment 186 in seeking to promote continuity in the chairing of children's hearings. However, I consider that our primary focus should be on whether continuity would be desirable, with regard to the best interests of the child rather than whether that would be practicable. If Ms McCall is open to the offer, I commit to working with her on the framing of an amendment for stage 3.

On Martin Whitfield's amendment 187, I appreciate his interest in the role of the chairing member, but I do not consider primary legislation to be the appropriate vehicle for providing for recruitment into such roles, nor is it appropriate to restrict the independence of the national convener's role.

It is for the national convener to recruit and train panel members, and I am satisfied that plans are well under way for a robust recruitment programme based on the qualities, competencies and skills that the national convener deems appropriate for the role. Chairing members are also children's panel members, and it is for the national convener to strike the fine balance between the additionality that we seek from the remunerated chair's contribution and the overall integrity and cohesion of the panel, including the volunteer members. The briefing that the committee received from the national convener about his work in this area addresses many of the suggestions that Mr Whitfield has made in amendment 187, so I hope that he will not move it.

On Mr Whitfield's amendments 226 and 227, I think that we can all agree that, without the time, effort and expertise of so many people over so many years, we would not have a children's hearings system of which we are proud. The introduction of remuneration is a seismic moment for children's hearings, and it is a moment that has, arguably, been too long in coming, so I thank the committee for its support on the topic.

I ask Mr Whitfield to consider the impacts of limiting the scope of remuneration in the way in which his amendments would do. For example, we would not be able to put in place a scheme of remuneration for specialist panel members. I hope that committee members found the explanatory notes in response to the stage 1 report helpful in relation to the role and function of specialist panel members. In certain circumstances, a specialist panel member's expertise in a particular subject is intended to provide expert insight regarding decision making in the hearing. Furthermore, that expertise, and a panel member's willingness to be available when called on, should be remunerated appropriately. I know that the national convener shares that view.

The specialist role could, in future, become a powerful tool in the decision-making framework for the hearing, but that could be undermined by amendments 226 and 227 if there was no effective means to remunerate those panel members. The same goes for the future make-up of the panel. I do not want to confine our options or those of the national convener in that regard. We must be able to respond appropriately to the ever-changing demands on the hearings system, so I ask Mr Whitfield to consider his position and not move amendments 226 and 227.

I apologise for my lengthy speaking note.

I move amendment 22.

Jeremy Balfour: Amendment 25 simply seeks to ensure, by way of regulation, that the chair's role will not be altered, enhanced or materially changed by the fact that it will now be a paid position. There is consensus among committee members and stakeholders that it is the right time for chairs to be paid. However, from my discussions with groups and charities, particularly the Scottish Children's Reporter Administration, it is clear that remuneration is not about enhancing the chair's role but about improving the quality of the chair.

By paying the chair, we would be able to recruit people with sufficient skills and experience to improve the quality and consistency of the chair. Again, that is in no way a reflection on those who have been carrying out that role for many years, but we live in a changing world where things have become more complex and difficult. I do not think that we want to go down the route of making make the chair's role more onerous and more complex, and the danger is that we are going to. The

chairing members need to remain independent and impartial.

Ensuring that remuneration is put into regulation would allow for changes to happen quicker once we have seen how it works in practice. Children's Hearings Scotland, which is devising the new paid chair changes, needs to be mindful of the organisations that are concerned about the possible change in nature and focus of the role of the chair. That is what I am trying to do with amendment 25. I recognise what the minister has said and I will reflect on her comments today.

Finally, I would like to pick up on the exchange between Martin Whitfield and the minister on what the Scottish Government sees as the role of one-member panels if they are only to sit on hearings for uncontroversial things. What the minister has said today seems to be quite a big move. If that is where the Scottish Government is minded to be and to go, I would be interested to hear in the minister's summing up whether she would be open to some kind of amendment at stage 3 to crystallise that in the bill. At the moment, that is not how I read the system. My reading is that it would be up to the chair to make the decision on any case that it is appropriate for them to look at. If the minister is saying that that would only be for a fairly basic docket that everyone is happy with, that is different from where we are at the moment. I would suggest that that would require a change at stage 3. It would reassure me and others that there was not potential for an overreach of the role of chairs.

Roz McCall: I have already highlighted my concern that some of the positions that would be taken by the one-member panel process might inadvertently have some form of unintended consequence. I lodged my amendments to look at what I believe overstretches that decision-making process, especially because, as I have already stated, we have issues in rural areas right now and I want the unintended consequences to be brought out. However, I take on board what the minister has said and that she is willing to work with me on those concerns.

Amendment 105 is entirely about safeguarding. I have heard of instances where a safeguarder has made the situation that they have been put in worse rather than better. I am concerned that, if one person is making the decision, the information for that one person needs to be complete, which means that that approach is maybe not the right way to go.

On amendment 106, I am concerned that, if we introduce a system of one-member panels, we will easily get to a stage at which more information and decision making moves towards that one-member panel. Amendment 106 seeks to make sure that it is held in statute that the most important cases should be heard by three-member panels.

Amendment 107 is about continuity of the chair. I have explained a little bit about what the amendments are, but I am happy to work with the minister ahead of stage 3. There are concerns and work needs to be done, but I am happy to take it forward offline, as the minister said, and work on the amendments ahead of stage 3.

11:15

Martin Whitfield: Like our debates on amendments last week, the debate on this group has been interesting. The discussion about the composition of the panel has opened up areas where I agree with Jeremy Balfour that we are in a different position from where we were before the bill was introduced. However, I see a great deal of agreement among the members who lodged amendments in the group. There is a desire to reach a solution in relation to the role and remuneration of the chair compared with other, wing members of the panel—if I may use that phrase. There is also a great deal of interest—and I think that there is also an ability to reach a decision—on the expectations that will be placed on the chair. The amendments in the group, including mine, speak to that.

The minister talked about taking the matter offline. Given the circumstances, I wonder whether there can be a cross-party discussion to seek an agreed position that the Parliament can get behind at stage 3. Our amendments contain different wording, but I genuinely believe that there is an intent among members to find agreement.

I will not press my amendments 226 and 227, because I have no intention of circumventing the very sensible proposals on the importance of reflecting the expertise and professionalism of those who are involved in the system.

I do not know whether the minister is in a position to intervene or whether she will address this when she sums up but, given what she said about taking the matter offline, I think that it would be sensible for members not to move their amendments in the group, given that we are all in similar places on the matter. I think that we all need some time to consider amendments that the Government and the Opposition could lodge for stage 3.

The Convener: I invite the minister to wind up.

Natalie Don-Innes: I do not have much to add, but I will reflect on a couple of the points that members made. I emphasise that single-member panels have been proposed in the bill in an effort to keep children safe. It is not envisaged that their use would become a regular occurrence. The

measure would be implemented because there may be times when an urgent decision is required that will help to keep a child or young person safe, when that is needed, in the short term. That is when it is expected that a single-member panel would be used.

John Mason: I totally agree with what the minister has just said but, to echo Martin Whitfield, I note that we could maybe put something about that into the bill at stage 3 in order to tighten it up. My fear is that it could be too convenient for a chair to say, "It'll be easier for me to make a decision rather than having the hassle of getting other people involved."

Natalie Don-Innes: I appreciate that. Following on from Mr Balfour's comments, although I cannot commit to any exact wording now, we can certainly look at the matter to perhaps provide more clarity around it. If it helps members, I am happy to provide an assurance that I can take that forward ahead of stage 3.

Martin Whitfield: I absolutely welcome the proposal that the minister makes. In essence, if we all leave the amendments in the group in abeyance ahead of that discussion before stage 3, we will not pre-define anything. We have not heard any new evidence, but there has been some discussion about a different aspect of the role of the single-member panel. Does the minister agree that not moving the amendments in the group would indicate everyone's intention to work in good faith to reach agreement on the matter?

Natalie Don-Innes: I would prefer to move my amendments today, Mr Whitfield, because I think that the issue that we are talking about is a need for clarity on specific aspects of when a single-member panel should be utilised. The amendments that I have lodged are necessary technical amendments as well as safeguards. I really want to work with members of the committee, but I feel that we can still get to the place that members are requesting us to get to, and provide that clarity, even if I move my amendments today.

Martin Whitfield: I understand the position that the minister takes. However, that notwithstanding, if the minister did not move her amendment 30, on a single-member panel discharging a referral, that would be an indication of good faith, and I am quite confident that if it was felt to be necessary, it could be put back in at stage 3.

I am not questioning the good faith of the minister in any way, but that would allow a discussion to happen in an area where the minister wants to make amendments that we can maybe get behind when we have more understanding of them. If the minister was able, as a matter of good faith, not to move the amendments, I would certainly be more than satisfied not to move any of my amendments in this group to allow that discussion to happen.

Natalie Don-Innes: As I said, I want to work in a co-operative way, so if the issue is purely down to amendment 30, I would be happy not to move that amendment today and continue the discussion following stage 2.

Amendment 22 agreed to.

Amendments 23 and 24 moved—[Natalie Don-Innes]—and agreed to.

Amendment 25 not moved.

Amendments 26 and 27 moved—[Natalie Don-Innes]—and agreed to.

Amendment 105 not moved.

The Convener: We move to group 19. Amendment 28, in the name of the minister, is grouped with amendments 191, 192 and 60 to 68.

Natalie Don-Innes: My amendments in this group make some essential changes to the grounds process. Amendment 60 gives the grounds hearing wider scope to appropriately consider the views of more people than just the principal reporter when considering the child's understanding of the grounds. That might include a child's advocacy worker, legal representative or safeguarder, whose views will be essential to the hearing's decision.

Amendment 61 makes sure that the hearing is not forced to proceed immediately to consider the child's acceptance of the grounds when a child has attended despite no appropriate person having discussed the grounds with them. It means that the hearing can give the child's capacity and acceptance the necessary and appropriate consideration in their decision making.

Amendments 64 to 66 make it clear that the chairing member has flexibility when explaining the grounds and supporting facts to the child and relevant persons. It means that such discussions can be less formal, and these amendments allow for a more proportionate approach to each case, especially where there has been a lot of early work with the child and family to help them understand the grounds.

Sheriff David Mackie previously raised concerns about the formality of the process, and those amendments seek to address those concerns. Amendment 67 is consequential on those amendments.

I understand the intent behind Martin Whitfield's amendments 191 and 192, and we absolutely need to be thoughtful about the capacity of very young children in grounds hearings. However, I am concerned that an arbitrary age limit cuts across

individualised and child-centred approaches that are already being applied in practice.

An automatic cut-off age is inappropriate, because it fails to reflect the different rates at which children's capacity evolves, as required by the UNCRC. It is expected that, in practice, the voices of very young children will be gathered and reflected to hearings in ways other than a consideration of their capacity to understand the grounds.

Ultimately, it is for the hearing to respond to the individual child's needs in that regard. However, in practice, it is highly unlikely that there will be disproportionate or inappropriate consideration of the child's capacity where the child is very young. Moreover, in line with the UNCRC, recent reforms made by the Parliament, such as the Children (Scotland) Act 2020, have moved away from presumptions about a child's capacity based purely on age. Apart from age, there may be other issues affecting a child's capacity to understand a statement of grounds. I would be concerned that a bright-line age limit might also potentially lead to unlawful discrimination contrary to article 14 of the European convention on human rights. I hope Martin Whitfield agrees, and will not move amendments 191 and 192. If he does, I would ask members to vote against them.

I hope that members can support my amendments.

I move amendment 28.

Martin Whitfield: To capture the last part of the minister's contribution in respect of the amendments that I have lodged, it is about understanding not only the capacity, but the reality of the situation. At present, there is conflicting guidance and support as to whose voice will be heard and taken forward, and that is a challenge.

The purpose of my amendments was, in part, to be provocative. There are five-year-olds who certainly have a great deal of understanding of some things and less understanding of others, and if we are talking about five months or 12 months, those are very different scenarios.

Indeed, to revert to some of our earlier discussions, there will be a challenge around decisions that are taken, and on whose authority evidence was taken, with regard to young infants in particular. There needs to be scope to explore that, because there will come a time when either a single chairing member or a panel will be confronted with conflicting evidence that is brought before them as to what is in the best interests of a young child. One of the obligations that we already place on the children's hearings system is to make a decision in that situation. The panel will need support and guidance to take that decision—that is crucial to avoid conflict or tension or the wrong decision being made.

If the minister is open to further discussion in respect of UNCRC and human rights and how those issues can be articulated—not necessarily in the bill, because there are other vehicles that might be helpful—and if that can be placed on the record, I certainly will not pursue these two amendments today.

Natalie Don-Innes: Yes—I would absolutely be happy to continue that discussion further. I fully agree with Mr Whitfield that there are alternative non-legislative options. There is also a place for non-instructed advocacy, for example, in relation to the rights of our youngest children. There are a number of areas that we can discuss further, and I would be happy to do so.

Amendment 28 agreed to.

Amendment 29 moved—[Natalie Don-Innes]—and agreed to.

Amendments 30 and 31 not moved.

Amendment 32 moved—[Natalie Don-Innes]—and agreed to.

Amendments 106 and 33 not moved.

Section 11, as amended, agreed to.

After section 11

Amendments 107 and 186 not moved.

Section 12—Remuneration of Children's Panel members

Amendments 226, 187 and 227 not moved.

Section 12 agreed to.

Section 13—Child's attendance at children's hearings and hearings before sheriff

11:30

The Convener: Amendment 34, in the name of the minister, is grouped with amendments 108, 35 to 49 and 188.

Natalie Don-Innes: My amendments in this group will make important technical changes to the bill's approach regarding a child's attendance at hearings. Amendment 34 seeks to make it absolutely clear that the decision to require a child to attend a hearing can be made in advance of a hearing, and that that decision can apply to all or only part of the hearing. The amendment will affect an important part of the scheme in relation to attendance, because it will allow procedural decisions to be made at the appropriate time and ensure that hearings can be tailored to require attendance only as far as is completely necessary.

Amendments 35 to 38, 47 and 49 are consequential to the change that will be made by amendment 34.

Amendments 39 to 46 will make various minor changes that relate to a child's attendance at hearings before a sheriff. The amendments will clarify the provision under which a requirement to attend is imposed and improve consistency when referring to

"all or part of the hearing".

Amendment 48 will correct a minor typographical error.

The framing of Roz McCall's amendment 108 is problematic from a legal and practical perspective, although I appreciate her interest in the area. It would be inappropriate for ministers to be seen to direct the decision making of an independent tribunal or the relevant independent office bearers who are carrying out their functions under the Children's Hearings (Scotland) Act 2011.

Guidance for attendance at hearings, which is based on the age and stage of the child, is rightly within the domain of the national convener of Children's Hearings Scotland. Detailed guidance on attendance is already published and updated on a regular basis in the CHS practice and procedure manual. Just as it would be inappropriate for the Scottish ministers to interfere with decision-making functions that have been conferred on the courts, it would be equally inappropriate to interfere in relation to decision making by a children's hearing, which is an independent and impartial tribunal.

Amendment 188, in the name of Martin Whitfield, would have the effect of retaining the child's duty to attend hearings. Removing that duty was a key recommendation in the "Hearings for Children" report and the duty's removal in section 13 of the bill was welcomed by the committee in its stage 1 report. Removing the duty was also well supported in the 2024 public consultation on the proposals. A child's preference for how they participate in their hearing should be respected to the fullest extent possible, and that must include whether and how they attend. We must not confuse mandated attendance at a hearing for meaningful participation.

Section 13 of the bill will provide a simple power for a hearing to require a child's attendance where it is necessary for them to have "a fair hearing" or to assist the hearing in making a decision. In exercising that power, the hearing must have regard to the child's "age and maturity" and consider whether requiring their attendance would put them at risk. Section 13 does not seek to deprive a child of their right to attend their hearing. That right is absolute: no child can be excluded from their hearing for any reason.

The bill seeks to uphold a child's preference for whether to attend a hearing, to respond to that preference with support and to provide assurance that a child will only need to attend if it is absolutely necessary and fully justified by the hearing. Amendment 188 goes against that well-supported proposal, so I urge Martin Whitfield not to move it.

Similarly, I ask Roz McCall not to move amendment 108. I encourage members to reject amendment 108 if it is moved and to support the amendments in my name.

I move amendment 34.

Roz McCall: Thank you for your comments, minister. In speaking to amendment 108, I do not want to add a huge amount, but I will highlight what Children First said in its submission. As the minister highlighted, Children's Hearings Scotland has published a practical guide to support very young children, but questions about children's voices of continue to be raised. Because there are such concerns and issues with the guidance, it is important that we utilise any way that we can to make sure that we put a focus on those voices.

Amendment 108 seeks to ensure that the bill will require there to be guidance so that everybody knows where they are and what they are meant to do. I wholeheartedly accept that there is already guidance in place, but questions about children's voices continue to be raised.

Martin Whitfield: The purpose behind amendment 188 is not—to refer to the minister's contribution—to mandate a requirement for the child to be at every hearing; it is a provision whereby, in order to comply with UNCRC rights, human rights and general accepted jurisprudence in proving that a fair trial has taken place, whoever is the subject of the hearing, irrespective of their age, should have the right to attend, as the minister has articulated, and, in situations where the tribunal or group has decided that they should not attend, the right questions are asked. A failure to do that will render the decision questionable, for a full tribunal, or appellable, if there is a single chair—or perhaps otherwise.

The purpose that sits behind my amendment is to ensure that the UNCRC article 40 right to a fair trial is not only seen to occur but can be objectively proved to have occurred. It is unfair to describe amendment 188 as requiring the attendance of young person. My amendment would ensure that the correct questions are asked, so that the young person, where they are able, or those who represent them or advocate on their behalf, understand what has occurred, by way of deciding

whether the young person's attendance is needed or not.

I am not saying that this point in the bill is the sole place where this matter could be rectified, but the bill as introduced could rightly be challenged with regard to human rights. Both in this place and before I came here, I have always advocated for human rights. It is not a case of trying to force things in the most wrong situation, where, for instance, the young person may be retraumatised or indeed traumatised if they attend; the aim is to ensure not only that their rights are seen to be upheld but that that can be openly proved.

The purpose behind amendment 188 is to ensure that, when very serious questions are asked of a tribunal that a young person has not attended, it can satisfactorily answer them by pointing to a piece of legislation allowing it to go through a series of questions to reach its decision.

Natalie Don-Innes: I do not have too much more to say in winding up, but I want to reflect briefly on Mr Whitfield's comments.

From what I read of his amendment 188, it does change—

Martin Whitfield: Will the minister take an intervention?

Natalie Don-Innes: Yes.

Martin Whitfield: In essence, the amendment shifts the onus to a presumption of attendance; it does not impose a mandatory requirement for attendance where the questions have been asked. Rather than what the minister said earlier, the amendment is about reaching the right decision with regard to the young person. That starts with a presumption of attendance, which can then be rebutted.

Natalie Don-Innes: From what I have set out regarding the young person's views being sought on whether they wish to attend and on how they participate in the hearing, I would say that the safeguards are already in place where it is necessary for the child to be there in order to have a fair hearing or to assist the hearing in making a decision.

I would respectfully disagree with Mr Whitfield. I believe that the safeguards are already built into the bill, following the gathering of the views of children and young people through the consultation.

I will press my amendment 34 and I resist Mr Whitfield's amendment 188. We will be having a lot of discussions after this meeting, however. If there are concerns around this matter, we can always pick them up. I am not saying that I would go any further on it, but it would be helpful for us to get to the bottom of this disagreement.

Martin Whitfield: I think that "disagreement" is far too strong a word; we have too much in common.

I welcome the minister's contribution. There is a different understanding regarding the term "presumption" and the discussions that take place so that a child has understanding. However, given what the minister has said and the discussions that will be happening, I will be more than happy to make this issue part of those discussions, if that assists.

Natalie Don-Innes: I am grateful to Martin Whitfield. I have nothing further to add, and I wish to press amendment 34.

Amendment 34 agreed to.

Amendment 108 moved—[Roz McCall].

The Convener: The question is, that amendment 108 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)

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

Amendment 108 disagreed to.

Amendments 35 to 49 moved—[Natalie Don-Innes]—and agreed to.

Amendment 188 not moved.

Section 13, as amended, agreed to.

Section 14—Role of Principal Reporter and grounds hearing

The Convener: Amendment 50, in the name of Jeremy Balfour, is grouped with amendments 52 to 59, 69 to 73 and 116.

Jeremy Balfour: Amendment 50 seeks to ensure that clear regulations are drafted on what can and, perhaps more importantly, what cannot be said in a pre-hearing discussion with the principal reporter. That would ensure consistency in how those meetings are conducted, so that any issues of substance are not swept under the carpet and that they are documented or recorded appropriately. The amendment deals with

children's hearings and pre-hearing meeting provisions as set out in proposed new section 69A of the Children's Hearings (Scotland) Act 2011, which sets out that the principal reporter must

"offer the child and each relevant person in relation to the child an opportunity"

to meet with the principal reporter ahead of the hearing.

I think that that meeting should follow a meet-and-greet format to help the child to understand what is going on, to deal with any anxiety and confusion, and allow them to have a real-life experience of such a setting before the hearing goes ahead. That type of meeting should not discuss details or the grounds for the hearings. As currently drafted, the bill indicates that the "statement of grounds" can be discussed at those meetings. My question is about what would happen if the child has questions: should those be noted or dealt with, or should that wait until everyone is in the room together? At present, there is no stipulation that the meeting will be noted or recorded. Therefore, what evidence would there be of what has gone on? It is really important that everyone understands what those meetings are about and that, across the country, there is a consistency, whether someone is in the Borders, the Highlands or anywhere in between.

Amendment 53 seeks to ensure all regulations laid in respect of changes to the grounds hearing system—namely changes to the role of the principal reporter and changes to the process of putting grounds to a child—are subject to the affirmative procedure, to ensure that the appropriate level of scrutiny is applied to these fundamental rights of a child. The amendment would ensure that any regulations that are drafted under section 14 of the bill would be subject to the affirmative procedure, which would allow for proper parliamentary scrutiny. I ask the committee and the minister to support my amendments and look forward to hearing the remarks.

I move amendment 50.

Natalie Don-Innes: In relation to Jeremy Balfour's amendments 50 and 53, the hearings for children report is clear about the importance of reporters being able to exercise professional judgment and work in a relational manner.

It is critical that the reporter is able to directly apply their skills, experience and professional discretion to the cases that they consider, in order to respond appropriately to the individual needs and circumstances of children and their families.

We must also respect the independent decision making of the principal reporter and the staff to whom that is delegated for case-specific decisions. Reporters already have a well-established system of practice guidance that informs their professional practice, and I expect that system to respond to the changes made by the bill. Regulations proposed under Mr Balfour's amendments could tie the hands of the reporters as they seek to progress a child's case. That would be unhelpful.

11:45

Amendment 52 will make it clear that the principal reporter should respect the child's choice about engaging with them at an early stage, and will give the reporter the ability to be flexible and proportionate in their engagement with children and families.

Amendments 54 and 55 will make sure that, when the principal reporter needs to get a case directly to a sheriff because grounds are not likely to be accepted, that decision is based on a simple assessment of their view on the grounds. Amendment 56 will ensure that, when the principal reporter has worked with a child at an early stage, the valuable results of that work can be shared with all decision makers.

Amendments 57 to 59 will ensure that, when certain matters absolutely must be decided by a pre-hearing panel, that can be done after the principal reporter has referred the case directly to the sheriff but before the sheriff hears the case.

Amendment 69 will make sure that, when an interim compulsory supervision order is made by a hearing before a case goes to court, that order will be reviewed by a children's hearing. That is in line with current practice and reflects our ambition to keep cases in the hearings system where possible.

Amendments 70 to 73 correct minor typographical errors in section 14.

I hope that members can support those amendments.

On Sue Webber's amendment 116, it is vital that decisions made about a child in the children's hearings system are well evidenced and are in the child's best interests. It is also essential that the child and their family can participate in the decision-making process.

The 2011 act provides the overarching principle that the decision makers are

"to regard the need to safeguard and promote the welfare of the child … as the paramount consideration."

They must

"have regard to any views expressed by the child"

when deciding to make a compulsory supervision order. They may put an order in place only where they are satisfied that it would be better for the child than if no order were in place.

Those principles are well established. Amendment 116 cuts across them by, unhelpfully, giving significant weight to the availability of alternative services. That availability may not be known to the hearing or to the sheriff, or it may not be clear that referral to those services would be in the best interests of the child. The hearing can only make decisions in relation to the child; the amendment appears to require decisions to be made about the parent or primary carer.

Under the getting it right for every child approach, a child's plan—regardless of whether it is a non-statutory plan or a statutory looked-after child's plan—should offer the child or young person and their family a simple planning, assessment and decision-making process that leads to the right support at the right time. The plan should reflect the voice of the child or young person at every stage and should include a clear explanation of why the plan has been created, the personalised actions to be taken and the expected improvement for the child or young person. Sue Webber's amendment is problematic because it would effectively require the chair of a hearing or a sheriff to include an assessment of possible alternative options in that plan. That would be an inappropriate interference with their decision making and would potentially confuse the child and their family about what support would be provided.

Ultimately, the role of any child's plan is to put support for the child first and foremost. When a plan has been put in place, children's hearings will review it as part of their decision-making process. However, the ownership of and responsibility for creating and implementing a looked-after child's plan rests with the local authority and multiagency partners. I hope that Sue Webber appreciates that her amendment would be problematic because it would bring into statute a non-statutory plan that is designed to create a range of supports for children.

Also, and perhaps more worryingly, her amendment would cut across the well-established principles of decision making in the hearings system, in which the child's welfare is the paramount consideration. I encourage her not to move it.

I also encourage Jeremy Balfour not to press his amendment 50 or move his amendment 53. If he does so, I encourage members not to support them for the reasons that I have laid out.

I hope that members will support all my amendments in the group.

Miles Briggs: Hearing the minister's response before I have had a chance to outline my colleague Sue Webber's rationale for amendment 116 is a bit like putting the cart before the horse. We know that a compulsory protection order removes a child from their mother, often at birth or shortly thereafter, and that there is no requirement on a local authority to demonstrate that all reasonable alternatives have been explored or that meaningful work has been undertaken with the family to keep the child with their family of origin.

I will not cover Sue Webber's previous remarks on prevention or the evidence that the committee took at stage 1, in which there were repeated calls for prevention and clear access routes to practical supports that avoid separation, and for recorded reasoning when separation is proposed. The amendment would operationalise that expectation through a statutory precondition in which a children's hearing or sheriff may make or vary an order that would result in a child not residing with a parent or primary carer only

"if satisfied that no reasonable alternative measures are available or would be appropriate"

to keep the child at home.

Under amendment 116, consideration of alternative measures would have to be recorded in the child's plan. It contains an illustrative list of appropriate measures, such as

"domiciliary and residential support services (including parent and baby units), … out of hours support, … family residential services, … personalised budgets, … services in an order made under section 68 of the Children and Young People (Scotland) Act 2014",

and

"parent and child foster or kinship care".

I listened to what the minister outlined. My colleague Sue Webber is seeking to improve the recording of decisions such that the reasoning behind and rational for them is included. If the minister believes that that aspect should be improved, I would ask that the recording of that information in the child's plan be considered at stage 3. I intend to move amendment 116.

The Convener: I call Jeremy Balfour to wind up and to press or withdraw amendment 50.

Jeremy Balfour: I still have concerns about the flexibility that the minister seems to want. At the moment, the principal reporter must prepare a report, but that does not necessarily have to include the results of the pre-hearing discussion, so there may be no record of what took place. That means that others are not privy to that information—they are not made aware of it.

I will press amendment 50, and I will move amendment 53. I appreciate that the amendments might not be agreed to this morning. However, we must look at what is in the best interests of the child, and of others, and at whether new regulations could be introduced that would

guarantee that the principal reporter does not overstep their mark.

I press amendment 50.

The Convener: The question is, that amendment 50 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)

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

Amendment 50 disagreed to.

The Convener: Amendment 189, in the name of Ross Greer, is grouped with amendments 51, 109, 200, 202 to 205, 78 to 80 and 206. I point out that, if amendment 51 is agreed to, I cannot call amendment 109, due to pre-emption.

Ross Greer: Amendment 189, which is from Nicola Sturgeon and me, seeks to delete the provision in section 14 that the principal reporter must offer the child and each relevant person in relation to the child an opportunity to discuss whether the child intends to use children's advocacy services. It would replace the provision with an opt-out model in which the child will automatically be referred to advocacy services unless they intimate that they do not wish to be.

The reporter should be looking for the most appropriate way for a child to communicate their views, and automatic referral can support the child before they have to make complex legal judgments.

During stage 1, we were given evidence that

"when advocacy is explained by an independent advocacy worker, around 98% of eligible referrals accepted the offer of advocacy."

However, those who need referral to advocacy might sometimes be caught out by an opt-in system, so a small number of people might be falling through the cracks. Changing to an opt-out system could ensure that those who most need advocacy do not fall through those cracks. The child would retain the option to say no and to decide that they do not want to be referred.

I acknowledge that this is an area where balancing children's rights is tricky, and I am sure that Nicola Sturgeon would also acknowledge that. We lodged the amendment primarily to probe with the Government its position on how those rights are balanced.

Amendment 205 simply specifies that section 18 should say that children's advocacy services should be independent when it comes to information about referral, availability of children's services and so on.

I move amendment 189.

Natalie Don-Innes: I welcome the opportunity to speak to this group of amendments. I thank Ross Greer for explaining the intent of his amendments, and I look forward to hearing from other members on the intent of their amendments in the group.

I have considered amendment 109 in the name of Roz McCall, amendment 189 in the name of Ross Greer and amendments 200, 202 to 204 and 206, in the name of Martin Whitfield, all of which seek to require and impose on the child an opt-out model of referral to children's advocacy services. I have also reflected on the discussions that we had on advocacy matters at last week's meeting, which included a sensible examination of what a balanced model of access to advocacy should look like. We agreed that that balance involved the consideration of child-centred planning and practice and of power dynamics and risks, and respecting children's rights and privacy.

The core concern that I still have about developing an opt-out model of children's hearing advocacy provision is how it would impact on children, some of whom might move in and out of care during their childhood as a result of interactions with the hearings system. The Government is also concerned that the opt-out approach does not match up with encouraging genuine relationship-based practice. The current children's hearings scheme, which is co-designed with advocacy providers, has operated successfully for more than five years, and independent evaluation in November 2024 confirmed its effectiveness. That independent research said:

"Many said that they felt in charge of the relationship, and in control of how the advocacy worker supported them and represented them. Some said that this was a very different relationship than they had with other adults in their lives",

with one young person commenting:

"I'm basically the boss because I tell you what to say and then you tell others."

Advocacy should deliver agency and empowerment to children, but that will not be the case from the outset when the state has assigned

a worker to them or imposed one on them. In an opt-out model, children will not feel, as they should, that they are the boss. Hearings-experienced young people from the Our Hearings, Our Voice board also gave their views on and experiences of advocacy. One person said that children should be able to say yes or no to an advocate if they do not like them or get on with them.

I do not support upending the current needs-led and demand-led, child-centred model that has operated in Scotland since 2020. That approach emerged from almost nine years of testing, options appraisal and modelling. Opt-out would necessitate advocacy provision being made for each child who is referred and would entail the recruitment of a standing army of advocacy workers that evidence shows is not needed or wanted.

Children should be able to choose whether independent advocacy is what they want and need, and we should respect that they might have other trusted adults whom they choose to support them. In some cases, for children who cannot so easily express their view, the authorisation of those trusted adults to refer children for independent advocacy, as needed, is equally important.

Cost is not the determining consideration; putting children's needs and wishes first is.

However, it is important to record that an opt-out scheme in the hearings system would increase costs to the public purse at least fivefold compared with the current scheme. When the clear evidence and experience show that there is nothing approaching that level of demand from children, we can agree that it is not necessarily needed. Creating an opt-out model could require children to move from existing trusted advocacy relationships to new ones at critical points in their care journey. The approach risks overriding children's wishes to fit with a state-imposed scheme and disrupting the individualised and person-centred approach that we have agreed that we wish to see.

12:00

Current advocacy provision under the national scheme is not simply opt-in. There is also an important demand-led and evidence-led dimension. The current advocacy scheme supports around 18 per cent of children's cases at an annual cost of £2.1 million. Since its introduction in 2020, when the scheme supported an initial 10 per cent of cases, provision and resourcing have steadily risen, with ministers successively releasing more funds in response to recorded and identified demand from providers. There is no current evidence of unmet need for children's hearings advocacy. Around one in five children say that they want advocacy for their hearings. There is a current functioning mechanism that matches the presenting demand. I believe that an organic and child-led approach is the right one.

Throughout the bill process, members have been concerned about imposed or unintended power imbalances. We should not paternalistically assign an advocacy worker to every child, leaving the child with the burden, pressure and expectation of rejecting a powerful professional figure.

Other bill provisions and non-legislative efforts will do more to promote advocacy and increase uptake. I recognise the statistic that Mr Greer has pointed out in relation to the uptake of advocacy. We have proven that we will respond positively to demand where it is needed.

I agree with members that there needs to be a balance, and I am open to working with members on developing the right course to achieve that. More should be done to positively encourage and inform children at every opportunity about their rights to independent advocacy and to be supported by trusted adults and the professionals around them at the right time. An early and on-going effort is where the focus should be, instead of imposing an opt-out approach.

There are significant privacy considerations, such as where the child is too young to consent to having their personal information shared, or where parents and carers have not given their prior consent to approaches being made. The Children and Young People's Commissioner Scotland has commented specifically on that in regard to children's hearings advocacy amendments, saying:

"We believe that access to independent advocacy should be on an opt-in basis. While we understand the issues suggestions of automatic referral to advocacy seeks to address, we believe opt-out approaches may represent a disproportionate interference with children's privacy rights. We are concerned that amendments 189, 109 may do this."

John Mason: I hear what the minister is saying, and she is saying it very strongly, but I have also listened to what Ross Greer and other members have said. What about a child who has had bad experiences with lots of adults and assumes that an advocate will be just the same? That would be a challenging position for the advocate, but their aim would be to win the child round and put them in exactly the position that the minister describes, with the child feeling in charge and in control of the situation. If we do not have an opt-out model, the child would not have the opportunity even to try that.

Natalie Don-Innes: I respectfully disagree with Mr Mason. It is not a one-time-only offer. If a child has had bad relationships with adults and distrusts services, they very well might not accept advocacy in the first instance, but they will most likely have trusted relationships around them. As I have just laid out, I believe that the offer and encouragement of advocacy should be stepped up. In an instance in which a child distrusts services, they will be educated about what advocacy does in providing and standing up for their views, and they will be encouraged to use it.

I do not think that an opt-out model would effectively tackle the problem that Mr Mason set out. Even if someone is referred to such services, that distrust will still be present and might be harder to remove if an advocate is in place. Therefore, I respectfully disagree with Mr Mason's comments. I hope that that provides a bit of clarity.

Amendments 51 and 79 are connected. Amendment 79 will replace provisions in section 14 of the bill on notification of hearings in proposed new section 69A(7) of the 2011 act by inserting, after section 18 of the bill, a new duty into the 2011 act. The new duty will require that a child's advocacy workers be notified in a timely manner by the principal reporter of the hearing's time and location in order to enable them to represent the child's views at the hearing.

On amendment 80, in the name of Jeremy Balfour, section 18 of the bill already includes new duties on local authorities, police constables, health boards, the principal reporter and others to provide information to a child about the availability of children's advocacy services prior to a referral to a children's hearing. At the point of giving the principal reporter information about the child, they must also provide the child with information about the availability of children's advocacy services. Although we support the intention behind the amendment—that advocacy services should be signposted to children at "the earliest possible opportunity" in order to enable their effective uptake—the amendment would increase the duty on the chairing member of the hearing in section 122 of the 2011 act, and it would not improve earlier access to advocacy for the child. That is because the point at which a hearing is convened and a chair is in conversation with a child is far too late for a child to be informed for the first time about the availability of advocacy—that should have already happened, as is recognised in the code of practice that underpins the scheme, which has run successfully for the past five years.

Jeremy Balfour: Does the minister not see the provisions as a backstop? If, for whatever reason, in a one-in-whatever-number case, a child has not been informed already, that would be the final opportunity for them to be given the knowledge that they are allowed an advocate. That is the purpose of the amendment. In other words, it should not be seen as establishing what should happen as normative; it would be used when a child has fallen through a gap, for whatever reason.

Natalie Don-Innes: I do not believe that that is what the amendment truly reflects, and I believe that what it provides for is already in place.

Jeremy Balfour: My amendment would serve as a belt and braces. You say that its provisions are already in place. If that were the case, the amendment would not necessarily be needed. However, as solicitors, social workers and others will have experienced, not every case goes smoothly. History tells us that kids miss out on that information. The amendment would therefore be an appropriate backstop to ensure that every child gets the advocacy that they might require, even if it is at the last moment.

Natalie Don-Innes: On the point about the provisions ensuring wider understanding and knowledge of advocacy, I absolutely agree with Mr Balfour that there will be instances, including complex cases, in which advocacy has not been taken on board. As I said to Mr Greer, there should be frequent, regular opportunities for advocacy to be offered to the child. I accept that such provision should still be there as late as that point in the children's hearing, but, as I said, that is already in statute. The chairing member of the children's hearing must inform the child of the availability of children's advocacy services. However, I am saying that there are earlier opportunities for such information to be given, as I have said in my assurances to Mr Greer.

The provisions that are already in section 18 will more effectively ensure that the child receives appropriate information about the availability of such services at the earliest opportunity, well before a children's hearing is organised. Therefore, I oppose amendment 80 for the reasons that I have outlined.

Amendment 78, in my name, clarifies that children's advocacy services under section 122 of the Children's Hearings (Scotland) Act 2011 can be provided to support a child in relation to a children's hearing

"whatever the child's age or capacity".

So-called non-instructed advocacy recognises that a child might be unable to directly instruct someone to provide such services, so the provision of those services can be arranged on behalf of the child, following appropriate engagement with their family.

I acknowledge that Ross Greer's amendment 205 seeks, in part, to achieve that. In principle, I

support the intention of his amendment, but the term “non-instructed advocacy” might need further clarification, so I would prefer Mr Greer not to move amendment 205, based on my assurance that we will find a workable means of realising our shared intentions.

Non-instructed advocacy supports children who cannot express their views due to age, disability, illness or trauma. That reflects some of the conversations that we have already had in the committee. It ensures that a child’s rights are upheld in children’s hearings through observation, relationship building and consultation with relevant others.

In delivering non-instructed advocacy, the advocacy worker’s role is to factually present an advocacy statement to decision makers based on what they have observed directly or been told by significant others in a child’s life. No projection or opinion is offered by the advocacy worker as to what action would be in a child’s best interests. That is an important distinction from the role of a safeguarder.

In order to promote further dialogue, inclusion and future flexibility, the Government’s amendment 78 proposes setting out the framework for, or connected to, the provision of non-instructed advocacy through the existing regulation-making powers in section 122(4) of the 2011 act, following a process of consultation and engagement. That will allow for further collaborative work on training, awareness raising and practical application to specify when information on non-instructed advocacy services should be presented to children’s hearings panel members and be given due regard by decision makers.

I will not move amendment 78, in my name, if Ross Greer agrees not to move amendment 205, so that we can work together on an agreed solution at stage 3. As I said, I support the intention behind amendment 205, but further work is needed on the wording.

In summary, I encourage members to support amendments 51 and 79, in my name, and to vote against amendment 189, if it is pressed, and amendments 109, 200, 202 to 204, 80 and 206 if they are moved. As I said, if Ross Greer is happy to not move amendment 205, I will not move amendment 78.

The Convener: I call Roz McCall to speak to amendment 109 and other amendments in the group.

Roz McCall: It is weird to come in when virtually all the arguments have been stated.

It is interesting that, although the minister highlighted that, currently, one in five children say that they want advocacy, groups such as Barnardo’s have stated that, when there is the right process and the advocate is able to sit down and discuss with the child what the situation is and what advocacy will bring to them, there is more than 90 per cent uptake. That highlights to me that what we have now is not fully working for the majority of children.

Natalie Don-Innes: Does Roz McCall agree that, as I have highlighted, it would be more helpful to follow what those groups have said about offering the best opportunities and frequent opportunities for advocacy and explaining exactly what advocacy entails, rather than focusing on an opt-out model?

Roz McCall: I accept that we should have that process, and I agree 100 per cent that advocacy should not be a one-off offer, if that makes sense.

Martin Whitfield: In a similar vein, an opt-out model will not present advocacy for a child in the dark—the advocacy will be explained and will allow for relationship building—so the minister’s argument works just as well in relation to an opt-out model as it does in relation to an opt-in model, because relationships and understanding are needed in order to make a decision.

12:15

Roz McCall: That is a point well made. I do not think that this is an all-or-nothing situation. If we have the best interests of the child at heart, we must consider providing an advocacy service at different places down the line while ensuring that the child is fully informed of what that is. That is what my amendment 109 is trying to achieve.

We are not stating in amendment 109 that the child has to take up the service; the child would be referred unless they indicate that they do not wish to be referred. That referral will, however, give an advocate a chance to explain, thoroughly and properly, what support they can provide. With only one in five children saying that they want advocacy, that cannot be the system at the moment, but with amendment 109 there would be more uptake. That is what amendment 109 hopes to achieve.

Martin Whitfield: This has been an interesting debate so far. We have two extreme positions, in essence. We either have an opt-in model or an opt-out model. The Scottish Government’s preferred option is for an opt-in model, whereas substantial amounts of evidence and argument point to the benefits of an opt-out model, starting with the data that is already there about how successful the services are when properly introduced.

We have already had a debate on the matter, and we will consider what "independent" means. That is a crucial aspect of this element of the bill, although I see that we are much further apart on this matter than we are on the definition of "independent".

I found some of the minister's remarks a little challenging. It is unfair to describe my proposal as imposing services on the child; I think that an opt-out model imposes it on the system.

The minister has talked about the importance of relationships.

Natalie Don-Innes: I highlight the point that our proposed policy is not just the Government's position regarding the power imbalance. The Children and Young People's Commissioner Scotland had very clear views on that. If an advocate is assigned to a child or young person, they may feel forced into taking that advocate on, rather than it being a choice for them. I am interested to hear Mr Whitfield's reflections on that.

Martin Whitfield: At a simple level, we can all point to those who have provided suggestions and advice, including the children's commissioner, on amendments that have not been agreed by the Government. One of the roles of Parliament is to debate what may be two extreme points—by "extreme" I mean where the stance is that it is one thing or the other. Part of our role as elected members is to take such decisions on behalf of those in our wider communities who elect us here. That can be based only on the evidence, the debate that is heard and the conversations that happen.

I go back to my point that an opt-out model is not an imposition on the child; it is an imposition on the system. There have been cases, to which the minister has referred, of individuals who choose to do exactly that—to opt out. We also have a huge amount of both subjective and objective evidence that the challenge of dissent and misunderstanding is greatly reduced when advocates are involved.

The minister has talked about the costs, and she is absolutely right to do so, but she has also talked about her desire to develop advocacy in an iterative way, presumably to the point where every young person has an advocate, albeit that that point would be reached at a different pace compared with the jump that the opt-out model would give.

In essence, we all seem to be talking about the same goal that we wish to achieve, which is that the children are rightly represented by an advocate where the child wants to have one. I think that the opt-out model allows for a sensible discussion, and it allows relationships to be built at a much earlier stage.

The minister also raised the question of the potential tension with the rights of a young person under the general data protection regulation.

The flipside of that is the right to a fair trial and representation, and to be heard. We have ways of balancing challenges where human rights are brought into the context. In this case, the adults who surround the young person are perfectly able to adjudicate as to when GDPR should take precedence over the right to an advocate and the right to have a fair trial or, indeed, when it should be the other way. Some of the assertions that are being made against the opt-out model are unfairly based. In the amendments before us, we have, in essence, two different ways of achieving that. I compliment both Ross Greer and Nicola Sturgeon on managing to do it in a much shorter way than I did. It absolutely needs to be looked at.

With regard to amendment 80 from Jeremy Balfour, I know that the minister pushed back on the fact that it would, in essence, be a backstop. However, I can imagine scenarios where a chair or a panel are confronted with a subject in relation to which they would feel much safer if the young person had an advocate who was separate and distinct from others who had been involved. It might, indeed, be a sign of a disappointment if a case had got that far without the young person having their own advocate. To forgo the last opportunity for that would go against both the professionalism of the chair and the expertise of the panel.

I think that we have disagreement among the lodgers of a number of these amendments in relation to the purpose behind them. I am not sure whether the discussion will draw that together. We will see where it goes. I look forward to the minister's summing-up.

The Convener: I call Jeremy Balfour to speak to amendment 80 and other amendments in the group.

Jeremy Balfour: We have had a long debate on this and I do not want to rehearse all the comments that have been made. However, we need to look at some kind of backstop; I appreciate that it is already there, but it needs to be looked at.

Going in the other direction, Barnardo's is very clear that advocacy should be there at the point of referral. I appreciate that that will be the situation in many cases, but I am concerned that, for different reasons, a number of children will fall through that system. I will not press amendment 80 this morning, but I would like to discuss both the backstop and referral at the earliest opportunity.

I make the following point as much to myself as to anyone else who has not been through care experience—I have on one side, but not on the other side. Often, as they get older, children do not have very positive role models and they do not have people who are advocating for them. As Mr Mason pointed out, they often have very poor experience of what adults have done to them and, allegedly, for them. We need as many opportunities as possible, and as many doors as possible, to allow advocacy to take place. Even if we have things that might happen only one in 100 or one in 1,000 times, it is nonetheless important that they are there and that they are being used as often as possible, because we are talking about some of the most vulnerable people in our society.

I will not press my amendment this morning, but I would welcome further discussions about a backstop and the earliest possible time to refer.

Ross Greer: To get it out of the way at the start, I note that I will not move amendment 205. I am happy to take up the minister's offer in relation to that, bearing in mind that we are in the same place in principle and simply need to work on drafting.

On amendment 189, I will not repeat what Martin Whitfield said, because I agreed with much of it. If I am being completely honest, I struggled with the logic of a lot of the minister's contribution, particularly for one of the reasons that Mr Whitfield highlighted: namely, that much of it could have applied equally as an argument against an opt-in model, as opposed to an argument against an opt-out model. There are inherent difficulties when we are trying to provide advocacy and support to very often traumatised children and young people who are, as John Mason said, quite rightly suspicious of adults full stop.

That being said, I recognise the particular concerns on privacy rights, which come from the office of the Children and Young People's Commissioner Scotland. On that basis, even though I do not yet agree with the Government's argument and would appreciate further discussion on it ahead of stage 3, I have been a stickler when it comes to privacy rights, so it is only reasonable that I do not press amendment 109 at this point. I am keen to continue the conversation with the Government ahead of stage 3, although this should not be the end of the discussion. As Mr Whitfield indicated, it is clear that there is not a settled position in the committee or across the Parliament. That is justification for the conversation to continue in other forums ahead of stage 3.

Amendment 189, by agreement, withdrawn.

Amendments 51 moved—[Natalie Don-Innes].

The Convener: I remind members that, if amendment 51 is agreed to, I cannot call amendment 109 due to pre-emption.

Amendment 51 agreed to.

Amendment 52 moved—[Natalie Don-Innes]—and agreed to.

Amendment 53 not moved.

The Convener: Amendment 190, in the name of Martin Whitfield, is grouped with amendment 198. I call Martin Whitfield to move amendment 190 and speak to both amendments in the group.

Martin Whitfield: This is a short group that might re-rehearse some of the earlier discussions that we had about timeframes. In no way do I assume that the Government will take the same stance with regard to timeframes appearing in primary legislation, but I am also open to having a discussion about the appropriate venue to enable it to happen. I am happy to conclude my submission at this stage and will not seek to move amendment 190, if the minister can intervene.

The Convener: I am sorry, Mr Whitfield, but if you do not move it, we cannot consider the rest of the group. If you move the amendment, we can then call other speakers.

Martin Whitfield: I will look to the minister for safety in an intervention, and I can then move amendment 190 to allow the discussion to happen.

Natalie Don-Innes: I am sorry, Mr Whitfield. I did not catch exactly what you wanted me to say.

Martin Whitfield: That is no problem.

I move amendment 190.

The Convener: I am very pleased to have been able to catch out the convener of the Standards, Procedures and Public Appointments Committee on that one.

Amendment 190 has been moved, so we can continue with the group. I call Roz McCall to speak to amendment 198 and other amendments in the group.

Roz McCall: I will speak only to my amendment 198, which would introduce a requirement on the principal reporter to prepare and publish reports on waiting times for children's hearings. As Children First said in its submission, requiring further transparency and accountability around waiting times is not necessarily a bad thing. This simple amendment would give us more information. I am a great believer that we do not know where the issues are if we do not have the information to back it up. Amendment 198 would allow us to find out exactly what the waiting times are for children's hearings.

Natalie Don-Innes: I want to provide some information, and if there is anything further, we can pick that up later. I recognise that Martin Whitfield, with his amendment 190, seeks to address an issue of common concern. He is right that much of what I said on a previous group of amendments is relevant to this group. However, work is under way to improve timeframes, so I want to provide a little context around that.

Continuous system-wide multi-agency action is being taken to reduce the time to establish grounds and, more broadly, to deal with drift and delay in the system. Much of that is covered in the bill, but wider work is also being done. The time interval standards, which were established in 2001, are being revised by a multi-agency group in order to continue driving efficiencies. Between 2022 and 2025, the Scottish Children Reporters Administration has increased the proportion of cases with a first hearing arranged within 20 working days from 50 to 70 per cent.

Not only do the core system partners recognise the need to address the delay in the system, they have an established and effective mechanism for doing so. The courts and judiciary, the SCRA and other partners are working together with a view to ensuring that the existing system works more efficiently. Indeed, the approach has been successfully tested in Glasgow and Strathkelvin, and in that sheriffdom, the average time that is taken to complete referral proceedings has reduced from 89 to 66 days.

12:30

The sheriffs principal are currently considering the introduction of a national children's referrals practice note to ensure a consistent approach to the processing and management of children's referral cases across Scotland, so that cases are concluded efficiently and within optimum timescales. I would be happy to provide the member and the committee with more information on the non-statutory work in that area, if it would be helpful. We have also sought to eliminate drift and delay through the proposals that we have put into the bill, particularly to expedite processes around grounds for referral.

As indicated in the Government's response to the "Hearings for Children" report, we have explored and consulted on issues. For example, we consulted on the time limit proposal in July last year through the development of the bill, and we have further explored the efficacy of introducing time limits for the establishment of grounds in our discussions on the bill with the SCRA and the Scottish Courts and Tribunals Service. It is not clear from those discussions whether imposing a flat, arbitrary time limit that could not be altered in appropriate circumstances would serve to expedite matters for children.

In fact, it is potentially significantly damaging to legislate in that way. Certain activities can take time in the hearings system for child-centred rather than system-led reasons, and there are potential rights implications arising from arbitrarily compressing timescales. At various stages, children and families need time to absorb the information that they receive, time to source—and potentially take—legal advice, and time to consider their response. Other actions might be deemed necessary in the process, and those take time, too. Appointing safeguarders, commissioning expert reports and accounting for the scheduling of hearings into families' busy lives all contribute to decision makers arriving at an informed, defensible and sustainable decision for each child, and I think that that could be compromised by statutory timescales. There are also some cases that are, of course, extraordinarily complex.

As I have said, I recognise the intent behind Mr Whitfield's amendment, and I appreciate his opening comments. I am happy to provide further information on the work that is under way and to discuss the matter further. Given the live dialogue and the work that is on-going on achieving the objective that the amendment sets out to achieve, I will explore lodging a child-centred and deliverable provision at stage 3, so I ask Mr Whitfield not to press his amendment.

On a similar topic, I thank Roz McCall for lodging amendment 198. She might be aware of the blueprint for the processing of children's hearings cases—the time interval standards—which was published and adopted by hearings system partners in 1999,. An updated scheme was introduced in 2001, which extended beyond police, local authorities, reporters and hearings to include safeguarders, courts and health professionals.

Detailed performance reporting on timeliness is a regular and public feature of children's reporter annual reporting. It also features in care inspectorate assessments of local children's services, specifically on the preparation of social work reports for the reporter. There is also a data workstream of the children's hearings redesign programme, and in the next session of Parliament, I expect the board to advise the new Government on how to develop and introduce an updated, extended and sustainable scheme to measure performance and assess areas for improvement.

Roz McCall: The blueprint that the minister mentioned might be considered a little out of date, given the increase in work that there has been since it was published in 1999. She said that she would like the next Government, whatever colour

it might be, to look at this. Is that on the understanding that the blueprint is perhaps a little out of date?

Natalie Don-Innes: Aspects of it could be, but at the crux of this is the fact that this relates to the children's hearings redesign and Sheriff Mackie's report. Obviously, the redesign programme is driving forward with the non-legislative aspects of this. This is centred around that, but it is something that I believe will help improve the situation and will be directed towards the next parliamentary session.

There might be merit in legislating in the bill to put timeliness reporting on a statutory footing and enabling the form, scope and content to be governed by future regulations, as Roz McCall's amendment 198 seeks to do.

On publication and dissemination, we could include a duty in the bill provision, with further parameters to be set out in regulations in order to afford the Parliament appropriate scrutiny and oversight. It is important that any provision on time measurement reflects the redesigned system, not the current one. The detail of that is still emerging through the bill, so a regulation-making power is a sensible future-proofing measure and will afford the Parliament appropriate scrutiny and oversight. Thus, some technical refinements could be made to the amendment that would not materially change the effect of the amendment. For example, it could adopt the terminology of "time intervals and quality standards" rather than "waiting times". In any case, I undertake to consider the issue further ahead of stage 3, to give best effect to the member's intentions, which I absolutely support. With that assurance, I ask Roz McCall not to move amendment 198.

Martin Whitfield: I extend my apologies to my colleague Roz McCall for trying to defeat her debate on her amendment. I will now read from the next bit of my script. Following the assurance given by the minister, I seek to withdraw amendment 190.

Amendment 190, by agreement, withdrawn.

Amendments 54 to 59 moved—[Natalie Don-Innes]—and agreed to.

Amendments 191 and 192 not moved.

Amendments 60 to 73 moved—[Natalie Don-Innes]—and agreed to.

Section 14, as amended, agreed to.

Section 15 agreed to.

After section 15

The Convener: Amendment 74, in the name of the minister, is grouped with amendments 193, 194, 75 and 76. I invite the minister to move amendment 74 and speak to all the amendments in the group.

Natalie Don-Innes: I will speak to my amendments in the group first.

Amendment 74 was lodged in direct response to the outcome of a judicial review in which the opinion of Lady Carmichael was clear that the statutory safeguard contained within it is required. It is designed to prevent frivolous or vexatious reviews of a child's case by relevant persons in children's hearings. Currently, there is nothing to prevent a relevant person from repeatedly exercising their right to seek variation of an order. Lady Carmichael considered that right to be particularly problematic because of the continual state intervention in a child's life when such a review has no prospect of changing an order. In particular, she mentioned

"The unfettered potential for calling repeated reviews where there has been a background of domestic abuse of one relevant person by another".

Amendment 74 seeks to remedy that situation and I hope that members will support it.

Amendments 75 and 76 will remove the timescales from the proposed new sections 128B and 164A of the Children's Hearings (Scotland) Act 2011, which had been intended as placeholders at introduction of this bill. Following engagement with the Scottish Courts and Tribunals Service and the office of the Lord President of the Court of Session, it is their preference that we work with them to produce court rules that govern the procedure for appeals on such decisions, rather than setting potentially challenging timescales in primary legislation.

It remains the Scottish ministers' intention that such cases be dealt with as quickly as possible. That will continue to be the case as we work collaboratively on the necessary court rules on timescales. I hope that members can support those changes.

I thank Martin Whitfield for lodging amendments 193 and 194. It is potentially helpful to include consideration of children's rights under the UNCRC in such cases, and I am content to support those amendments. However, I may need to lodge some amendments at stage 3 to tidy up the provisions.

I move amendment 74.

Martin Whitfield: As the minister has indicated, amendments 193 and 194 relate to article 16 of the UNCRC, which provides for the right of children not to be subjected to unlawful interference in their private or family life. The amendments would ensure that, when considering whether to prevent a relevant person from attending a hearing, the UNCRC would be considered on the same basis

as article 8 of the ECHR, which is the right to private and family life. As I have argued on many occasions, that right embeds the UNCRC into Scots law and gives further routes for children and young people to challenge decisions. I welcome the Government's support for the amendments.

The Convener: I call the minister to wind up and press or withdraw amendment 74.

Natalie Don-Innes: I have nothing further to add. I press amendment 74.

Amendment 74 agreed to.

Section 16— Removal of relevant person status

Amendments 193 and 194 moved—[Martin Whitfield]—and agreed to.

Amendments 75 and 76 moved—[Natalie Don-Innes]—and agreed to.

Section 16, as amended, agreed to.

After section 16

The Convener: Amendment 77, in the name of Jeremy Balfour, is grouped with amendments 111 to 115.

Jeremy Balfour: I apologise to you, convener, and to the committee, because this will take me a wee bit of time, but these issues are important.

In its stage 1 report, the committee asked for

"clarity on whether the Bill will offer further opportunities"

for legal representation. With my amendments in this group, I seek to strengthen a child's legal rights as they go through children's hearings.

Children's hearings, particularly those that relate to offence grounds, can play a pivotal role in a child's outcomes and future. Legal representation is essential to ensure that children and their families are fully aware of their rights under the law. However, concerns have been raised that children are not currently aware of their rights and often use advocates or other advisers at hearings, which can diminish their understanding and representation. That is why it is important, as we discuss and debate these amendments, to make a distinction between advocates and advisers and those who are legally trained and qualified.

The Promise Scotland said that one of its key asks for the bill was for there to be an automatic right to legal representation for children who are referred on justice grounds. That right is what I seek to ensure with amendment 77.

The introduction of rights of audience to children's hearings, linked to specific child-centred and trauma-informed training and training on the ethos and practice of children's hearings, would go a long way to ensuring that standards are set and maintained in the system. That is what amendment 112 seeks to ensure. There is precedent for introducing rights of audience in a specific forum—for example, the rights of audience that will be introduced for the sexual offences court.

It would take time to build capacity in the sector, although the Law Society of Scotland already offers accreditation for child-centred practice. To allow such capacity to be built, amendment 112 could have a delayed commencement before its provisions are formally introduced into Scots law.

Amendment 113 would introduce a legal aid duty. Amendments 113 and 114 seek to introduce the concept of duty solicitors in the children's hearings system so that children's rights are adequately protected throughout the system. The process of introducing duty solicitors is started by amendment 115, which would amend section 18 of the bill to provide information about rights to access legal advice.

I believe that it is really important that the child is offered a lawyer and that, if they want a lawyer, one is provided at the earliest opportunity. If we do not provide for that, the child will always be put on the back foot. We could not imagine that that would be fair to an adult in a criminal or other procedure. We also need a definition of child-centred legal advice, which is linked to rights of audience and training, as I talked about before.

12:45

I lodged my amendments in the group because, back in 2020, "The Promise" said:

"Children and their families must have a right to legal advice and representation if required. Scotland must be clear that the provision of advocacy does not replace rights to legal representation but the two roles (advocacy and legal representation) have a separate, distinct purpose."

However, there is no reference to the right to seek legal advice anywhere in the bill. That is problematic, particularly given the proposed landscape of complexity being added to grounds hearings, meetings with the reporter after the grounds have been decided, and single-member panel hearings.

My amendment 115 seeks to make the distinct roles of advocacy and legal representation clear and to ensure that the child is provided with information about their right to access legal advice and how to do that at an early stage. It has to come under legal aid, because no child would be able to afford that legal representation. I appreciate that the Government is working on legal aid and that a bill on it has been promised in the next session of Parliament. However, as Ross Greer pointed out, this is our last opportunity to deal with the matter in the current session, and if we do not at least move in the right direction with regard to giving

young people independent legal advice, we will miss an opportunity.

I look forward to hearing what members and the minister have to say about my amendments.

I move amendment 77.

Roz McCall: The "Hearings for Children" report called for a decisive move to an

"inquisitorial rather than adversarial"

model—it is not easy to say that when you have a cold. However, Children First told us ahead of today's stage 2 proceedings that legal representatives acting in a way that is not appropriate for children's hearings is a constant challenge and it creates an adversarial atmosphere, and I entirely agree.

My amendment 111 therefore seeks to introduce a framework for the accreditation of solicitors who represent children and relevant persons in children's hearings. It represents a practical and important measure to ensure that legal representation in such sensitive proceedings is consistently competent, professional and child centred. In seeking to provide training standards, accreditation and a register of solicitors, the amendment would ensure that those who represent children are properly equipped to act in the child's best interests, uphold procedural fairness and engage in a trauma-informed manner. It would also allow suspension or removal of that accreditation if standards were not met, which would ensure accountability.

I am well aware that work is happening—and has been for some time—to address that matter, but it would be helpful for the bill to provide for further regulations to provide a statutory underpinning. That is why I lodged amendment 111.

Natalie Don-Innes: I am grateful to Mr Balfour for lodging his amendment 77, which seeks to expand the prescribed list of circumstances where children's legal aid is automatically available to a child in connection with certain children's hearings and court proceedings. Although I agree with the principle of his intentions, I am concerned that the amendment would have significant adverse consequences for not just the children and young people who are eligible for legal aid but the legal profession and the courts that serve them in those circumstances. I will lay out my concerns.

The Scottish Legal Aid Board has established a scheme to ensure that a duty solicitor is available to a child who is entitled to automatic legal aid under section 28C of the Legal Aid (Scotland) Act 1986. Under regulation 35 of the Children's Legal Assistance (Scotland) Regulations 2013, a child in those circumstances may not choose their own solicitor, as children's legal aid may be provided only by a solicitor who is made available under the duty scheme.

Amendment 77 would impose a requirement for all children to be provided with a duty solicitor, creating a twofold problem, as that would be undeliverable and would impose a requirement for children to be represented by whoever the duty solicitor was at the time, and I think that the member would agree that that is not necessarily a child-centred approach.

I understand that, in most cases where there are court proceedings, children will already have a solicitor of choice who has been acting for them in earlier hearings proceedings, and our information is that there are few, if any recorded instances of children being unable to secure representation. Accordingly, although I agree in principle with the amendment, I have concerns that it could undermine some of the existing arrangements. In the light of those concerns, I ask Mr Balfour not to press amendment 77. However, I have been clear with him that I am happy to engage with him on the issue to explore other potential opportunities to strengthen children's legal aid.

I am grateful to members for lodging amendments 111 and 112, which raise important questions about the quality, consistency and trauma-informed nature of representation in the children's hearings system. The Government is fully committed to ensuring that children and families experience high-quality, trustworthy and trauma-informed legal support. However, both amendments raise significant issues relating to the independence of the legal profession, regulatory oversight and the sustainability of the solicitor workforce.

In Scotland, the regulation of solicitors is a matter for the Law Society of Scotland, overseen by the Lord President. Introducing a minister-driven accreditation scheme, as proposed in amendment 111, would risk a significant departure from that long-standing position and would challenge the independence of the legal profession.

The Scottish Legal Aid Board already requires solicitors who work in the area of children's legal assistance to meet five defined standards, which show their knowledge and experience in child law and development. Solicitors can also choose to be specially accredited in child law through the Law Society of Scotland. However, we know that there are shortages of available solicitors in some areas and that securing duty representation can sometimes be challenging. Mandatory accreditation or additional compulsory training could exacerbate that situation.

Similarly, amendment 112 seeks to ensure trauma-informed practice by requiring completion of a course approved by the national convener, rather than by the Law Society or the Lord President. Although the intention is welcome, the amendment might reduce the number of solicitors who are prepared to undertake that work unless it is accompanied by appropriate remuneration and implementation planning, so I have some concerns about the framing of the amendment. We also recognise the strong vision and values statement that is endorsed by partners across the hearings system, which sets out clear expectations around collaborative, respectful child-centred practice. Any move towards formal accreditation should build on that shared framework.

For those reasons, although we support the aspiration to strengthen practice, we do not necessarily consider that introducing statutory accreditation at stage 2 is the right approach.

Accordingly, I invite members not to press amendments 111 and 112 today, but I am happy to commit to further engagement with the Law Society of Scotland, the Lord President, SLAB, the Family Law Association and wider stakeholders ahead of stage 3, and to consider whether a more proportionate, consensus-based approach could be developed. Our shared priority must be ensuring that children and young people receive the best possible support in the hearings system.

Amendment 114 would make children's legal aid automatically available to every child who is subject to a children's hearing fixed by the children's reporter, including all deferred hearings, irrespective of the grounds of referral. The effect of the amendment operationally would be to require the Scottish Children's Reporter Administration to notify the Scottish Legal Aid Board of every hearing. The Scottish Legal Aid Board would then have to arrange for a duty solicitor to be made available to every subject child. That would be extremely difficult, if not impossible, logistically. In addition, given the rules on children's legal aid schemes, it would mean that every child who had chosen their own solicitor would need to use a duty solicitor.

It could also lead to the presence of more solicitors in a children's hearing, with a risk that the voice of the child would become quieter. The relevance of legal presentation should be a key issue in determining the need for a solicitor, and we should avoid it becoming the norm.

Amendment 114 is also unnecessary because, in any case from 1 June, children will have automatic access to free advice by way of representation for any children's hearing without any means or merit tests. Another key issue relates to the concern that the supply of duty solicitors would fail to meet any new increased demand of that level, with the consequence that such a proposal would become inoperable.

Amendment 114 also seeks to extend the availability of automatic children's legal aid but, in this case, only on any occasion when a referral ground includes an offence allegedly being committed. Although I accept that that is narrower in scope than amendment 113, I am again concerned about the need for such a blanket provision when there is adequate scope under the current rules for children to access to legal aid when it is required. As has already been mentioned, from 1 June, assistance by way of representation will be automatically available to the subject child for all hearings.

In addition, although amendment 114 is narrower in scope than amendment 113, it is disproportionate, as it would nonetheless result in automatic children's legal aid for any hearing involving a referral, even referrals for minor offences. Operationally, amendment 114 would also result in a significant number of duty appointments being required to be put in place by SLAB, along with a knock-on effect for those solicitors. As with amendment 113, any child who has selected their own solicitor would be unable to be represented by them since the duty rules will require that automatic legal aid be provided by the duty solicitor.

Finally—you will be pleased to hear me say that—it should be borne in mind that children's hearings adopt a welfarist approach that aims to be non-adversarial—

Jeremy Balfour: Will the minister take an intervention?

Natalie Don-Innes: Yes.

Jeremy Balfour: If the minister is asking the committee to reject all the amendments in this group today, is it the Government's intention not to lodge amendments at stage 3 about increasing the amount of legal advice and help that a young person can get at a children's hearing? Is it the Government's view that everything is fine in the garden and no changes need to be made?

Natalie Don-Innes: No, that is not at all what I have said. I think that I assured Mr Balfour that I would be happy to explore opportunities to strengthen children's access to legal aid prior to stage 3, and I would be happy to do so, whether that is in a legislative sense or a non-legislative sense, given the host of work that is already under way to improve access to legal aid. I am not shut off to more discussions, but I do not know that an amendment at stage 3 is the appropriate route.

However, I am happy to follow that up with the member.

On amendment 115, the Scottish Government supports the proposed signposting to the availability of child-centred legal advice and representation by a local authority, while reserving the right to propose minor adjustments to the wording at stage 3.

I invite members not to move amendments 113 and 114 today. If Mr Balfour's concerns relate to removing barriers to legal aid I am, as I have said, more than happy to commit to considering that again and have those discussions. I support amendment 115.

The Convener: I call Jeremy Balfour to wind up and indicate whether he wishes to press or withdraw amendment 77.

Jeremy Balfour: I welcome that the minister accepts amendment 115. I will not press amendment 77 today or move my other amendments, and I will take the opportunity to consult with the minister and others before stage 3.

I am not absolutely sure that I agree with everything that the minister has said today about legal representation. There are still gaps in the system and many young people are not getting the appropriate representation that they deserve, but we can have those discussions in private and at stage 3.

Amendment 77, by agreement, withdrawn.

The Convener: Amendment 110, in the name of Roz McCall, is grouped with amendments 195, 197 and 199.

Roz McCall: My amendments 110 and 197 look specifically at the younger end of the scale.

We have had various representations that much of the system that is in place does not work for infants and very young children, and my amendments recognise that children under three years of age require special consideration in the hearings system.

Their developmental stage, vulnerability and inability to articulate their views mean that a one-size-fits-all approach is not working and is not appropriate.

We know that the first 1,000 days of a child's life are when the brain builds the required foundations for every aspect of their life, including social bonds, learning skills, rationale, understanding and attachment—the list goes on. Those are fundamental. The longer a child stays in an environment that causes potential harm, the harder it is for them to grow into adulthood.

13:00

Amendment 110 would provide for a specialised children's hearing process for infants, allowing ministers to set out regulations that cover the composition of hearings, timescales, panel training and evaluation of the process. By tailoring hearings to infants' needs, we can ensure that decisions are made quickly, sensitively and appropriately, with panel members who are equipped to understand infant development and the impact of decisions on very young children.

Amendment 197 would complement that by enabling independent representation for infants. It would allow ministers to establish regulations for the appointment of trained, independent persons to represent an infant's interests in hearings. That would ensure that the child's welfare and best interests are effectively safeguarded; that their participation is meaningful, even at that early stage of life; and that decisions are informed by someone who can speak on their behalf.

I move amendment 110.

Martin Whitfield: There are two amendments in my name in the group.

The first, amendment 195, is on the level of skills and training that infant safeguarders should have to ensure that they are the appropriate people to deal with the matter.

The second, amendment 199, builds on what we have heard about babies and infants and about whether a safe baby hearing pilot scheme should be undertaken by the Government to ensure that the baby hearing experience and environment are built on data and on an understanding of the—sometimes subtly and other times obviously—different nature of those hearings, and that the voice of the baby or infant is represented.

We have discussed, when debating previous amendments, whether the appropriate age should be five or three—the age that appears in the other amendments in the group. Given importance of infant safeguarding and the unusual nature of baby hearings, the Government needs to seriously consider such matters in the bill.

Natalie Don-Innes: The amendments in the group would introduce new provisions to the bill in respect of babies and infants. We can all agree on the importance of ensuring that their needs and interests are represented and met through the children's hearings system. However, I am not sure that the amendments in the group do that.

Roz McCall's amendment 110 risks the adoption of a splintered approach to considering compulsory state intervention in children's and families' lives. Scotland currently applies a universalist, "whole child" approach to these issues. It is self-evident that when one group of

children is prioritised for particular attention on the basis of age, other children are deprioritised. Prioritisation should not be done on the basis of age alone. However, the very youngest children have an inherent and unique vulnerability.

Roz McCall: By not focusing on infants, we have a splintered approach right now. We are not getting it right for the youngest children. Will the minister explain to me how the current approach gets it right for the youngest children involved in the process?

Natalie Don-Innes: We have been clear in today's committee meeting that improvements can be made in relation to the needs of our youngest children. The amendments in the group are not necessarily the way to do that. It is not about any form of prioritisation but about the support that our youngest children require. Perhaps more needs to be done on that front to ensure that we efficiently support them and really listen to their voice, even if they are very young.

Roz McCall: Given the statement that the minister has just made, is she willing to work on the issue before stage 3 to ensure that we have a suitable process? We are talking about moving forward and looking at all care-experienced children, so is she willing to work on this whole area to ensure that infants are properly included in the bill?

Natalie Don-Innes: I am interested in working to further improve the support that is provided to our youngest children and babies. I am happy to discuss with Ms McCall whether the approach in her amendments in this group is the right one.

It would be relevant to pull together the host of work that partners are undertaking in relation to the provisions in the bill and the wider non-legislative work through, for example, the children's hearings redesign board, to improve the support that is provided to our babies and youngest children. If I pull that together and provide it to Ms McCall, we could then have a further discussion on the amendments.

If Ms McCall is willing to make an intervention, I ask her to say whether, given that assurance, she will not press or move her amendments so that we can discuss the issue further.

The Convener: I should say, Ms McCall, that you will have an opportunity to sum up in this group, although you are more than welcome to make an intervention.

Roz McCall: I will not pre-empt that then—I will listen to the rest of the debate. I will do it that way, if that is okay. I would like to hear more of what the minister has to say on the other amendments.

Natalie Don-Innes: Okay.

Martin Whitfield's amendment 195 would create the new role of infant safeguarder, when there is already a well-established safeguarder service. The national safeguarders panel, which was established under the 2011 act, is a fully demand-led specialist service that is available for any child for whom there is an identified need.

Under the 2011 act, it is a statutory requirement that a children's hearing or sheriff consider appointing a safeguarder. In 2024-25, 1,482 children were appointed a safeguarder to represent their best interests in hearings proceedings. Most of them were younger children. However, we can do more through that existing service to promote and protect the needs of babies and infants.

Martin Whitfield: Does the Scottish Government agree that the role of safeguarder does not necessarily always need to be a separate and distinct role and that others can fulfil it in the system?

Natalie Don-Innes: I would need to reflect on that. There is a clear role for the safeguarders. I might want to consider that further, but I see that Mr Whitfield has another point.

Martin Whitfield: I can provide the minister with the space to do that beyond this meeting, so I will not push the matter now.

Natalie Don-Innes: I appreciate that. We are already going to have probably a full day's meeting to discuss a number of things, so I am more than happy to pick that up then as well.

We will work with Children First, which is the contracted manager of the safeguarder panel, on further strengthening the training offer relating to our very youngest children. That will be directly informed by the support and expertise that will be offered to panel members through upskilling work led by the NSPCC, in partnership with Children's Hearings Scotland.

Roz McCall's amendment 197 proposes that ministers, through regulations, assign independent infant representatives to children who are under three. I do not consider that an appropriate or necessary innovation. The proposal did not feature in the "Hearings for Children" report.

Independent decision makers should be respected and trusted to appoint additional rights, voice and representation supports to children only where individual children need them in specific or individual cases. There is a long-standing and clear responsibility on panel members to minimise the number of additional adult actors who are imposed on children. An artificial age-bound approach that takes no account of individual children's needs will not improve matters for all children.

Representatives are already an established statutory part of the system.

Safeguarders are also independent and, where deemed necessary, are appointed by children's hearings or sheriffs to protect a child's best interests through the proceedings. Where required, panel members can also appoint independent report writers to assist them with decision making.

Of course I want to ensure that we are doing everything that we can and should be doing to protect and promote the interests and needs of babies and infants in the children's hearings system. That is why we have identified the potential for non-instructed advocacy to play a part in the redesigned hearings system, to better support children who are unable to speak for themselves. I intend to work with Ross Greer ahead of stage 3 to introduce that in an appropriate way.

I want to see what change and improvement the workstream proposes—if, indeed, it makes such a recommendation. If it does so, I would like that to be developed for potential testing over the next two years. Seeking to determine whether practice and process need to be improved before legislating for change seems the appropriate way forward.

Given the assurances that I have provided on record in the debate that we have had so far, I hope that members will agree with the points that I have set out, and I ask Roz McCall and Martin Whitfield not to press their amendments. If they do, I encourage members to vote against them.

The Convener: I call Roz McCall to wind up and press or withdraw amendment 110.

Roz McCall: Thank you, convener, for helping me with the process earlier. The debate was very interesting, and I am glad that it continued. I will seek to withdraw my amendment and take up the minister's offer to work on the issue ahead of stage 3, to examine whether we can amend the bill to ensure that the youngest people who are involved in the process have a system that works for them.

Amendment 110, by agreement, withdrawn.

The Convener: I call Roz McCall to move or not move amendment 111.

Roz McCall: I will not move the amendment and take the opportunity to work with the minister.

Amendment 111 not moved.

Amendments 112 to 114 and 195 to 197 not moved.

The Convener: I call Roz McCall to move or not move amendment 198.

Roz McCall: Again, I will not move the amendment and take the opportunity to work with the minister.

Amendment 198 not moved.

Section 17 agreed to.

Section 18—Information about referral, availability of children's advocacy services etc

Amendment 200 not moved.

Amendment 115 moved—[Jeremy Balfour]—and agreed to.

Amendments 202 to 205 not moved.

Section 18, as amended, agreed to.

After section 18

Amendment 78 not moved.

Amendment 79 moved—[Natalie Don-Innes]—and agreed to.

Amendments 80 and 206 not moved.

Sections 19 to 21 agreed to.

After section 21

The Convener: Amendment 117, in the name of Roz McCall, is in a group on its own.

Roz McCall: Amendment 117 is about language, primarily, and the philosophy that underpins our entire system of children's hearings. Across multiple sections of the bill, the current wording refers to a child being subject to "treatment or control". This framing is outdated and punitive, and it does not reflect the purpose of the children's hearings system, which is to safeguard children and meet their development needs, not to impose control over them.

By substituting the term "treatment or control" with "nurture or support", we would make the language child-centred, rights-based and reflective of the welfare principle. It would signal clearly that the focus of the hearings, investigations and interventions is to provide children with the care, guidance and support that they need to thrive, rather than to manage or discipline them.

The change would be systemic, and it would align with articles 3, 12 and 19 of the UN Convention on the Rights of the Child. Across every stage, whether that is information provision, investigation, grounds hearings, interim orders or reviews, my amendment would ensure that all the powers that are exercised by the system are framed in terms of nurture and support, not control.

I move amendment 117.

13:15

Natalie Don-Innes: I thank Ms McCall for amendment 117. I know from my conversations with children and young people that language is extremely important to them. Significant work has been done in that area already, much of it led by children, but there is certainly more to do. I am acutely aware of the evolution of Scotland's unique approach to children's welfare and justice through the hearings system. Chapter 3 of part 1 of the bill seeks to further modernise our approach and respond to calls for change, not least in the "Hearings for Children" report.

We have already acted to change some of the language by adding the term "support" to the referral criteria through section 17 of the bill. Therefore, it would be inappropriate to make that change twice through amendment 117. By its very nature, the children's hearings system is a system of compulsion. We must ensure that its purpose is clear in all circumstances. We cannot lose sight of the justice role that children's hearings perform, and that the role is growing—rightly—to accept 16 and 17-year-olds. The statistics show that some of the offence grounds that might be brought to a hearing will be serious. Applying control, as well as support, will be—and, indeed, is—an appropriate way for panel members to consider the right course of action for some children.

We have sought advice on the language of "treatment or control" from a range of sources. There is not a singular response; as with much of the bill, there are a range of views, though most agree that the language could be changed. There are practical and legal difficulties in trying to change the core language of a system that is more than 50 years old, without first weighing up all the consequences of doing so. However, I want to give more consideration to it. There may be a case to modernise the language around treatment, but keep "control", for other reasons that I and others have set out. I am willing to consider that further ahead of stage 3.

I therefore ask Roz McCall not to press amendment 117.

The Convener: I call Roz McCall to wind up and to press or withdraw amendment 117.

Roz McCall: I thank the minister for her comments. As we all know and as the minister has stated, language is so important in this process. Although I whole-heartedly accept what the minister has said, the word "control" is difficult. I am happy to take the minister up on her offer to work on that, although we will be doing an awful lot of work before stage 3. I am minded to accept it, because, at the end of the day, if we can get to something that works properly in a legislative framework, I am willing to do so. I will not press amendment 117.

Amendment 117, by agreement, withdrawn.

The Convener: Amendment 119, in the name of Sue Webber, is grouped with amendment 120. I call Miles Briggs to move amendment 119 and speak to both amendments in the group.

Miles Briggs: Amendment 119 would amend sections 38 and 39 of the 2011 act so that, when a sheriff considers a child protection order, they must be satisfied by evidence on oath. Amendment 120 would add a specific requirement that any evidence that is provided by a social worker to the sheriff for the purposes of considering whether to make an order must also be given under oath. Both amendments are in my colleague Sue Webber's name.

Applications for CPOs are generally made by local authority social workers and determined by a sheriff. At present, evidence that is presented in support of a CPO application is not subject to external independent scrutiny or corroboration. Applications for removal are not required to be made on oath and strict rules for evidence do not apply, despite the severity and immediacy of the outcome.

Existing research highlights the reliance that is placed on urgency and professional judgment in such cases, with protective action often taken prior to full court scrutiny, which may not take place for many months or, indeed, sometimes a year or more in complex cases. That makes the standard of evidence at the point of decision making especially important.

Independent reviews, including by the Nuffield Family Justice Observatory, have repeatedly identified that there is insufficient time, training and support for often inexperienced local authority social workers.

Those conditions mitigate against what should be robust and replicable assessments of suspected risk.

There is also concern that, despite grounds of significant harm being advanced at the point of a CPO application, the grounds subsequently relied on by the children's reporter are often not those that are used to justify the original removal and are often very different after the proof hearing in front of a sheriff, which is sometimes months after a removal has taken place.

The separation of a child from their family, particularly at or near birth, is associated with a significant psychological impact. As the committee has heard, both published research and the lived experiences of families who are affected by child removal underline the importance of what should

be fair, transparent and evidence-based decision making, given the potential for long-term harm to arise from unnecessary or poorly evidenced removals.

Although the police retain powers to remove a child without prior court approval in urgent circumstances, the routine use of CPOs without sworn evidence or mandatory parental representation raises serious concerns about proportionality, fairness and accountability.

The intention behind Sue Webber's amendments is to address and recognise that the stakes in emergency removal are high. The requirement for an oath to be taken aims to raise evidential standards, improve accountability and enhance confidence in decisions in which separation is urgent. That is consistent with the calls for rights-respecting processes and for transparent reasoning and safeguards wherever decisions can have lasting impacts, which we heard during our evidence sessions at stage 1.

I move amendment 119.

Natalie Don-Innes: I absolutely value and understand the importance of ensuring that any decision that is made in relation to a child protection order is well evidenced and in the child's best interests.

The Scottish Government opposes amendments 119 and 120 on the basis that the current legislation and practice are already sufficient in that area. When social workers apply for child protection orders, they must submit paperwork to a sheriff, which includes a signed statement that acts as an oath. Furthermore, in most cases, the sheriff requests a discussion on the case, and a verbal oath is therefore also taken.

There might be cases in which a sheriff does not necessarily consider that the application warrants further discussion, and it would not be appropriate for legislation to require a verbal oath in cases in which the sheriff has judged that that is not necessary. Although legislation can and does set out matters that sheriffs must take into account, prescribing that an oath must always be taken goes further than current practice, in which sheriffs may determine that written evidence is sufficient.

As they have considered all the evidence in the particular case, sheriffs are best placed to decide how evidence should be taken, including whether it should be given on oath. The law should allow that discretion rather than prescribe it. I therefore hope that my explanation highlights to Miles Briggs that Ms Webber's amendments are unnecessary.

I ask Miles Briggs not to press amendment 119 or move amendment 120. If he does, I encourage members to vote against them.

The Convener: I call on Miles Briggs to wind up and to press or withdraw amendment 119.

Miles Briggs: I hope that the amendments have given an opportunity to put on record some of the concerns, especially the point on independent scrutiny. I hope that the minister will still consider whether there needs to be some improvement in the area, given the concerns about the time that it often takes for hearings to happen.

I will not press amendment 119 or move amendment 120, but I am pleased to have put on record those concerns.

Amendment 119, by agreement, withdrawn.

Amendment 120 not moved.

The Convener: At this point, I conclude today's consideration of the bill at stage 2. I thank the minister, her supporting officials, committee colleagues and others for their attendance.

The committee will continue its consideration of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at stage 2 at its meeting on 18 February.

Meeting closed at 13:24.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba