JUSTICE 1 COMMITTEE

Wednesday 2 November 2005

Session 2

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JUSTICE 1 COMMITTEE
† 34th Meeting 2005, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Karen Gillon (Clydesdale) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
*Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Brian Adam (Aberdeen North) (SNP)
Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)
Hugh Henry (Deputy Minister for Justice)
Mr Kenneth Macintosh (Eastwood) (Lab)

THE FOLLOWING GAVE EVIDENCE:

John McCafferty (General Register Office for Scotland)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 5

† 31st meeting 2005, session 2—in private

32nd, 33rd meeting 2005, Session 2—joint meeting with Justice 2 Committee.

Scottish Parliament

Justice 1 Committee

Wednesday 2 November 2005

[THE CONVENER *opened the meeting at 09:56*]

Item in Private

The Convener (Pauline McNeill): Good morning and welcome to the 34th meeting in 2005 of the Justice 1 Committee. I have received apologies from Mike Pringle, but Jim Wallace is here in his place. I ask him to confirm for the record that he is substituting for Mike Pringle today.

Mr Jim Wallace (Orkney) (LD): I am happy to confirm that.

The Convener: Welcome to the committee once again.

As usual, I ask members to check that they have switched off anything that buzzes, because electronic equipment interferes with the sound.

The first item on the agenda is to invite members to agree to take in private item 5, which relates to the European Commission green papers and witness expenses. Is that agreed?

Members *indicated agreement*.

Family Law (Scotland) Bill: Stage 2

09:57

The Convener: Item 2 is the Family Law (Scotland) Bill at stage 2. I welcome once again Hugh Henry, the Deputy Minister for Justice, and his legal team: Carol Duncan, Anne Cairns and David McLeish.

Before we begin proceedings, I have something to say about an issue that arose at a previous meeting, when we voted on the provisions dealing with marriage by cohabitation with habit and repute. The minister has explained in his letter to the committee of 20 October that the committee had been inadvertently misled by the

"re-assurance that people who marry abroad in good faith and subsequently discover the marriage to be invalid will be totally unaffected by the abolition of marriage by cohabitation with habit and repute."

I appreciate the fact that the matter was clarified speedily, but I would like to make a couple of points.

In general, it seems to me that we are dealing with a complex area and that mistakes may be made in advice that is given to Parliament. However, committees rely on that advice, and members relied on it when they voted on the bill at stage 1.

It is unfortunate that the committee has been put in this position, because I do not know—individual members can speak for themselves—how members might have voted had they been in full possession of the facts. Given the rule of progress, the issue of marriage by cohabitation with habit and repute cannot be examined again until stage 3. That is a matter for the Presiding Officer to decide on but, given the circumstances of that previous meeting, I hope that any member who wishes to revisit the issue at stage 3 will have the support of the Executive to do so, should the Presiding Officer look for a view on the matter.

I would not have voted for amendment 1 had I been fully aware of its implications—other members can speak for themselves. I know that the minister will want to reply to that. I am sure that he will appreciate that we are not labouring the point about the advice; the issue is about the procedure. We have done something substantial in voting away 300 years or so of Scottish tradition. I want to ensure that we did so on the basis of the correct advice and that I have reflected committee members' views. Do you want to speak first, minister, or would you prefer to hear from other members first?

10:00

The Deputy Minister for Justice (Hugh Henry): I am entirely in your hands, convener. I am content to listen to what other members have to say.

The Convener: Okay. I will take two or three comments, and then allow you the final say.

Mr Bruce McFee (West of Scotland) (SNP): As members know, I spoke on the matter at length previously. It is regrettable that the advice was the way it was; we do not want to hammer home the point any harder than that. I was uneasy about amendment 1, which abolished marriage by cohabitation with habit and repute, and raised scenarios in which I thought it could be used to remedy a situation that had occurred in, I admit, a small minority of cases. I am unhappy that that provision has been removed on the basis of incorrect information.

I hope that at stage 3 an amendment can be lodged to allow the Parliament to vote on the abolition of marriage by cohabitation with habit and repute in full knowledge of the facts. I am not saying that the majority of members will agree to reintroduce that provision, but we could be accused of passing legislation without full knowledge of the ramifications if we are told that the Parliament cannot vote on the matter. Equally, I cannot speculate on what the Parliament will do if it is given that opportunity. It is certainly regrettable that the situation has arisen.

Stewart Stevenson (Banff and Buchan) (SNP): I did not participate in the first stage 2 meeting, but I remain concerned about cases in which, through inadvertence, it transpires that a marriage that took place in a foreign jurisdiction is legally incompetent and one person in such a couple—who believed themselves to be married—dies. The remedy offered in the minister's letter is not equivalent to the ability to go to court and be deemed to be married by cohabitation with habit and repute, in that the taxation position on the transfer of assets between the deceased and the survivor is treated differently according to whether they were married. That issue continues to perplex and concern me. I will certainly consider how to proceed at stage 3.

Mr Wallace: It is regrettable that we are in this position. However, I note that section 28 relates to the validity of marriages contracted abroad. Given that the numbers are small and that there is still time for amendments to section 28 to be lodged, could the point about which Bruce McFee gave examples at the previous meeting and which appears to have had some validity be covered in an amendment to that section, rather than through our reconsidering the whole issue of marriage by cohabitation with habit and repute? Such an amendment could allow some form of marriage by cohabitation with habit and repute in the circumstances in which a marriage was contracted abroad but for some reason was found subsequently to be invalid.

The Convener: I would support that approach. In fact, I was going to conclude my remarks by saying that I think that the Executive ought to remain open to that possibility, because it might be a more appropriate way of dealing with the issue as it relates to foreign marriages, which was the main substance of members' concerns. We will end the debate there. I invite the minister to respond.

Hugh Henry: I regret that I inadvertently misled the committee about the impact of the abolition of marriage by cohabitation with habit and repute on couples who marry abroad in good faith and subsequently discover the marriage to be invalid. Although such people will retain access to legal redress, it will not be as I described to the committee at the previous meeting. As the convener indicated, the correct position is that which is detailed in my letter of 20 October to the committee. I am still convinced, however, that the decision to abolish irregular marriages was the correct one. We cannot justify retaining an obsolete law simply to cater for circumstances as unusual as those described.

I note and will reflect on what members said. However, at this stage it would be wrong to give an absolute commitment that we will lodge an amendment of the nature suggested by Jim Wallace. I would not commit myself to lodging an amendment if I thought that it would be inappropriate to do so. If, on reflection, we think that that position has some validity, we will lodge an amendment. However, I will give the convener early warning of our decision so that if any committee member then wishes to lodge their own amendment, they will have time to do so. As things stand, we are not persuaded, but we will look at the matter again.

The change will not impact on people who already find themselves in the position described; the provision will not be retrospective. Notwithstanding what has been said, there must be some onus on the individuals who take the important step to marry in future. They should check that they are married in accordance with the law of the land in which the ceremony takes place. I find it peculiar that we are trying to legislate to remedy a fault that occurs when people have not taken appropriate steps to ensure the validity of their marriage. That could apply in all sorts of circumstances—people could say that they did not fully understand the law of a foreign land and that they now wanted Scots law to remedy the problem.

For our part, we will ensure that information provided to couples who consider that route as an option continues to emphasise the importance of making sure that all the correct steps are followed and that the marriage must be legally constituted according to Scots law. It will also spell out the consequences of failing to do so.

I am not persuaded by the suggestion that we should make some adjustment to the private and international law aspects of the bill to accommodate such situations. It would not be appropriate or desirable to empower Scottish courts to declare a foreign marriage valid under Scots law if the marriage in question had not been constituted in accordance with the law of the land in which it took place.

As I said, I will reflect on what has been said and take into account the points that have been made by members, but I can give no guarantees at this stage because I am not persuaded by the arguments at present. However, I will give the committee an early indication of our decision.

The Convener: I am aware that you described the Executive's position at the previous meeting. We do not seek to argue against the Executive—well, perhaps some of us do—but the question is, would committee members have voted for the Executive's amendment 1 had they had more information?

I take the point that it might not be appropriate to amend section 28, but I am pleased that you remain open-minded about the possibility. However—this is the point about which I feel strongly—if you decide that it is not appropriate to amend section 28, but members who feel strongly about the matter want to revisit it at stage 3, will the Executive support such an approach?

Hugh Henry: If we decide that it would not be appropriate to lodge an amendment and another member wishes to do so, we would support the right of that member to have the matter debated at stage 3.

The Convener: Before we begin consideration of stage 2 of the Family Law (Scotland) Bill, I welcome to the committee several visiting members: Ken Macintosh, Brian Adam and Fergus Ewing.

Before section 10

The Convener: Amendment 14, in the name of Margaret Mitchell, is in a group on its own.

Margaret Mitchell (Central Scotland) (Con): Good morning, minister.

The purpose of amendment 14 is to make explicit the possibility and encouragement of reconciliation in the proposals that are contained in the bill.

Although I accept that the Executive has made it clear in the policy memorandum that it has no desire or intention to undermine the status of marriage, the proposals appear to accept that it is inevitable that, when a couple separates, they will divorce. That does not take account of the possibility of reconciliation—even at that late stage.

Evidence from Couple Counselling Scotland said that five or six counselling sessions could turn a relationship around and result in the marriage partners staying together, even at a late stage in the process. In view of that fact, and in keeping with the policy intention, it would be desirable for the amendment to be included in the bill. The proposals as they stand will otherwise seem to be heavily weighted in favour of mediation and the inevitability of a separation.

I move amendment 14.

Mrs Mary Mulligan (Linlithgow) (Lab): Good morning, minister.

I fully accept the intention behind Margaret Mitchell's amendment 14. We all want to support marriage; we want, in particular, to support married couples through any difficulties that they may experience and to offer them a reconciliation service. I support the heading that Margaret Mitchell gave to her amendment—"encouragement of reconciliation". Unfortunately, however, the provisions in the amendment go further than that. I have some concerns about whether we can legislate to force people to seek the help of reconciliation or mediation services and so on—the individual should make that choice.

It is for that reason that amendment 14 will not achieve what Margaret Mitchell has set out to do. The provision should be part of a package of measures that aim to support marriage, whether that is through reconciliation, mediation or whatever. Indeed, before people get into a marriage, they should get advice and guidance on what exactly marriage is. That is not the subject of the debate, however.

Amendment 14 is inadequate, at least at this stage of the debate. Later this morning, we will scrutinise the group of amendments that address support services. I will have more to say at that stage about how the Executive should go about addressing the issue. Amendment 14 does not achieve the aim of society supporting marriage, which has been the subject of a great deal of discussion at committee. I will not support amendment 14.

Stewart Stevenson: I, too, have sympathy for what Margaret Mitchell seeks to achieve through amendment 14, but I also have difficulty with the means by which she has expressed that. For example,

"the court … may not grant decree unless … the pursuer has … taken reasonable steps to arrange a meeting".

In the circumstances of a relationship that has been characterised by violence, it may be entirely against the interests of the parties for such a meeting to take place. Indeed, in many circumstances, such contact may be forbidden by interdict. Even on a narrow, purely legal issue, I find difficulties with the construction of the amendment. It is perfectly clear that in many cases that are contested or in which violence has been part of the relationship, attempts at reconciliation could make things worse and not better.

I accept that Margaret Mitchell's proposed new section 2(1)(a) of the Divorce (Scotland) Act 1976 speaks of taking

"reasonable steps to arrange a meeting"

and that that might encompass the issues that I am addressing. I will be interested to hear what the minister has to say, based on the advice of his officials. For the moment, however, I am not minded to support the amendment.

10:15

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): These are highly sensitive matters, and I am sure that we all respect the opinions of those with whom we may not necessarily agree.

I am inclined to support Margaret Mitchell's amendment. I do so as one who was engaged from 1979 for two decades in family law, although I make no claim to be a specialist. The Divorce (Scotland) Act 1976 contains a duty on lawyers who are acting in consistorial matters to encourage reconciliation. Therefore, the law recognises that lawyers can play a part in discussing with the party in the privacy of an office the possibilities of reconciliation. A lawyer may then recommend mediation or other services. That is a duty that I always sought to fulfil where appropriate.

Mary Mulligan made a reasonable point, but Margaret Mitchell's amendment does not seek to force anything; it seeks to encourage. Since the law already contains a similar provision for lawyers, there is no reason why it should not do so for a sheriff.

Evidence from the House of Commons in 1996 shows that 50 per cent of men and 28 per cent of women regret having gone through a divorce. Indeed, many couples consider reconciling after divorce. If that is the case, surely it would be sensible for the sheriff at least to be able to look at that possibility at the time of divorce.

It may be wrong to generalise, but in my 20 years' experience I found that people seeking advice on divorce are often agitated, confused, angry and uncertain. If children are involved there are almost always mixed feelings about whether it is prudent to proceed. I understand that figures for 1989-93 from "Civil Judicial Statistics Scotland", which are the most recently available, show that of the divorce actions brought in that period, no less than 16 per cent were dropped. That is an indication that many people decide not to proceed with divorce, even though they might have embarked on an action.

I say that knowing that raising an action of divorce is a momentous step that sets off a chain reaction of emotions and consequences. However, there are no statistics on how many people have visited lawyers with the intention of instigating a divorce action since the duty contained in the 1976 act was introduced, and have decided to stay together as result, or partly as a result, of the advice received from the lawyer or as a result of the counselling or mediation that they received.

Because what happens between solicitor and client is completely confidential, it may be impossible to discern statistics. However, I suspect that a huge number of couples have decided not to proceed with divorce because one of them benefited from advice that they should stay together; perhaps, in most cases, for the good of the children.

Stewart Stevenson made the very apposite and telling point that proposed new section 2(1)(a) of the 1976 act would need to be amended, because it may not always be suitable for a meeting to be required. The proposed new section does not stipulate that there must be a meeting. Nevertheless, perhaps proposed new section 2(1)(b) should be amended so that the sheriff could have regard to the points that Stewart Stevenson made about whether it would be reasonable for such a meeting to take place. If there has been violence, a meeting would obviously not be reasonable. No sheriff would require a wife who has been the victim of matrimonial violence to meet her violent husband. That could be dealt with at stage 3, perhaps by a modest amendment to amendment 14. I would be interested to hear whether Margaret Mitchell agrees in her closing remarks. I hope that the committee will give sympathetic consideration to amendment 14.

Mr McFee: I have a great deal of sympathy with Margaret Mitchell's attempt to introduce some sanity into a process that sometimes loses its footing. I have swithered on this one, simply because of the practical difficulties with the amendment, but I take Fergus Ewing's point that if

the amendment is agreed, it will be possible to amend it further to remove those difficulties.

My concern is that it is late on in the process and other amendments that we will consider today address the real problems, which are those of where people go for advice in the first instance, and a misunderstanding that mediation and conciliation are one and the same thing. Frankly, one seems to involve holding the jackets and the other seems to be concerned with trying to reconcile differences. The Parliament should concentrate on the services that the Executive funds and the focus of that funding. When it comes to providing coverage to give the advice that is necessary if we wish to maintain as many marriages as possible, conciliation services are in many respects the Cinderellas, or the poor relations.

Intervention before we get anywhere near the court process is also important. Some of the amendments may address that better than amendment 14. However, that is no reason to vote against the amendment, and I happily support it on the basis that some of the rough edges can be taken off it at stage 3.

Marlyn Glen (North East Scotland) (Lab): I start by reminding the committee of the lengths to which we have gone to take formal and informal evidence, from many organisations and at many levels, on all those points. The lack of relevant statistics has been difficult, but I am sure that everyone on the committee has a much deeper understanding now of how the whole system works. At the beginning we may have been confusing the different kinds of counselling. However, it is clear that the counselling organisations start by finding out what stage the couple are at and whether reconciliation is possible. If it is possible, the couple goes down that route; otherwise, they go to mediation and are helped through an amicable separation.

We have taken our time and considered the issue. That is not to say that the committee should not follow it up in some other way. I am not saying that there is no problem, because there is definitely a lack of such services throughout Scotland. As Fergus Ewing says, it is already practice to check at every stage whether reconciliation is possible. However, the nub of the argument has tended to be whether legislation is needed to make something compulsory. That is where amendment 14 falls down. As has been pointed out, it says:

"the court shall require the parties to seek assistance"

from different services. In fact, there is no such thing as compulsory counselling—it does not work like that. Counselling must be voluntary and open, and both partners have got to be ready to talk or it does not work. One of the most harrowing things about our sessions on the family law bill has been when people have told us about the conflict that arises when counselling does not work. If an agreement falls apart the resulting conflict—and it is the conflict that is bad for children—can be even worse than at the start. I will vote against amendment 14, even if it is tampered with.

Mr Wallace: I fully understand and have some sympathy with the reasoning that underlies amendment 14. However, Bruce McFee put his finger on it when he said there is a distinction between mediation and reconciliation. If a couple gets to the stage at which an action for divorce has been raised, we are into the realms of mediation. The important point is that organisations that try to promote reconciliation should be properly supported, their service should be more widely known and couples should be encouraged to access the services at an earlier stage when the prospect of reconciliation is far more likely. I therefore cannot support amendment 14.

Stewart Stevenson made an important point about a woman who might have a violent husband. I know that the amendment does not say that the arrangement of a meeting within the three-month period is a legal obligation, but nevertheless the advice from a solicitor might be that if the person really wants to be sure of their divorce, they should go through the process. In addition, let us say for the sake of argument that we agree to a separation period of two years when there is a lack of consent by the other party to divorce. Are we seriously suggesting that at one year and nine months, when by the nature of the action that is being brought the parties have been separated for a lengthy period, a meeting has to be set up to clear this hurdle on the way to a divorce? I cannot imagine what kind of averments would be made in a divorce summons or initial writ, particularly in an undefended divorce. How would the sheriff make a judgment? What would the pursuer be expected to say? "I hate this guy's guts. I have not had a meeting with him, but that is not possible." I do not think that the proposed provision is in the realms of reality.

I hear what Fergus Ewing says about the encouragement of reconciliation and the valuable work that can be done. That requirement would be removed if the amendment were agreed, because that requirement under the 1976 act would be deleted and the provisions in the amendment would be substituted in its place. What Fergus Ewing has said from his long experience is a valuable provision in encouraging reconciliation would be swept away—and I am sure that that is not what Margaret Mitchell intended. That is another reason for not supporting amendment 14.

The Convener: I am grateful to Margaret Mitchell for lodging amendment 14, because we should debate the matter. I know that such a system was tried in England and Wales. My understanding is that it was not very effective, but it is an important matter to debate in the context of the consultation on family matters and family law.

I ask myself what we are trying to do. It seems to me that I could support the principle of trying to save marriages when that can be done, so my next question is how that can be done. Marlyn Glen suggested that it could not be done by forcing couples into reconciliation, so should the Executive be doing more to make such services available? We have deliberately separated this amendment from Stewart Stevenson's amendment 42. Members will get a chance to discuss what they think about mediation and conciliation support services. It is important to distinguish between the two debates.

We have learned a lot during the passage of the bill. I have learned about the importance of conciliation services and, as Bruce McFee pointed out, about the important difference between mediation and conciliation. It strikes me that early intervention is key; I think that early intervention can save relationships. My problem with amendment 14 is that it proposes consideration of reconciliation at the end of the process, and I am not convinced that that would be effective. It could be effective if the issue were tackled earlier.

I have the same question as Jim Wallace about the construction of amendment 14. The sheriff is to decide

"whether there is a reasonable prospect of a reconciliation".

I could be satisfied on the point that Fergus Ewing makes, because I do not believe that any sheriff would think that there was a reasonable prospect of reconciliation if issues are brought to the court about violence and so on. However, the amendment would mean that the sheriff effectively had the power to delay the decree if they thought that there was a reasonable prospect of reconciliation. How is the sheriff to judge that?

My fundamental concern about the amendment is the stage at which the prospect of reconciliation is assessed. Should conciliation be supported before couples get to the stage of applying for divorce or should it be at the end? When we debate Stewart Stevenson's amendment, I will certainly say that, if we believe that relationships require support from time to time, these services are very important and couples and families of all descriptions should benefit from them.

10:30

Hugh Henry: I support many of the comments that have been made and the legitimate aspiration of trying to get people to make a marriage work. A marriage is a serious undertaking. I hope that people would attempt to make a go of it. However, we should also remind ourselves that we have sought throughout the bill to put the interests of children first. I recognise that there are divorces in which children are not involved. However, we have specifically focused on what is in the best interests of children. I would hope that whatever happens, whether in legislation or in attempts to enter into discussions, people would always remember the children, rather than focus on their own view or interest.

I support the view that there should be attempts at conciliation. Sometimes mediation is appropriate, although speakers have said that that is a different matter. However, we are very clear in the Executive that the process, whether conciliation or mediation, should be entirely consensual and that there should be no attempt to make it mandatory. To do that would be misguided and impractical and I would argue that many practitioners in the field endorse that view.

You referred, convener, to an attempt by the United Kingdom Government to do something in that respect when it piloted what were termed compulsory information meetings for couples seeking divorce through part 2 of the Family Law Act 1996, but the attempt was not a success. Pilot projects were undertaken in parts of England over two years, but the compulsory meetings were not effective in helping most people to save their marriages. Indeed, the research showed that the meetings tended to incline those who were uncertain about their marriage towards divorce. Consequently, the UK Government has abandoned its plan to implement that part of the 1996 act.

Amendment 14's intentions are sound and its aspirations are right, but the practical implications of what it proposes could have an unintended consequence. I do not think that what the amendment proposes would work and I think that it is inappropriate. I hope that Margaret Mitchell does not press her amendment.

Margaret Mitchell: This has been an excellent debate. Amendment 14 has been thoroughly discussed and some good points have been raised.

Jim Wallace's point was that if a couple have separated and are going for a decree, that is it; the relationship has broken down to such an extent that there is no hope of reconciliation. Fergus Ewing, even though he did not claim to be an expert, was able to shine some light on that. He

indicated that, even after the first stage of seeing a lawyer, couples often do not progress to a decree. To suggest that, as soon as a couple separate, the relationship is so acrimonious that there is no hope is not, I think, a real reflection of the possibility of reconciliation being considered at that early stage.

Couple Counselling Scotland backs up what Fergus Ewing said, as does the fact that many couples remarry. The great difficulty is that there is a lack of empirical evidence in this area. However, there is enough anecdotal evidence to support the contention that, if reconciliation is tried, some marriages could be saved, much heartache could be avoided and, as the minister said, potential problems for children could be resolved.

Quite a few members have made a point about compulsion. I do not believe that there is really an element of compulsion, unless the sheriff considers that there is a reasonable prospect of reconciliation. Like Stewart Stevenson, I have reservations about saying in cases where there is domestic violence that, within three months of bringing the action, the pursuer should take reasonable steps to arrange a meeting in order just to consider the possibility of reconciliation. That would be totally inappropriate. Proposed section 2(1)(b) deals with that. However, if the provision needs to be more explicit, we can consider fine tuning it at stage 3.

Proposed section 2(1)(a) states only that the parties should consider the possibility of reconciliation. At that time it may be blatantly obvious that there is no point in requiring the parties to seek marriage counselling. In other cases, there will be a genuine prospect of saving the marriage, if people go that little bit further.

There is an important principle to be established. It may need to be fine tuned at stage 3, but in order to ensure that there is a possibility of reconciliation and that marriage is not undermined, I will press amendment 14.

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

McFee, Mr Bruce (West of Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Wallace, Mr Jim (Orkney) (Liberal Democrats)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 2, Against 4, Abstentions 1.

Amendment 14 disagreed to.

Section 10—Divorce: reduction in separation periods

The Convener: Amendment 32, in the name of Brian Adam, is grouped with amendments 15 and 16. If amendment 32 is agreed to, I cannot call amendment 15 because it will have been pre-empted.

Brian Adam (Aberdeen North) (SNP): I thank you for the opportunity to speak to amendment 32.

Section 10 is a key section of the bill in which we will determine what length of separation is appropriate before divorce. The intention of the amendment is to preserve the current requirement that couples who are seeking a divorce to which both parties consent must not cohabit for a consecutive period of two years before divorce can be granted, rather than one year as the bill proposes. I understand that there are alternatives, such as that for which amendment 15 provides.

Under the bill, the time for which couples must not cohabit before divorce will decrease from two years to one year. I have lodged amendment 32 in order to offer couples an appropriate cooling-off period in which to resolve their differences. As we have heard this morning, there are distinctions between reconciliation, mediation and the other options that exist. However, I hope that we can continue to focus on reconciliation.

As the minister said, marriage should not be entered into lightly. In my opinion, it should not be regarded as being particularly disposable. Divorce should be the last possible option, rather than an option to which we should smooth the passage. I believe that the family unit is the fundamental unit of society. Divorce should be the last resort, especially when a marriage involves children.

There is evidence to support the view that divorce has a profound impact on the lives of children. The national health service's national library for health reports that children of single parents are at increased risk of psychiatric disease, suicide, attempted suicide, injury and addiction.

Furthermore, the Partnership for Children has commented that children of divorced parents are more likely themselves to have marital problems and to choose unstable partners, and that they tend to divorce earlier and more often. The evidence suggests that we end up in a vicious circle rather than a virtuous circle. If we are to have a stable society—in particular, stable family relationships that allow children to be nurtured—we need to be careful about what we do in

legislating for family relationships. By providing for the retention of a second year, as in the present arrangements, in which to work out marriage difficulties, the intention of amendment 32 is to prevent such difficult circumstances as in the aforementioned consequences for the children of divorced parents.

The previous arrangements drew a distinction only between situations in which there was consent between the two parties and situations in which there was no consent, but did not draw any distinction between circumstances in which there were children and circumstances in which there were no children. The Executive has gone to great pains to explain its position on the bill; it is to protect children. It might be difficult to see that in the bill, but I accept the assurance that its intention is to protect children. Perhaps we ought to have given some thought to making it more difficult—that is not the right word; I am not expressing this very well—or to whether there is a case for a longer period of separation when children are involved if we are genuine about trying to protect the interests of children. Divorce is undoubtedly more complex when children are involved.

Opponents of amendment 32 might say that if both parties consent to divorce, then they should be allowed to divorce as soon as possible, and that one year is perfectly adequate. We have heard already this morning that a number of people change their minds right at the last minute. In such circumstances, a cooling-off period of substantial length would be appropriate, whether that is a year—I do not think that it should be a year—or 18 months or longer. I understand the proposals that have been made by others who think that we perhaps need to move on the matter, but not necessarily to have a period as long as a year. I am not convinced that that will give sufficient time for things to be worked out, especially when there are children.

I know that there are proposals before us, other than the one in amendment 14, that will allow greater opportunities for reconciliation to be explored. It is difficult to produce an evidence base for precise periods of time that are suitable for granting divorce following a separation, and I respect the views of people whose views are different to mine. We have heard this morning about cases of abuse of spouses. In such circumstances, waiting for two years might have dangerous consequences for the individual who is being abused; at least, that case can be argued. However, that is quite a specific kind of case and in such circumstances the separation would normally be a fact anyway. The courts offer protection in such circumstances, and it is possible to get a divorce on the grounds of physical or other abuse.

Under the Divorce (Scotland) Act 1976, divorce is available where marriage has broken down irretrievably and divorce can be granted to the pursuer providing that one of five factual circumstances exists. One of those circumstances—behaviour—addresses abuse; divorce can be granted under provisions on behaviour if the defendant has behaved in such a way that the pursuer cannot be expected to cohabit with him or her. Thus, amendment 32 would have no bearing on cases of spousal or family abuse, and individuals who suffer from those experiences would still be able to obtain a divorce and would not be disadvantaged in any way by the amendment.

10:45

On amendment 15, I have expressed my view that I would prefer the period of two years to remain: that is the intention of amendment 32.

On amendment 16, I note that no one has suggested the retention of the current five-year period. I certainly do not support it. I do not know how we can arrive at an appropriate evidence-based period because I suspect that such evidence simply does not exist. As Fergus Ewing suggested, many of the sources of evidence are quite rightly controlled by client confidentiality. I am more than happy to support Margaret Mitchell's suggestion that the limit should remain at three years where consent is not granted. Two years is a short period of time in that circumstance. My intention was to leave the limits at three years and two years as opposed to three years and 18 months, which Margaret Mitchell has proposed. Certainly, limits of two years and one year—in cases in which consent is not given and in those in which it is given, respectively—would be too short and could give the impression that we regard marriage as being rather disposable.

I move amendment 32.

Margaret Mitchell: Brian Adam makes an important point when he says that there is a lack of empirical evidence to support the new separation times that the Executive has come up with. A number of us on the committee feel uncomfortable with the new separation times. To us, one year—even in a non-contested case—seems to be an extremely short time. We feel that there should be a little bit longer. I was struck by the comparison that some of the marriage counselling people who we spoke to made with bereavement, in that it takes a full year to readjust and reflect on a relationship before coming to a more balanced view. On that ground alone, the 18-month period would be a good compromise between the two-year period, which was felt to be a little too long in non-contested cases, and the one-year period, which was felt to be a little too

short to provide people with the necessary time to reflect on their relationship and readjust properly. Of course, without a proper evidential base, those views can be no more than feelings.

On amendment 16, which relates to contested divorces, the committee was struck by evidence from the United Reformed Church, which made the point that five years represents a long period in the life of a child and that it is important to reduce the amount of conflict that children might witness in an acrimonious situation. We were all convinced by that, but were left with the difficult question of what period of time should be settled on. I thought that two years was a little bit too short and that three years seemed to strike a happy medium in terms of reducing acrimony for children and allowing time in which a relationship can be examined and—if the people are intent on getting divorced—a more reasonable attitude towards parenting arrangements and provision of stability for the children could be developed.

Stewart Stevenson: My starting point is simple: on entering marriage, one makes a declaration of lifelong commitment to a partner. It is against that background that I test the suitability of any arrangements for early termination—while both partners continue to live—of that arrangement. In this debate on family law, we must be careful that we do nothing that devalues the importance of marriage.

I assert that marriage represents the gold standard in arrangements within which a family can be brought up. Other arrangements are, of course, perfectly capable of delivering well-balanced members of our community—I include co-habitation and single parents. That said, there is a long history behind marriage and there are good societal reasons why marriage has evolved as the preferred option. That is my test.

We are talking about reduction of the length of time that applies under some of the grounds for divorce that we have put in law. I believe that some of the grounds, such as adultery and behaviour, should not have a time limit. The process should be carried out as soon as people like. I noted that one of the questions under the new nationality questionnaire for the citizenship test appears to discount that fact. Perhaps that ought to be examined. I noticed that on the BBC website yesterday.

I am particularly uncomfortable with the one-year period in the bill. Through experience from my immediate family, I have seen the process of change that takes place in the year after an apparent breakdown in a relationship. That process might lead to reconciliation, to stability through separation without divorce, or to divorce. I am uncomfortable that a year is seen to be sufficient time for the process of adjustment to take place and for a certain outcome to be reached in such a way that does not involve entrenchment in the legal system. I have not decided whether I will support the option of 18 months or the two years—I will listen to what colleagues say.

When there is not agreement between the partners I think—as Brian Adam does—that five years is too long. I could support a period of three years. On the remarks that I made about Margaret Mitchell's previous proposals, we must, where violence is concerned, ensure that there is a safe and early exit route when it has clearly become inappropriate for a marriage to continue. The existing grounds provide for that, so what we are debating now does not touch on that issue.

Notwithstanding the fact that the minister will undoubtedly tell us that, throughout the consultation, the periods of one and two years have always been in front in what has been a wide debate on the matter, it is perhaps only when we have come to the bill and engaged with the evidence under the pressure of actually having to legislate, taking into account the various implications, that some of us have come to realise that the one-year and two-year periods are simply too short. I will support a change to what is currently in the bill and I will listen to colleagues' remarks on the periods of 18 months and two years.

Mrs Mulligan: Many of the comments that have been made have been helpful in progressing the debate. The committee has been wrestling with the issue incessantly; indeed, the issue was raised during the stage 1 debate by almost every committee member who spoke.

We should go back to basics and ask why we are seeking to change the current arrangements. I do not think that the Executive has so far been able to give us a sound reason for that, or even sound evidence to support its proposed change. I recognise some of the concerns that have been voiced about allowing break-ups to be less acrimonious, but there is an issue around whether we have evidence to prove that that will become the case by reducing timescales. We might have a gut feeling about it, but I do not think that the evidence exists.

In the stage 1 debate, I said that I did not want to get into a bidding war on whether the period should be six months, 12 months, 18 months or whatever. Unfortunately, that is where we find ourselves. I have no doubt that all of us—the Executive, committee members and others who have joined us—are serious about supporting the institution of marriage. We all acknowledge that marriage is a serious commitment and that people should accept that when they get married. Therefore, we must question whether by allowing

people to remove themselves from marriage in such a short time we are upholding that commitment or allowing people to undermine it, which is not our intention. We must think seriously about the message that we give out when we consider the time periods for divorce.

As members have said, we are talking about section 1(2) of the Divorce (Scotland) Act 1976 and no-fault divorce. We are not talking about situations in which there has been adultery or domestic abuse; legislation allows for divorces to proceed on those grounds. We are talking about situations beyond such circumstances. We should give people time to reflect on their situation and reconsider.

I support Margaret Mitchell's amendment 15, which would reduce the period from two years to 18 months, where there is agreement. On reflection, I wonder whether I have played into the bidding war in seeking agreement on where we should go. I am deliberating whether we should go with 18 months or stick with two years. I will be interested to hear the minister's comments.

Amendment 16 seeks to reduce the timescale for contested divorces from five years to three years. Five years is probably too long. However, we must remember that it is the adults who are getting divorced; the children's lives will go on. They will still be the children of those two adults. Although we have tried hard to put children at the centre of the bill, the suggestion that a reduction from five years to three will assist children is not as forceful as it might be, because in many instances disputes will continue even after divorce has been granted. Changing the time limit will not resolve such situations in the way that we hope. We must be careful about promising a resolution that might not come to pass. I accept amendment 16, as it seeks to reduce the timescale from five years, which is probably too long. Three years may be a more civilised period, even where there is disagreement as to whether the divorce should go ahead. We must think about the partner in a marriage who sets such store by it that even when they are having difficulties they do not want a divorce.

We should retain the period of two years for uncontested divorces and we should examine a reduction of the period for contested divorces from five years to three. However, I will be interested to hear what the minister has to say about why we are taking the decision at this stage. I seek his reassurance about the support that we all want to give to the institution of marriage.

11:00

Mr McFee: I have a great deal of sympathy for Mary Mulligan's remarks. We must be absolutely clear about this: we are talking about time limits for what is termed no-fault divorce, not time limits for cases of adultery and abuse. In such circumstances, there are no time limits. The victim can pursue a divorce immediately. However, statistics show that since the introduction of no-fault divorces, the route has been used by a sliding morass of people.

Mary Mulligan was right to draw attention to the problem of there being a bidding war over the period of time, particularly with proposals based on what I believe to be unsubstantiated evidence to reduce the period from two years to one year for uncontested no-fault divorces. There are doubts about the lack of evidence and statistics in that respect; however, the commitment that people make to each other when they get married is very important and should not be devalued. The signal that the bill sends out about the Scottish Parliament's view of marriage is most important and does not require any statistical base. Despite the intention that is set out in the policy memorandum, to reduce the period from two years to one year would devalue marriage—after all, hire purchase agreements for television sets are longer than 12 months. Is that the level of commitment that we are talking about? I find that incredible.

I am in favour of retaining a two-year period, because no existing evidence for reducing it to 18 months or a year would persuade the majority of people. If we agree to reduce the period to a year, we will send out the message that marriage is an easily disposed of—indeed, a throwaway—commodity. The bill's policy intention is to put children first—we will do children a disservice if we devalue marriage and our society will pay for that.

Mr Wallace: I disagree with much of what Bruce McFee said. I do not think that such a proposal gives out the wrong signals. After all, every committee member has indicated the importance of marriage. I sometimes think that if couples were required to know each other for two years before they could get married we might not have to deal with some of these problems.

I agree entirely with Brian Adam's important point that divorce should be the last resort. I do not have Fergus Ewing's extensive experience in consistorial actions; when I practised, however, divorces were heard in the Court of Session and the witnesses and the pursuer had to appear. The divorce clients on whose behalf I appeared saw that step very much as a last resort and were in no doubt about its gravity. No matter whether it was on the ground of non-cohabitation for two years with consent, non-cohabitation for five years without consent, adultery or unreasonable behaviour, divorce was very much seen as a last resort.

Most couples enter into marriage with the intention that it should last. However, I am sad to say that, as people know from personal experience or from friends who have gone through the trauma of divorce, when a marriage breaks down, the parties involved go through a difficult and traumatic time.

The proposals in section 10 are worth supporting. We should remind ourselves that the sole ground for divorce is the irretrievable breakdown of marriage and that the court must be satisfied that the marriage has broken down irretrievably. The bill proposes that evidence of that is that the parties have not cohabited for one year and that they both consent to the divorce.

Stewart Stevenson said that a year is a relatively short period of time and that parties might not know whether they want to divorce so there might be a possibility of reconciliation. The practical application of that is that if there is a doubt and one of the partners thinks that there is a possibility of reconciliation, that ground for divorce is not open to them; it applies only when both parties have agreed to divorce. We are talking about two grown-up people who agree that their marriage has irretrievably broken down, who have not lived together for a year and who want to get on with their lives. I have no doubt that the decision whether to divorce will have been a great source of grief and anxiety, but we are talking about people who have consented to a divorce, having been separated for a year. One does not always know, but their marriage might have broken down even before they separated formally.

I have read the committee's stage 1 report. Margaret Mitchell referred to the evidence from the United Reformed Church that five years was a long time for there to be uncertainty for the children. The Executive's policy memorandum suggested that research indicated that such a period of disruption could be unsettling and damaging for children, who could suffer from low self-esteem. It is not just a question of trying to shorten the period of disruption, uncertainty and acrimony, although that is important in itself; the bill does nothing that removes the ability to prove irretrievable breakdown of marriage by virtue of unreasonable behaviour or adultery.

My concern—it is not fanciful, because I believe that this happens—is that if a person wants a divorce and is going to have to wait longer to get it, they might well decide to cite adultery or unreasonable behaviour. That is where the acrimony would arise. In a divorce that might otherwise have proceeded consensually, we might find that one party decides that if they have to wait two years they will use a specific incident of the other being unfaithful and blow it up.

In the debate on amendment 14, mention was made of violent abuse, which would unquestionably be a ground for divorce. I acted in enough cases in the short period of time when I practised family law to know that unreasonable behaviour is not about real physical abuse. Very often when a divorce became acrimonious, a petty little incident of words spoken in anger, which were shrugged off in half an hour, was turned into a major conflict. If there were disputes about money, it became a question of which partner could paint the other blacker. People would dredge up all sorts of things from their memories as one tried to make the other sound worse than they were.

I am concerned that in the longer period where one party is not willing to agree to a divorce, we would find that parties would cite unreasonable behaviour, because there is no time limit for that and people can get a divorce more quickly. I am not saying that there is never acrimony, but I am concerned about acrimony spilling out in cases that might otherwise have proceeded more consensually because one party is determined to get a divorce and will magnify any incident that happened during the marriage to establish unreasonable behaviour. If children are involved, a divorce that might have proceeded smoothly might become very difficult for them. We should not lose sight of that.

I do not believe that we should undermine or downplay the importance of marriage—everyone who has spoken has said how important it is—but we must consider children's interests. However, in terms of children's interests, if two adult people in a marriage decide that they have tried but failed and now want to move on, making them wait a longer time to do so will not necessarily add to the well-being of society or to that of their children.

The Convener: You talked about unreasonable behaviour and the amplification of incidents in a marriage. I presume that you are not suggesting that a sheriff who presides over a divorce action that has been brought on the ground of unreasonable behaviour would not look for a bit more evidence than, for example, the fact that someone had not painted a ceiling. Surely you agree that there would still have to be a test in law of the unreasonable behaviour. A sheriff does not grant an action just because someone says that the other person has been unreasonable.

Mr Wallace: There is a test, of course, but my point is that unreasonable behaviour is not always a physical assault. The more flimsy the case, the more likely it is that someone will dredge up more incidents from memory to try to establish that there was some kind of pattern. That was what I always found. If there had been a major assault, the case was cut and dried, but when the unreasonable

behaviour was a good bit less serious than that, people would try to remember different incidents in order to establish that, in fact, the unreasonable behaviour formed a recurring pattern. That kind of approach produced the acrimony.

Fergus Ewing: I was most interested to listen to what committee members said. I speak in support of Brian Adam's amendment 32, which would retain the non-cohabitation period of two years for divorces in which there is consent. I also support Margaret Mitchell's proposal to reduce from five years to three years the non-cohabitation time for divorces in which there is no consent.

Mary Mulligan argued cogently that the Executive had not made its case. Therefore, it seems sensible to me to try, as well as I can, to focus on the Executive's case in the policy memorandum. As I understand it, the primary reason that is given for the proposed reduction from five years to two years and from two years to one year for the periods of non-cohabitation is the intention to reduce acrimony in divorce. If I thought that the reductions would succeed in doing that, I would support them. However, my view, which is based on a reasonable quantity of experience, is that legislation cannot remove acrimony.

To assume that we can change people's behaviour through legislation is a misconception and a flawed analysis. I believe that it is legislators' fond misconception, which is born of good intentions, to magnify their capacity for power and influence. However, I submit that even if we were blessed with the wisdom of Lord Cooper, the wit of Laurence Dowdall and the collective draftsmanship skills of every Lord President who has graced the Court of Session, none of us could tackle, reduce or scrap acrimony in divorce.

However, Jim Wallace's argument undoubtedly has merit. It is true of cases in which there is no consent that divorce should take place. However, it applies particularly to the possibly more common cases in which, although both parties may wish a divorce, there is no agreement about the financial aspects such as who should live in the house, how property should be divided, who should be entitled to pension rights and who should have the car. More important are the disagreements in such cases about who should look after the children, who should have residence or contact—in the old days, the argument was about custody and access—and what the access or visiting rights should be. Those matters are all highly contentious and a consent divorce often results only after a long period of negotiation.

11:15

As has been said, five years is a long time. By reducing the non-cohabitation period to three years, we would remove any incentive on the part of a spouse to use adultery or, more commonly, unreasonable behaviour as a lever to get a better financial settlement or the desired arrangements, for example, for residence or contact with the children. In so far as it is possible to use legislation to discourage people from abusing the legal mechanisms, reducing the period from five years to three years would—at least in my experience—have some factual basis. I hope that my experience has been adequate enough to allow me to draw that conclusion.

The proposal to reduce the period from two years to one year is wholly misconceived when there are children involved. In such cases, I strongly urge members to resist the proposed reduction. Even in the circumstances that Jim Wallace postulated, when one parent uses adultery or unreasonable behaviour as the ground for divorce, there is no such thing as a speedy divorce. If—as can happen, unfortunately—a spouse seeks to base the irretrievable breakdown of the marriage on the behaviour of the other spouse, and the impact that that has had on the pursuer, or on adultery, the case takes a long time. As a result, the notion that reducing the period from two years to one year would reduce acrimony is misconceived.

In a way, those arguments are utilitarian and are, perhaps, secondary to my main argument. As the minister said, we should put the interests of the children first. I do not wish to imply that any member does not wish to do so. However, who asks the children? They do not have a right to say to the sheriff, "I don't want my parents to separate." They do not have a legal right to have someone—I believe that the legal term is a curator ad litem—to say on their behalf, "I don't want my mummy and daddy to split up"; having said that, I know that what happens sometimes in chambers and privately is that the sheriff seeks their views. In seeking to put the interests of the children first, we should recognise that their voices are not always heard. Of course, in almost all such cases the parents are deeply anxious and concerned about the future of the children; to suggest otherwise would be nonsense. The Executive's thesis that reducing the period from two years to one year will reduce acrimony is a flawed analysis. I hope that we all accept that marriage is the surest foundation for bringing up children and that marriage should not be cast off lightly.

I was interested to read the comments from Cardinal O'Brien in the submission from the moderator of the General Assembly of the Church of Scotland. He said:

"It is in the best interests of Scottish society, and is therefore a duty incumbent on all who are active in public life, to respect and foster family life … to ensure that it is strengthened and not undermined."

I hope that the committee will put the interests of the children first, and recognise the harm that can be caused by divorce and separation and the fact that the harm of divorce can exceed the harm of staying together. Of course, parents argue and have disagreements. I am sure that if my mother were here she would not mind me saying that she and my late father were no exception; indeed, that would be the case with every set of parents. However, evidence in "The Exeter Family Study: Family Breakdown and its impact on Children" indicates that it is not the mechanism of divorce but the fact of divorce that is harmful to children. For those reasons, I urge committee members, and perhaps the minister, too, to contemplate carefully—as I am sure they will—whether the proposed reduction from two years to one year is truly in the best interests of Scotland's children.

Marlyn Glen: I appreciated the clarity of the analysis from Jim Wallace. We have discovered that everyone has experience of and an opinion on family law. It is not clear how we can legislate to help the way in which families are run. However, the message must come out loudly and clearly from the committee and the Executive that we support families absolutely, whatever their make-up. I ask the minister to ensure that that happens.

There are many permutations of families with children, and we should not undermine them. When we consider family law, it is important that we do not undermine any kind of family, not only the kind on which we are concentrating at the moment. The committee has been extremely vigilant about that. Children grow up happily and without difficulties in many families. I support single parents, who often work extremely hard to support their families. I ask that we all support family life, whatever its make-up, rather than undermine it.

The central issue is children. Children are badly affected by conflict, but not necessarily by divorce. It is right that children's voices should be heard, especially if a family splits up. We have taken that point into consideration. However, it is no longer the case that a couple needs to stay together for the sake of the children. Nowadays it is clear that staying together for the sake of the children is counterproductive, if a couple is in conflict. The committee has taken a great deal of evidence on that point and has considered it in detail. We must be clear about how we will look after children. We do not necessarily do that by making divorce a lengthy process.

I support the Executive proposals to reduce waiting times for both types of divorce. When there is consent, one year is perfectly adequate. I believe that legislation can change behaviour. If it could not, we could cut short meetings of the committee and, perhaps, of the Parliament as a whole. We must believe that we can make changes—that is why we are here.

Organisations such as Family Mediation Scotland and Couple Counselling Scotland, which we have met a couple of times, informally as well as formally, did not lobby against the reductions in waiting times. The waiting time before divorce is not a cooling-off period. Scottish Marriage Care pointed out that couples often take up to seven years to seek help. We would be adding on time to those seven years for a couple who had sought help, gone to counselling and decided to divorce. We might make a family that does not want to live together do so for eight years, which is a huge amount of time, especially when children are involved. Waiting times are not about cooling off.

The proposed changes are about reflecting family life as it is now. We must step back a little from our personal experience. Evidence that the committee received on the Scottish household survey showed that, on the whole, the adults who are involved in active families that will be affected by the legislation are younger than members of the Parliament. Generally, they are up to about 40 years old. We are legislating for people who are younger than we are. In those generations, there is a move towards independence, especially for young women. If we do not make a radical move and if we resist change, that may be counterproductive, because we may dissuade more young people from marrying, rather than persuading them to get married. The idea is not to undermine marriage, but to look at family life as it is now. It is important that we do whatever we can to make break-ups and divorce less acrimonious.

It is important for us to step back from personal experience and to consider how we can help to make the lives of the general population and their children a bit easier, rather than putting more difficulties in their way.

The Convener: I agree with Marlyn Glen. It is important to record that we recognise that families come in all shapes and sizes. I always liked the words "Family Matters" in the "Family Matters: Improving Family Law in Scotland" consultation document—that is a good title.

The question for the committee is whether a reduction in the time limits will make divorces more or less likely. The committee was clear about that. The consensus was that the law should be neutral in respect of promoting or not promoting divorce. The key test is whether reducing the time limits would be likely to make people rush to divorce.

One issue that arose from the stage 1 report is that most people do not believe that people rush to divorce, although they may rush to marry. However, the Executive might have a responsibility to address the issue of the information that people who enter into marriage or another relationship should be made aware of—we had an exchange on that matter at stage 1, if I remember rightly. I believe strongly that more work needs to be done on that.

Like others, I think that marriage is an important relationship and that the state should support it, but other relationships are important, too. Irrespective of the reasons for which individuals marry, marriage confers benefits on them and it is therefore right that the state should take a view on how people can get out of marriages. That is also true of civil partnerships. People enter into civil partnerships and make a commitment that is regulated by the state; it is therefore right that the state should take a view on how people can leave such partnerships.

Would more people rush to divorce as a result of what has been proposed? That is a hard question to answer. One must think about one's own experiences and listen to family law practitioners. In my experience, marriages break down for all sorts of reasons—I think that Marlyn Glen made that point—and generally over a long period. It is a big step for couples to think about not living together, or for one party to think about not living with the other party. As others have pointed out, we are primarily discussing divorce on the ground of non-cohabitation. For how long should a person have left a relationship—for one year, two years, three years or four years—to demonstrate that they no longer want to be part of a marriage? Like Mary Mulligan, I am being torn apart by trying to pick an appropriate timescale after having applied the principles.

My gut instinct was to be a bit disappointed with the witnesses who said that five years was too long; I wanted more information about why such a period was too long and examples that showed why such a time limit was not child focused. For me, the bill is about children, but it is also okay to say that it is about adults. If one party has tried their hardest to remain in a marriage but no longer wishes to do so and has clearly demonstrated that the marriage has broken down for whatever reason, they should not be held in that marriage against their wishes for five years. I am absolutely clear—although this is more of a gut instinct than anything else—that five years is too long.

I agree with what Stewart Stevenson said about consenting parties who have both decided that a marriage has ended. One year feels too short. However, I wonder what difference Margaret Mitchell's amendment 15 would make if it is thought that such a period is too short. The period is currently two years and her amendment would reduce it to 18 months. What difference would six months make?

We should reflect on where society is going, but that is not the only factor that should be taken into account. As legislators, we should get the balance right between modernising and putting into law what we claim to believe in.

11:30

As I have said previously, I believe that some marriages and relationships can be saved, but support is required. We should not rush to say that every organisation that provides a service is so vital that it should be funded immediately under the Family Law (Scotland) Bill—the committee said that in its report. I can now see the logic in saying that, if early intervention is shown to work, the Executive should be prepared to make a strong policy statement about the way in which it sees the interaction between those services. The Executive should also say something about the extent to which it would be prepared to discuss the way in which those services should be provided in the future.

If we believe that support services make the difference to relationships, we need to ask what the standards are and what services are, or should be, provided. I have other grounds for my conviction that contact centres are a good thing in terms of arranging contact with children, but varying standards will also apply in that respect.

Jim Wallace made an important point about the grounds for divorce. We are removing the ground of desertion, which means that only two grounds remain: adultery and unreasonable behaviour. Again, the committee wants to see honesty in divorce proceedings—we do not want to see couples petitioning for adultery. The removal of the age-old bar to collusion means that that will not be against the law—again, we do not want that; we want honesty.

All of us have thought long and hard about the matter and have tried to apply our beliefs and the evidence that we heard. We are at stage 2 of the proceedings; big decisions are being made today and the full Parliament may or may not support them. Although I am happy to take decisions in some areas, I feel a certain discomfort in doing so today.

When all is said and done, I can support the Executive's position of reducing the periods from five years to two years—I would be prepared to discuss whether that limit should be three or two—and from two years to one year, but I can do so only if the Executive makes a very strong commitment on how the family law legal provisions

will work alongside the non-legislative measures, the importance of marriage and relationships and its support for married couples.

That was a very long-winded statement. However, this debate is probably one of the most vital parts of our consideration of the bill. It was therefore important that the committee was given time to debate the matter. The minister now has the opportunity to respond to everything that he has heard.

Hugh Henry: Thank you, convener. It has been useful that you have given everyone the opportunity to contribute. Members may have done so at length, but they did so thoughtfully and passionately. I may not agree with everything that was said, but the issue clearly is one that strikes a chord with many people.

I will start by picking up on one of the points that you made at the end of your contribution. You spoke about the committee making decisions at stage 2 on behalf of the Parliament. I have been struck not just by the divergence of views around the table but by the fact that a number of members who are not members of the committee have approached me on the subject over the past few weeks. Some of them expressed views that were very similar to those that Brian Adam and Fergus Ewing expressed. Marlyn Glen also spoke in those terms. The Parliament's huge interest in the subject is clear to see.

The suggestion that I am about to make may strike the committee as unusual. Irrespective of the outcome of today's meeting and whether the committee accepts what the Executive is saying, I suggest that it would be appropriate for Parliament to consider the matter at stage 3. Given the breadth of interest in the subject and its significance, it may not be in the best interests of either the Parliament or wider society for the matter to be debated and decided on today, rather than by the full Parliament on the floor of the chamber. Before I give detailed responses to the points that have been made, I would like to pause in order to seek some guidance from you on that matter.

The Convener: Okay, thank you for that.

Stewart Stevenson: I have a simple question that might help to inform today's discussion. The political party of which I am a member is allowing its MSPs to make their minds up free from the direction or control of the party whips. Might that privilege be extended more widely—at least to members of your political party, minister? I realise that you cannot necessarily speak on behalf of the Liberal Democrats. As I am sure that you recognise, the matter that we are discussing is a matter of belief, conscience and, to an extent, the traditions in which people have been brought up. My party has taken the view that, therefore, it is not an issue in relation to which it would be appropriate for a political party to dragoon members through the lobbies. It would be useful to know your thinking on that subject.

Hugh Henry: Stewart Stevenson has said that the issue is a matter of belief and conscience but I would point out that it also relates to significant areas of policy that have wider implications. I cannot speak on behalf of our partners in the coalition but, even in relation to my party, I cannot make the decision whether there should be a free vote. That is a matter for our party to decide collectively, on this issue as on any other. I am sure that there will be a discussion about that. What is clear to me—I do not think that I am breaking any confidences—is that there are people in my party who have concerns and who, irrespective of the outcome of a decision on whether to allow a free vote, might not be prepared to accept the Executive's position. That will be a matter for each of them to decide.

I could not tell you—because I would be lying to you if I did—what the view of my party would be in relation to a vote. All that I can say is that people from at least four parties have spoken to me about these matters and that it is clear to me that there is considerable interest in them.

The Convener: Does any other member want to comment? It is important that Brian Adam comments on the procedure.

Brian Adam: In relation to the question that the minister put to you, I think that the range of choices should be put before the whole Parliament. He is quite right to point out that a range of views has been expressed today. Obviously, I agree with Stewart Stevenson's point because I am at one end of the argument and I recognise that others, some of whom are in my party, will be at the other end. I do not think that this is a party-political matter and I accept the point that the minister has made with regard to his party.

The Convener: I know that other members want to speak but I want to be clear about what the procedural consequences of any decision that we make today might be.

If Brian Adam is trying to avoid a decision being made today, he could seek the committee's leave to withdraw amendment 32. If he wants a decision to be made today but also wants that decision to be considered again—obviously, the Parliament would vote on it—there are two ways of doing that.

Hugh Henry: I put on record the fact that I would be prepared to make the case to the Presiding Officer, along with you, convener, that it is rare that we have to deal with an issue of such significance and widespread interest that our

deciding to do what has been suggested would be warranted, but that this is such an issue.

The Convener: Okay, but I just want to check the position that, as I said, there are two ways of dealing with the matter. The first is that the committee could vote on the amendment and take a decision that the bill should be so amended at stage 2. The bill will then be reprinted and the Parliament can discuss it and decide whether it wants to overturn our decision. The second is that we could decide not to make a decision today and all the amendments would go forward at stage 3. Am I correct?

Members *indicated agreement*.

Fergus Ewing: I wish to address the minister's invitation to the committee not to vote on the amendments today. I welcome his suggestion and his sensitivity and candour in saying that members of his own party have expressed reservations. That will come as no surprise to any of us.

I hope that there will be a free vote at stage 3. It is not for political parties to determine the vote of elected representatives on this matter. The converse is the case: the vast majority of people in Scotland expect that there should be no place for party-political direction on issues of morality or on issues in which morality plays a prime part. There is no way that a party whip could influence my vote on such issues—I bear the scars that the whips have inflicted in previous debates to prove it.

The minister cannot have it both ways. Stewart Stevenson asked the obvious question: will the Executive parties have a free vote? That may not be for the minister to determine; it will be for the Executive parties to decide. However, given that the minister cannot give us an assurance that there will be a free vote, why should the committee take a self-denying ordinance?

Moreover, members cannot attend every committee and cannot consider every bill. The members around the table have shown me today that they have applied themselves, listened to the evidence and thought deeply and carefully about the issues. Parliament will welcome the recommendation that arises from the votes of the committee—as it does the recommendations of every committee. Every committee is merely a sub-committee of Parliament as a whole.

Of course, today's decision may be overruled at stage 3. However, it is important that members who have done the work, heard the evidence and wrestled with the issues should have the chance to cast their vote.

Margaret Mitchell: I have great sympathy with what the minister says. It would have been a very attractive proposition had he told us that, like the SNP and the Scottish Conservative party, which are committed to a free vote, the Executive and the coalition parties were also committed to a free vote. We could then have a meaningful discussion in the Parliament at stage 3. Without that commitment, I must agree with Fergus Ewing's point: we are the people who have looked at the matter in depth. On that basis, a vote today would carry a very strong message to the Parliament.

Mr McFee: My concern is whether members are going to be whipped over this issue at stage 3. I am a deputy whip, and I have made it clear within my party that a vote on this issue at stage 3 should not be subject to the group whip. I would not follow a directive given on such matters of conscience.

It is up to those who propose the various amendments to decide whether they wish to pursue them. I would be concerned if we do not vote on the amendments today, because today may be our only opportunity to hear the views of members—albeit only those of committee members—free of the party whips. That is vital.

I understand the minister's position: he cannot make a commitment on behalf of the Labour group—or indeed the Liberal group—as that group has not yet made a decision. However, that is his predicament today, and it would be entirely wrong if the committee did not make its view clear. If the committee does not do so, the provisions on periods of two years and one year will go through to stage 3 unamended. It is therefore important that we take the views of committee members. Members of the Parliament as a whole may disagree with us, but that is a matter for them. We have the opportunity today to get the true feelings of committee members, and we should not squander it.

11:45

Hugh Henry: I acknowledge what members are saying and will address the specific points that have come up. People have asked how we came to our conclusions. The issue has been debated for a long time, starting in 1989 with the Scottish Law Commission's work. Indeed, the Executive has had two separate consultations on the issue. Conclusions have not been arrived at lightly; there has been a great deal of deliberation.

I was struck by people's claims that the periods of two years and one year are arbitrary in nature. We have to make a decision on how long the periods should be, and periods of two years and three years, or three years and five years, are arbitrary. Is staying where we are any less arbitrary? What was the basis for the present configuration? The logical extension of some of the comments that have been made about making

people stay together and work through their problems is that divorce should not be allowed at all. Some people believe that, and that is a legitimate view, which they base firmly on their own beliefs, whether religious, personal, social or moral. However, once one accepts the principle of divorce, one accepts that there is a certain arbitrary nature in the conclusions that are reached.

We are not changing the nature of the divorce process, although I respect members' logic when they say that we should try to make divorce as difficult as possible, if not impossible. However, to pick up Jim Wallace's point, we are still saying that couples will have to prove to the courts that their marriage has irretrievably broken down. The fact is that the courts will not grant a divorce if they consider that there is a reasonable prospect of reconciliation, whether or not we move to the shorter periods that we are suggesting. In addition, the non-cohabitation periods represent minimum times after the couple separate. We are not talking about the period after a couple decides to get married; we are talking about the period after they separate and before a divorce can be granted.

Some people have suggested that where the divorce is disputed two years is too short, and that the period should be three years. Three years is a huge period of time in someone's life when they have decided that, for whatever reason, their marriage is not working and they want to move on. Are we saying that if they want to move on—whether there are children or not—and form another relationship in that three-year period, we will deny them the right to remarry, given everything that we have said about the significance of marriage? I share many members' views on the significance of marriage, but are we saying that we will deny someone the right to remarry until a period of three years has elapsed?

As I said, three years is a long time. It feels to many of us that the present composition of Parliament has existed forever. It is hard to think back to last session. For example, it is hard to remember that Colin Campbell was a member for the West of Scotland region or that Iain Gray was a minister. Some members may think that they have been here for a very long time, but last session was less than three years ago. That puts this debate in context.

If a couple who have tried to make a go of a marriage conclude, for whatever reason, that it cannot work, are we telling them that we will force them to stay together for longer than two years simply because we think that two years is too short, despite the fact that we have no reason for setting the period at three, four, five, six, 10, 15 or 20 years? We are denying people the opportunity to move on.

In cases that involve children, if we cannot allow people to separate reasonably, either with or without agreement, we will encourage them to start looking at all kinds of spurious, manufactured or trivial reasons for getting a divorce—Jim Wallace and other members referred to that.

In some cases, people are desperate—

Brian Adam: You and Mr Wallace have said that if the change is not made, more people will seek a divorce on grounds other than through consent. What is the evidence for that? Currently, couples can get a divorce after two years with consent and after five years without consent, and evidence shows that most divorces are sought on those grounds rather than on the ground of unreasonable behaviour. I presume that, if what you and Mr Wallace have argued is valid, there has been a rise in the number of divorces that are sought on grounds other than irretrievable breakdown.

Hugh Henry: No. If for whatever reason we elongate the period we will encourage people to look at different ways of getting out of a marriage that they believe has broken down. Others more practised in this field than I am can give you chapter and verse on the ways in which that happens at the moment. There is nothing to suggest that forcing couples whose relationship has ended to keep the title of marriage will help them or any children involved. Either we accept the principle of divorce or we do not. Those who oppose divorce can legitimately argue their views. However, once we accept that there is a reason for divorce, it is only reasonable to ask whether it is valid to keep people married if it is clear that their marriage no longer has any purpose.

We have taken advice from the Scottish Law Commission and have talked to legal practitioners in successive consultation exercises. People have been given a long time to express their views. Members tell me that they see no reason for making the period one year, two years or whatever; I see nothing to justify amendments 15 and 16, which set the periods at 18 months and three years. Why did Margaret Mitchell choose 18 months? Why did she not choose a 17-month or a 19-month period? Members may argue against the Executive's position on this matter, but I have to say that no evidence suggests that having an 18-month period will make any more difference than our proposal.

Brian Adam's argument that we should retain the current arrangements might appear to have a certain logic. However, the problem is that the current arrangements have no logic. Those periods were chosen simply because someone at some point had to make a decision. Times have moved on and whether we like it or not we face a stark reality, not just in relation to the number of

marriages that break down but in relation to the number of people who choose not to marry. Indeed, we seek to address the latter issue elsewhere in the bill.

Yes, I support marriage; yes, the Executive supports marriage; and yes, we believe that people should be encouraged to make a go of it—they should be supported in working through their difficulties. We will come to some of the issues that the convener and others, including Stewart Stevenson, have raised about conciliation and mediation. However, equally, when all that has failed we must make a decision about letting people divorce reasonably and amicably, without trying to score points and without introducing artificial reasons.

Once we have accepted the principle, there will never be a time period that is right or wrong. There is no evidence to suggest that what Margaret Mitchell is saying about the time periods of 18 months and three years has any more substance. Not only have those periods not been consulted on; very little comment has been made at all on the matter. In response to Brian Adam, I can say that very few people supported keeping the status quo.

If any arbitrary decision is going to be made, it will not be based on the Executive's research. We have consulted long and hard. The arbitrary decision will be any change that is made at stage 2 by the committee plucking figures out of the air, because it does not agree with the Executive, and saying, "We don't think it's right. Here's another figure that we just happened to think of." That would take us into a different kind of auction.

I accept that this is a hard decision for people to make. I accept that there is concern in society, as well as in the committee and in the Parliament, that marriages are sometimes entered into too trivially. The point is well made that we should perhaps make it harder for people to marry. I agree that people should make a go of marriage; indeed, if people choose not to marry, they should make a go of relationships. People who get together should try to work together, especially where children are involved. They should think before they have children and, once they have children, they should think of their children in everything that they do or say.

The amendments that we are considering will add nothing to what has been a long and complicated process to bring us here. They will add nothing to the view that there should be considered debate and considered decisions. I have not seen any consideration of the suggested alternative time periods. I would argue that, if there is to be a change to the law, the Executive has at least attempted to make that change on a considered basis. There is some reason for doing it; therefore, a difficult decision has to be made. I am not convinced that the amendments have any validity, although I understand the emotions and feelings behind them. I suspect that Parliament will return to the issue, one way or another. I hope that we will be able to send the message that there had to be change and that we have made that change in a considered and measured way.

The Convener: Thank you, minister. There are a couple of points that you have not addressed. One of them is my point about what the Executive is saying about what will go alongside the bill.

Hugh Henry: I said that we would probably come back to that. Stewart Stevenson has lodged an amendment on the issue, so we can have another discussion when we deal with that amendment.

The Convener: I would prefer to hear about it now. I cannot vote on amendment 32 unless I know the Executive's view.

I have another question for you. You make a valid point about the arbitrary nature of the suggested time periods. A time period cannot be backed up scientifically. However, in its stage 1 report, the committee came up with the good point that the time limits—whatever they are—should seek to be neutral: they should neither encourage nor discourage people. We have not heard anything from the Executive on where it thinks its proposed time periods will take us.

12:00

Hugh Henry: Sorry, I thought that we had said something about that; I apologise if it is not there. We do not believe that the bill will encourage people to divorce. We are trying to ensure that, when people decide to divorce, they do so with as little bitterness or acrimony as is humanly possible, although Fergus Ewing and others have said that we will never remove bitterness and acrimony, irrespective of what we do.

I suspect that in a mechanical, arithmetic sense, if our changes are accepted, there will be an initial increase in the divorce rate, because people who are in the pipeline just now will be able to use the shorter time period. There might be a blip at the beginning but, thereafter, as the changes become the norm, the figures should settle down. However, we cannot say with any degree of certainty what is likely to happen; we just examine the trends, such as the number of people choosing not to marry. I think the peak in the divorce rate was around 1985; it has fallen since then. Some might argue that that is because more people are choosing to live together and so have no need to get divorced.

On conciliation and mediation, we believe that help should be made available to those who want to reflect on any decision to separate and divorce. We make money available and people will argue about whether it should be used in conciliation and mediation services or in aspects of education, the voluntary sector, social care and social work. The money is never enough. We grant £630,000 to local mediation groups, which is an unusual arrangement, because the Executive should not be funding local groups. We are considering ways of transferring the funding to local providers. We provide money to national organisations such as Stepfamily Scotland, Scottish Marriage Care, Family Mediation Scotland and Couple Counselling Scotland.

We consider carefully the amount of money that we are providing. I acknowledge that organisations feel that the money is never enough, but in 2003-04 more than £1 million was made available to family support bodies. An additional £250,000 each year in 2004-05 and 2005-06 was made available to those bodies to effect a change process whereby they can improve how they support local organisations. The acknowledged weakness in all that, which Mary Mulligan and others have raised with me, is the support that goes locally to bodies that provide counselling and mediation services.

We are not talking about imposing new burdens in the bill—although we will be if Stewart Stevenson's amendment 42 is accepted. We are saying that, at the moment, there should be counselling and mediation. Fergus Ewing has already referred to a requirement on solicitors. The Executive provides, through its funding to local authorities under broad categories, money for supporting families and money for supporting children. How local authorities choose to use that money is a matter for them.

Another debate has been had—and perhaps continues—about dictating what local authorities should do with the money. In recent years, the trend has been to move away from ring fencing. People say that, if we give the money to the local authorities, we should let the local decision makers decide what to do for themselves. When we talk to local groups about that, they are not happy; they would prefer ring fencing, but that goes against everything that the Parliament has said—the Parliament has said that it believes that the local decision makers should be responsible.

I am prepared to discuss with local government what happens locally and to encourage the development and support of local services, because the difference will be made locally. Where I hesitate—because it is a much bigger debate—is on the question whether the Parliament should start to prescribe to local authorities exactly what and how much they should provide for local services. If we decide to do that in this area, we should, logically, decide to do it in other areas. We will continue to support the national bodies and we hope that they can help others at a local level. However, I would contend that the weakness is not so much with the national bodies—they do a good job, although I agree that more support could be given to them—as at local level, when people turn to look for something that they need immediately. Would we have to draw up a template for the provision of local services? That would be a matter for the committee and for the Parliament to decide; it is not a matter for me.

The Convener: Brian Adam has moved amendment 32. No members have indicated that there are additional points for clarification, so I ask him to wind up.

Brian Adam: Having heard members' comments in response to the minister's generous offer, I shall press amendment 32, as it is clear that members would like the committee to make a decision today. It will then be open to anyone to propose amendments at stage 3.

This has been an interesting debate and I acknowledge the views that have been expressed, although they do not always chime with mine. Mr Wallace made the timely comment that pre-marital arrangements are probably just as important as those during a marriage and those for the dissolution of a marriage. However, we are not here to deal with that today.

Some of the arguments deployed by Mr Wallace and the minister about the consequences of changes may well bear scrutiny. As I understand it, the vast majority of divorces in Scotland—82 per cent—are currently obtained on the ground of separation. If the spectre of an increase in the number of divorces by routes other than separation is likely to arise, I would have thought that there would be some evidence to show that there had been a change in the pattern because of pressures, given the current periods of five years and two years. However, as I understand it, there is no such evidence. The only proposals that are before us for changing the existing arrangements in other respects will make divorce easier, so I do not see any weight of argument to show that the proposals made by Margaret Mitchell, for three years and 18 months, or by me, for three years and two years, would lead to an increase in applications for divorce on grounds other than separation.

Mr Wallace: The point that I was making was that there could be a number of cases in which divorces that are currently granted on the grounds of adultery or unreasonable behaviour could be granted—whether the time limits are two years and one year or five years and two years—not

using those grounds, which would be better for everyone concerned. I am not saying that there would be a huge increase; I am saying that the number of divorces currently granted on the ground of unreasonable behaviour, which may cause distress and further acrimony, could be reduced further.

Brian Adam: Given that only 18 per cent of couples seeking a divorce are currently in that position and that there are no proposals before the committee to do anything other than reduce the five-year period, I would have thought that that figure would go down naturally in any case. Not reducing the period to two years might mean that a few divorces that would currently be granted on grounds other than separation would continue to be granted on such grounds, but I do not think that that is an overwhelming argument. Indeed, that is one of the substantive points made by both Mr Wallace and the minister in defence of the proposals.

People enter into marriage, and let us remember that we are talking only about marriage and not about any other voluntarily entered-into arrangements, such as cohabitation or other arrangements—

The Convener: We are, actually.

Brian Adam: The amendments in this group relate to marriage.

The Convener: My understanding is that the amendments relate not only to marriage, but to civil partnerships. Whatever time limits there are for a dissolution of a marriage would be the same for the dissolution of a civil partnership.

Brian Adam: I accept your guidance. Nevertheless, both those legally binding arrangements have been entered into through will and choice, so to grant people the right to change that arrangement is an important matter. The minister referred on a number of occasions to people who believe that there should be no mechanism by which those arrangements should be dissolved. I know that there are people who believe that, but I am not one of them. I am not putting forward amendment 32 as a Trojan horse for doing away with divorce. There are circumstances in which marriages have irretrievably broken down. What we are talking about is to some extent arbitrary because it is difficult to find the evidence, but—

The Convener: Can I intervene on that point? You have twice suggested that, under the bill, it would be easier to get a divorce. I acknowledge that it would be quicker, but I am weighing up in my mind whether it would be easier. I would be interested to hear from you about the idea that reducing the time period for which someone has to demonstrate that they are not cohabiting would encourage divorce. That is the key question.

Brian Adam: I accept that the consequence of the Executive's position, my position or Margaret Mitchell's position is that divorce would be quicker and therefore potentially less painful. However, I am not sure whether it would be easier; I was probably loose in my language. There is no evidence one way or the other on that point. It is difficult to produce any evidence on those issues. The evidence that we have is what appears in the registrar general's report, which suggests that currently 82 per cent of marriages are dissolved on the ground of separation. I feel that the other arguments are rather spurious.

Fergus Ewing: Does the member accept that the Executive is not proposing that the grounds of adultery and behaviour should be scrapped, so that any spouse who wishes to cause acrimony and—for whatever reason—to use the law as a lever will still be able to do so? The reduction of the periods will not therefore reduce that source of potential acrimony. If the Executive had sought to do that, it should perhaps have abolished the grounds of adultery and behaviour altogether. Does he also recognise that, if the period of non-cohabitation when there is no consent is reduced to three years, people who are currently anxious about having to wait for such a long period as five years may well recognise that three years is a considerably shorter time and so have less incentive to use the grounds of adultery or behaviour? The amendments for which he is arguing will vastly reduce that incentive.

Brian Adam: I whole-heartedly accept the point that Mr Ewing makes.

I do not think that one can come up with—in the same way as the Executive has not come up with—evidence-based grounds for the changes. I would argue that, if there is no pressing evidence that demands that the existing arrangements be changed, we should hold to the current position. The point is that 82 per cent of divorces are obtained on the ground of separation and, as no significant evidence for a change has been advanced by ministers, the current position should remain. The committee has received evidence—largely anecdotal—that the five-year period is too long, so I am happy to accept that three years would be more appropriate. That is why I have supported Margaret Mitchell's amendment 16.

The committee's position that the approach should be neutral in terms of numbers is an honourable one. It is difficult to produce evidence on the implications of any of the amendments. I would like to give the committee the opportunity to vote on my amendment 32.

The Convener: I take it from that that you will press your amendment.

Brian Adam: Yes.

12:15

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

McFee, Mr Bruce (West of Scotland) (SNP)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 32 disagreed to.

Amendment 15 moved—[Margaret Mitchell].

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

Members: No.

The Convener: There will be a division.

FOR

McFee, Mr Bruce (West of Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Wallace, Mr Jim (Orkney) (LD)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 15 agreed to.

Amendment 16 moved—[Margaret Mitchell].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

McFee, Mr Bruce (West of Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Wallace, Mr Jim (Orkney) (LD)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 16 agreed to.

Section 10, as amended, agreed to.

Sections 11 to 13 agreed to.

The Convener: I have received a request for a comfort break, which I will grant. We will resume in five minutes.

12:17

Meeting suspended.

12:29

On resuming—

The Convener: Amendment 33, in the name of Ken Macintosh, is grouped with amendment 33A.

Mr Kenneth Macintosh (Eastwood) (Lab): I thank committee members for the time and consideration that they have given to trying to understand and address the limited but serious difficulty that is experienced by some Scottish families who are going through a divorce but for whom there is a religious impediment to remarrying. Members will know that although amendment 33 could apply to members of all religions, in practice it will apply to Jewish families. However, I am concerned that there may still be some confusion about why the amendment is needed and in particular why the issue cannot be addressed internally by the Jewish community.

The problem that the amendment addresses is essentially that although a Jewish religious marriage is recognised by the courts and by civil law in this country, there is no reciprocal mechanism for a civil divorce to include or even refer to the need for a religious divorce. The result for some Jewish families is that former partners—usually men—have used the on-going relationship to exercise control over their former spouses, preventing them from getting remarried, gaining access to children and, in some cases, even renegotiating property rights that were agreed in the original divorce settlement. I am sure that members will recognise that that is an unhappy state of affairs. I hope that they will also agree that amendment 33 is very much designed to operate in the best interests of the family and the children.

Why can the matter of Jewish religious divorce not be addressed by the Jewish religious authorities? Quite simply, it is because there is no mechanism to do so. I am not an expert on Jewish history, but my understanding is that some 300 years ago, the dispersed Jewish communities throughout Europe and elsewhere decided to adopt the secular law of the societies in which they

lived. In effect, they gave up the right to amend their own law. The traditionally low level of divorce in Jewish communities—lower than is experienced in societies generally—meant that that was not a problem until recently when, like communities generally, Jewish families experienced a rise in divorce rates. At this stage I will not speak to amendment 33A, other than to say that I support it. However, it touches on another point that I want to raise.

I know that some members are uncomfortable with the principle of civil procedures becoming intertwined with religious law. To that I would say two things. First, we are not amending Jewish religious law. In fact, as I hope that I have made clear, we cannot amend Jewish religious law. Amendment 33 builds a step into the civil divorce process so that religious divorce can be considered alongside other matters, such as access to children or property rights, in an effort to make it easier to secure a fair settlement.

Secondly, we already recognise and legislate for the needs of many different religious communities, through education legislation, the Race Relations Act 1976 and employment law, to name but a few areas of law. Perhaps most important of all for the purposes of amendment 33 and today's debate is the Marriage (Scotland) Act 1977, which specifically caters for Jewish and other religious marriages. We are going no further, in principle, by accepting amendment 33 than we did in that act. What we are doing in practice is improving the process by which some Scottish families reach a divorce and agree a fair and just settlement. Amendment 33 is in keeping with the spirit and intent of the bill and will amend Scottish law to reflect family life today. It will improve people's lives and I urge members to give it their support.

I move amendment 33.

Stewart Stevenson: Amendment 33A is intended simply to tidy up the draftsmanship of amendment 33. It removes the specific reference to the "usages of the Jews" in subsection (7) of new section 3A, which amendment 33 proposes to insert into the Divorce (Scotland) Act 1976. I am told that it is unnecessary to make such reference because, without the words that I am seeking to delete, religious marriage would be defined as a "marriage solemnised by a marriage celebrant of a prescribed religious body". The Marriage (Scotland) Act 1977, to which Ken Macintosh referred, gives a list of the religions in which ministers, pastors and so on may conduct a religious marriage that has a civil implication and which may be registered in the civil register.

In a sense, amendment 33, which Ken Macintosh lodged on behalf of the Jewish communities of Scotland, raises an equalities issue par excellence. It seeks to reduce the power that some men exercise over some women who still have a Jewish religious marriage after the civil process has dissolved their marriage by divorce. It is entirely in keeping with the ethos of the Parliament for us to respond sympathetically and in a practical way to the issues that arise in that situation. By removing the reference to Jews from amendment 33, we will make the provision entirely general, which will remove any suggestion that we are favouring one religious community over another.

If there are drafting issues and the minister believes that my amendment to Ken Macintosh's amendment is ill advised, I will listen and respond accordingly. I do not seek to confront the Executive or the minister on the matter because I do not regard it as a party-political issue. I will support amendment 33 whether or not amendment 33A is agreed to. I draw the committee's attention to the support that my party's leader has given to amendment 33. It is not subject to a party whip on my side of the chamber. I am not aware of any of my political colleagues who wish to oppose the substance of the amendment although they might wish to debate its content.

I move amendment 33A.

Mr Wallace: I do not want to elaborate on what Ken Macintosh said about his amendment, which I strongly support. I simply welcome it. I remember that the issue was raised at a meeting that I had with representatives of the Jewish community when I was the Minister for Justice. Until then, I had been completely unaware of the issue, but it became clear that it is not just a theoretical matter. It has practical implications and consequences that are both distressing and inhibiting, especially for women who wish to remain within the Jewish faith but find life difficult, due not least to the difficulty with remarrying.

Amendment 33 addresses a real problem in a sensible way. I understand that the parallel legislation in England and Wales has been effective during the short time for which it has been in force, albeit that there are differences because they already had decrees nisi and absolute. I welcome the proposal to amend the law of Scotland to take account of what has been a real problem and, as Ken Macintosh said in his opening remarks, to achieve a fair and just settlement.

Marlyn Glen: I direct the committee's attention back to its stage 1 report, which states:

"the 2004 consultation paper and, indeed, the Bill is silent on this issue."

We concluded:

"there are strong arguments that, as a matter of principle, the law should not conflate civil and religious divorces."

I would like us to uphold that principle. I have difficulties with the amendment in principle, but I also think that we have not considered it in enough detail. Even without amendment 33A, there are difficulties. Amendment 33 is aimed at Jewish marriage, but it will also apply to other religions.

The wording at the end of amendment 33 leaves it open for us to go back and amend the eventual act by a statutory instrument, without the need for primary legislation. From an equal opportunities point of view, amendment 33 is an open one because it would allow other faiths to look at changing our divorce law. I believe that our divorce law should be a matter for civil procedures.

I do not want to go through the many religions in Scotland—there are more and more of them—but one of the bigger minority religions is Roman Catholicism. That religion is similar to the Jewish religion in having a religious impediment to remarrying; Roman Catholics do not believe in divorce, unless there is an annulment. If there is a divorce but no annulment, the Roman Catholic Church will view any subsequent marriage as adulterous. If we consider Hinduism in the same light, does that mean that our divorce law will have to accommodate different religious beliefs about marriage and divorce? Will we have to take into consideration, for example, the fact that Hindu divorce recognises different grounds for separation, such as religious conversion? The committee has not considered such questions in detail. It is a mistake for us to accept something that would fundamentally change what we do, without considering it deeply. I am seriously concerned about this issue.

Sharia law governs divorce in the Muslim religion, which does not regard the partners in a marriage as being equal in any way. There are different rules for men and for women. I am extremely concerned that we might open up our family law to change that would disadvantage the very women whom we are supposedly trying to look after. There is also a restriction on a Muslim woman remarrying within three months of a divorce in case the man changes his mind. We have not considered or taken evidence on all sorts of details.

At the time, the committee decided that it was a mistake to conflate the two laws and that it would be much better to leave them apart. I was told that the changes affect only a handful of couples in the UK as a whole. As was said, the English changes are recent. The committee talks about evidence a lot and about why we should not move forward without it. However, we do not have the evidence from the English changes to consider properly before making what will be a fundamental change to our laws. There is another way. The Jewish community has powerful tools, which I was told about, to persuade reluctant spouses to grant consent to a religious divorce. Amendment 33 seeks to change timings, but the Jewish community could sort out the problem by putting pressure on a couple to get the Jewish divorce first before going to a civil court, if that would help.

I repeat that I do not think that the committee has examined this issue properly; I also think that the Executive should go back and examine it further. Amendment 33 seems to seek to give Jewish religious divorce preference over other kinds of religious divorces. Even without amendment 33A, the door is left open to other faiths. There are questions that we have not considered. For example, would we be introducing two separate procedures? Would legal aid be available for both and would it be needed for both? What would be the chances of being awarded legal aid?

12:45

Training would be required for all sheriffs so that they understood the finer points of religious marriages. That is another issue that we have not asked about. We have been very careful about the changes that we are proposing. We want to ensure that the bill is practicable and workable and that sheriffs will think that it is practicable, but we have not looked at the matter from the sheriffs' point of view.

I reiterate the fact that other religious impediments would also have to be taken into account. I am thinking of the fact that the Roman Catholic Church does not accept divorce and that Islam gives preference to the male partner in a marriage. Also, how well is the change working in England? As I said, there was not much time to gather evidence on the subject and, certainly, we did not seek evidence on it.

I will not support amendment 33. We should look at the matter in an awful lot more detail than we are able to manage today. I ask Kenneth Macintosh to seek leave to withdraw amendment 33. If he does not agree to do so, I ask my fellow committee members to vote against it.

Margaret Mitchell: I share Marlyn Glen's reservations on the stage 1 scrutiny of the bill, which was hopelessly inadequate. When we heard evidence from the Jewish community, for example, we did so as part of the evidence from four other religious bodies. Frankly, I do not think that enough time was given to the subject. We did not hear the detail of the arguments.

Since that time, I have had the opportunity of looking in some detail at amendment 33. When we looked at the issue at stage 1, the first thing that we considered was whether any such amendment

would open a Pandora's box of amendments from other religious bodies. I am satisfied that that is not the case, especially given amendment 33A.

The fact of the matter is that amendment 33 would not affect the court's authority to act in any way that it deemed to be appropriate. I am also satisfied that, although the court would be permitted to take action, it would not be obliged to do so. The provision would apply only when one party refused to give or receive a religious divorce. That being the case, amendment 33 would help to prevent a situation in which the religious agreement was being used as a blackmailing or bargaining tool in a dispute—it would aid mediation in the process. I am content with amendment 33 for those reasons.

Marlyn Glen made the point that other religions may come forward with amendments or points to be considered. The matter could be considered by means of a statutory instrument under the affirmative rather than the negative procedure, so that it would be debated properly in the chamber. Perhaps the minister could give some guidance on whether that would be his way of approaching any references from other religious bodies.

I am happy to support amendment 33.

Mrs Mulligan: I recognise the concerns that Marlyn Glen raised. As a committee, we should be concerned that we seemed to suggest in our stage 1 report that we wanted to avoid conflating religious and civil divorce and yet we are doing just that at stage 2.

All members have had discussions on the matter outwith the committee. Although I do not have a problem as such with amendment 33, I have some concerns about the impact that the provision could have on other religions. I hope that the situation does not arise of all members—even Jim Wallace—having to meet the minister before they get their issue on the agenda.

As I said, I have some concerns about the impact of the proposal. However, we are where we are. Amendment 33 was lodged to address the concerns of certain people within our communities—on this occasion, those in the Jewish community. If we can do something to alleviate their difficulties, we should do it. I support amendment 33, but I am interested in the minister's comments on how we got into the position of not having all the information at the beginning to allow us to take a more rounded approach to the issue, rather than just concentrating on one aspect of it.

Mr McFee: Like other committee members, I was almost totally ignorant of the issue when it arose in evidence at stage 1. At that stage, I would have subscribed to Marlyn Glen's view that the law should not conflate civil and religious divorce. However, I will support amendment 33 for two reasons. The first is that, while we may believe that the law should not conflate civil and religious divorce, it conflates civil and religious marriage. Therefore, where the law confers upon churches the ability to carry out the civil as well as the religious element of marriage, there is a duty on the law to resolve any difficulties that that may create. It would be possible to hold to the view that we should not conflate civil and religious matters if the law did not do so in the first instance, but a much more radical change would have to be proposed if we wanted to go down that route.

I would like to hear the minister's views on the issues that Marlyn Glen raised. However, the second reason to support amendment 33 is that it would protect those who occupy a weak position in such situations. It is all very well to say that the civil aspect should be held entirely apart, but the fact is that decisions that are taken in civil courts on divorce settlements are being undermined by other means. It is a serious situation for us as legislators if decisions that are taken in our courts can be undermined and if people who are in a weak position find that they have to move away from a settlement that a court of this country deemed to be fair. We cannot allow that to continue if we are serious about upholding our courts' decisions.

I support amendment 33, but I would like to hear the minister's view on whether further amendment through regulations would open up the Pandora's box that Marlyn Glen mentioned, although I suspect that the box is not as large as suggested. I want to hear that before making a final decision on the amendment and the amendment to it.

The Convener: We probably all agree that the problem is real; the question is whether we should legislate in the bill to resolve the issue. If we believe that the civil law is the only law that matters for the state, there is a dilemma. We must consider the issue seriously. We cannot fix something for a group just because we have the power to do so; in every case, we must justify carefully why we want to do so in the basic provisions. I acknowledge that, when people enter into marriage, they can get married either civilly or religiously, but it is clear that, when people divorce, matters such as financial provision, which is a property issue, are a civil matter only. A difference exists in that such matters do not arise when people enter into marriage.

When I considered amendment 33, I initially had the feelings that Marlyn Glen expressed—I thought that we had resolved the issue in our stage 1 report. The evidence that we heard was that it would not be acceptable to make legal provision that put the Jewish faith under any kind of duress or instruction. As a result, we took the

view that there was no work to be done. However, further evidence has emerged to suggest that amendment 33 would resolve the issues.

I, too, have taken time out to consider some of the issues and I am certainly satisfied that there are vulnerable people whom we need to consider carefully.

I need to have some questions answered before I can support amendment 33. I do not know enough about the court procedure to know whether delaying the decree is unusual. I am advised that it is not unusual for the decree to be delayed to sort out details, but I understand that usually the grounds for divorce and some of the big legal decisions have been made. Perhaps the minister can assist me with that.

I understand the argument about having something in the civil law; the party who has been non-compliant with the religious divorce will have something to think about when the matter is in the public domain, on the petition, and the delay is the trigger. However, is it clear that the party would not be under duress? Would the mechanism affect their free will and would there be implications under the European convention on human rights if there was a suggestion that they were put under pressure?

Marlyn Glen made a point about judicial training. It would be helpful if the minister could address that, having taken advice. I do not imagine that judges would particularly welcome this provision, but I do not know whether training would be required, because, if I have understood correctly, there would just be a delay.

All in all, if we are to support the amendments, I set out in the strongest terms my belief that although the provision would do no harm—subject to the answers to the questions that I have asked—we would usually want to separate civil law from religious law. Margaret Mitchell made the point that it would be better for regulations made under subsection 9 of proposed section 3A of the Divorce (Scotland) Act 1976 to be subject to the affirmative procedure, so that we could reconsider the issues, rather than a motion to annul having to be lodged.

Hugh Henry: The Executive is well aware of the concerns of the Jewish community. We believe that Ken Macintosh's amendment 33 will provide a useful and practical solution. It would not affect a great number of people and the benefits for the few people whom it would affect would be significant.

We support Stewart Stevenson's amendment 33A. We do not think that it introduces any complications whatever. The matter would be dealt with by negative instrument, as set out. We do not have any technical problems with dealing with that.

We rehearsed earlier our principles in trying to shape a family law bill. Some of the concerns that were expressed apply to the Jewish community as well. A number of members referred to fairness and equality of treatment, and it is right that women in the Jewish community should not be disadvantaged because of something that we can resolve in passing the bill.

The convener asked whether the delay of a decree was unusual. It is not; it can happen when there are arguments about the welfare of the child or about financial provision. A number of factors already lead to such delays. My understanding is that amendment 33 is ECHR compliant, so we do not have a problem with that.

I do not think that judicial training will prove to be a major issue, because we are simply asking the sheriff to delay the decree until the parties can demonstrate that they have satisfied the terms of the get. As a result, the procedure for the sheriff would be neither very technical nor greatly complex.

Of course, we cannot expect the sheriff to be aware that both parties are Jewish. They will have to draw that to the court's attention. We are saying that, when that information is made known, the sheriff should not grant the final decree until the matter has been resolved.

We have no problems with amendments 33 and 33A, which will resolve a long-standing concern in the Jewish community, and we are happy for the matter to be resolved in the bill.

13:00

The Convener: Those comments are helpful.

I presume that, if a party applies for a decree to be delayed because issues need to be sorted out, the sheriff does not need to know what they are. After all, when the party comes back, either they will have the get or they will not. If they do not get the get—so to speak—they could still proceed with the civil divorce if they wanted to. Is that right?

Hugh Henry: That is precisely my understanding of Ken Macintosh's proposal. We are merely asking the sheriff to delay the decree until the issue has been resolved.

Mr Macintosh: I thank all members for their contributions to this debate. It is unfortunate for the *Official Report* that from stage 1 up to now much of the discussion on the matter has gone on outwith the bounds of the committee. However, our knowledge has been enhanced by the process.

I do not intend for this debate to be as long as the previous one, so I will deal as briefly as possible with the points that have been made. Marlyn Glen raised a number of objections, the most important of which was the idea that there might be confusion between religious and civil law. I realise that she did not use the word "confusion" herself, but I hope that we all agree that amendment 33 seeks to amend—I would say improve—the civil divorce process and does not affect religious law. It acknowledges that religious divorce can be a difficulty that has to be resolved. It would be preferable for all concerned for the issue to be resolved during a divorce, just as—as the minister pointed out—issues such as access to children and property rights have to be sorted out. If the committee agrees to amendment 33, it will introduce a mechanism for addressing the matter. No such mechanism exists at the moment, so the issue of religious divorce is being disregarded in a number of divorces that are taking place, which can lead to difficulties. As a result, I do not think that there is any confusion.

Bruce McFee was right that amendment 33 presents no more conflation of civil and religious law than we have had for years in this country, particularly in the Marriage (Scotland) Act 1977. We are not taking the law further down that road than it has already gone.

I have no evidence to support this claim, but I do not think that religions will be queuing up to apply to the Scottish Parliament to use this or any other law in resolving intractable religious difficulties. Although, in principle, the law will apply to members of all faiths who face a religious impediment if they want to remarry, in practice it will apply only to the Jewish religion. I am very grateful to Stewart Stevenson for lodging amendment 33A, because it would make the situation clearer. I also point out that, under proposed subsection (2) in amendment 33, the provision would not apply to the Roman Catholic religion. At the moment, in the Jewish religion, both parties must agree to a divorce. However, a Roman Catholic is unable to enter a religious marriage after a divorce, and the other party can do nothing to change that situation.

It is interesting to note in passing that the Roman Catholic Church's evidence specifically supports amendment 33, as does the Scottish Inter Faith Council. Religious bodies support the amendment, but there is no suggestion that they intend to apply to use it or that they have other issues that they wish Parliament to resolve for them.

There was a suggestion that the result of amendment 33 would be preferential treatment for one section of the community. I do not think that that is the case and Stewart Stevenson's amendment 33A would make that even clearer. The legislation will apply fairly to everyone; it must, in order to comply with the European convention on human rights. I understand that it does, although subordinate legislation will make it clear to whom it will be of practical benefit.

Marlyn Glen was concerned that we might only be talking about a handful of couples. Even if that is true, it is important that the law benefits everyone. Someone said flippantly to me that we are going to change the law about marrying in-laws, but we do not expect many people to take advantage of that. We do not know what the numbers involved will be; the "handful of couples" to which Marlyn Glen referred does not consist of the people who have been in difficulty; rather, they are the intractable cases that might never be resolved even with the changes that will be brought about by the bill. I will come to evidence in a moment, but there are many intractable cases that have lasted for more than a dozen years and which are only now being addressed through the legislation changes in England and Wales. For many other cases, the bill will make divorce more balanced.

The convener asked a couple of questions. On duress and free will, all that the process will do is allow the sheriff to delay proceedings while the issue is addressed. The issue might not be resolved, but it has to be considered and because it would only be considered, no other pressure would be applied. Duress is also a religious matter. I have several statements of testimony here—I will not read them out—from several rabbinical authorities to the effect that they are confident that amendment 33 would not result in duress being applied.

The minister answered a question about judicial training; if it is of benefit to members, I point out that UK law was changed by a similar amendment. The Jewish community provided the various authorities with information and I am assured that that will happen here if necessary.

I think that I have addressed all the points. I end by commenting on the point that Jim Wallace made that this is an issue that came his way when he was Minister for Justice. It was the subject of one of the very first questions that I asked Mr Wallace in a debate in 1999. People talk about a lack of evidence, but a lot of evidence has been collected in the Jewish community and there is a lot of testimony. The chief rabbi was here recently and he testified to all the people who met him that there is an issue for Jewish people. Many of them have been going to him and to other rabbis to express their concerns. Articles have also appeared in the Jewish press. Although it might be described as anecdotal evidence, there is testimony that there is a problem. There is also no

doubt that the chief rabbi and others have agreed that this long-standing difficulty can be resolved if we pass amendment 33. I urge the committee to do so.

The Convener: Thank you.

Stewart Stevenson: I will not take very long. I thank the minister for confirming that amendment 33A will not create problems as far as the advisors are concerned. The amendment was prompted by input from the Jewish community. It does us great credit that, as we learn, we change our minds and our approach. That is a sign of maturity on all our parts.

I make brief reference to the use of secondary legislation. The Marriage Act 1977 already uses secondary legislation to define the religions that may create civil marriages through religious processes. The inclusion of secondary legislation through amendment 33A is analogous.

My final point is an obvious one. Yes, the amendment reflects the situation of very few people; however, one of the key tests of a democracy is how it treats its minorities. This is an opportunity to treat an important part of our community—an important minority—with respect and to respond to the needs that it has expressed to Parliament.

Amendment 33A agreed to.

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

Marlyn Glen: No.

The Convener: There will be a division.

FOR

Wallace, Mr Jim (Orkney) (LD)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)

The Convener: The result of the division is, For 6, Against 1, Abstentions 0.

Amendment 33, as amended, agreed to.

The Convener: I thank the minister and his officials for attending the meeting this morning—and this afternoon, which it now is.

Subordinate Legislation

Registration of Civil Partnerships (Prescription of Forms, Publicisation and Errors) (Scotland) Regulations 2005 (SSI 2005/458)

13:13

The Convener: Item 3 is subordinate legislation. I welcome John McCafferty from the General Register Office for Scotland. He is here to answer members' questions. Scottish statutory instrument 2005/458 is subject to the negative procedure. Do not be confused by the fact that we have a witness here—we simply thought that members might have questions to ask about the regulations, so this is an opportunity to clarify any points. John, do you want to say anything before we begin our questions?

John McCafferty (General Register Office for Scotland): No.

Stewart Stevenson: I have a technical question. Can you confirm that the technical provisions and the forms will allow the registration of up to 200 characters for forenames and up to 50 characters for surnames, which is in alignment with the provisions that the registrars make for registration of births?

John McCafferty: Basically, the computer system that has been set up for civil partnerships mirrors that which is set up for marriages; therefore, the same number of characters will be allowed for civil partnerships as are allowed for a marriage.

13:15

Stewart Stevenson: That leads to my secondary question: do the arrangements for registration of a marriage mirror those for the registration of names at birth?

John McCafferty: To be honest, I would need to speak to our technical colleagues who set up the system. However, I imagine that they took account of the length of names and allowed enough room for them to be entered.

Stewart Stevenson: I raise the point in an entirely personal capacity, because I constantly have difficulties in that regard. I am perfectly content that the situation is likely to be okay. It might be useful to have that confirmed later.

John McCafferty: I should add that if the computer system did not allow the required number of characters to be entered, the event could be registered manually to allow the full name to be added.

Stewart Stevenson: That is sufficient for my purposes. Thank you.

The Convener: Are there any more comments or questions? I think we have run out of steam.

Stewart Stevenson: I just wanted to show that I had read the regulations.

The Convener: I have a question. The form refers to "Marital … status". Why is that necessary?

John McCafferty: Are you asking in relation to the certificate of no impediment at schedule 4, which refers to

"Marital or Civil Partnership status"?

The Convener: Yes.

John McCafferty: I will explain the purpose of the certificate of no impediment. If a person wants to register their civil partnership in England or Wales, they can submit notice in Scotland, instead of doing it down south. The registrar in Scotland examines all the paperwork and documentation and completes the form, which is then handed to the registrar down south. The registrar down south needs to know the marital or civil partnership status of the person, because the person entering the civil partnership could have been in a marriage and be divorced. The registrar will be interested to see that the person is divorced, because their marital status will be needed for the English records. The certificate also signifies that the registrar in Scotland has been made aware that the person is divorced, and has checked divorce documents and so on.

Mr McFee: I once had to obtain a certificate of no impediment because I was married abroad. Its purpose is precisely to indicate that there is no impediment, no matter which procedure one goes through. It must be obtained from a registry office here. It does exactly what it says on the tin—it says that there is no impediment to the person entering a marriage or civil partnership. It is pretty sensible.

The Convener: There are no further questions. We appreciate your coming along, albeit that you were required only briefly.

John McCafferty: That is okay.

Mr McFee: He only got one question and he did not know the answer.

Stewart Stevenson: Oh! Unfair!

The Convener: Enough. We can safely say that the committee is happy with everything else in the form. We do not need to report on much. Everyone's questions have been answered satisfactorily. Thank you for appearing before the committee.

We are running out of time, because I know that members have to be elsewhere. We move into private session for items 4 and 5.

13:19

Meeting continued in private until 13:31.

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