JUSTICE 1 COMMITTEE

Wednesday 9 November 2005

Session 2

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JUSTICE 1 COMMITTEE
† 36th 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:

Hugh Henry (Deputy Minister for Justice)
Dr Sylvia Jackson (Stirling) (Lab)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

† 35th meeting 2005, Session 2—joint meeting with Justice 2 Committee held in private.

Scottish Parliament

Justice 1 Committee

Wednesday 9 November 2005

[THE CONVENER *opened the meeting at 09:51*]

Family Law (Scotland) Bill: Stage 2

The Convener (Pauline McNeill): Good morning and welcome to the 36th meeting of the Justice 1 Committee in 2005. It would be helpful if committee members could do the usual and switch off mobile phones.

I have received apologies once again from Mike Pringle, who is giving evidence on his member's bill at another committee. I ask Jim Wallace to confirm that he is here as a substitute for Mike Pringle.

Mr Jim Wallace (Orkney) (LD): Yes, I am.

The Convener: We have to do that every week.

Mr Wallace: I would not wish my vote not to be counted.

The Convener: I welcome the Deputy Minister for Justice, Hugh Henry, and the officials who are assisting him today—Carol Duncan, Anne Cairns and David McLeish—to day 3 of stage 2 consideration of the Family Law (Scotland) Bill.

Before we start the debate, I inform the committee that amendment 72B was not lodged, so its appearance on the marshalled list is erroneous. As a result, that amendment will not be moved today.

Section 14—Financial provision: valuation of matrimonial property

The Convener: Amendment 17, in the name of the minister, is in a group on its own.

The Deputy Minister for Justice (Hugh Henry): Section 14 of the bill amends section 10 of the Family Law (Scotland) Act 1985 by allowing the courts, on the application of either party, to consider and take account of any changes in the value of matrimonial property subsequent to the valuation at the relevant date, which is usually the date at which the couple separates.

Since the bill's introduction, it has been suggested that section 14 is cast too widely and therefore fails to protect the relevant date. The Justice 1 Committee was advised of that during its stage 1 consideration of the bill, and the Executive set up a group of key stakeholders to help to examine the section. The group concluded that the section needed to be revised. Accordingly, the Executive has introduced amendment 17, which replaces the provisions in section 14 with provisions that meet the concerns of key partners.

I move amendment 17.

The Convener: I probably know the answer to this question, but I would like to get it on record. Amendment 17—which seeks to deal with the case of Wallis v Wallis, on which you have been working—is about the court's flexibility to use a date other than the relevant date, particularly if the value of the property has increased substantially. I presume that it would also apply if the value had decreased substantially.

Hugh Henry: Yes, it would apply either way.

Amendment 17 agreed to.

Section 14, as amended, agreed to.

After section 14

The Convener: Amendment 18, in the name of the minister, is grouped with amendment 23.

Hugh Henry: Amendment 18 is a technical amendment, which is required to update Scottish matrimonial legislation to take account of the Pensions Act 2004.

In short, the 2004 act introduced the pension protection fund. The aim of the PPF is to introduce greater protection for members of private occupational pension schemes in the event that their employers become insolvent. The PPF will come into play in such situations to ensure that compensation is paid to those who would lose their occupational pensions.

Although pensions policy is a reserved area, there is an interface with devolved policy in the context of pensions as matrimonial assets on divorce. Amendment 18 seeks to update the Family Law (Scotland) Act 1985 and, in doing so, ensure that the protection that the PPF provides will apply in Scotland as it does in the rest of the United Kingdom.

I move amendment 18.

Stewart Stevenson (Banff and Buchan) (SNP): I have a technical question. I am broadly supportive of amendment 18, but to what extent does it provide protection for or cover pensions that are paid from pension funds outside the UK? For example, many people who are employed in the North sea are employed not by UK-resident employers but by employers who are resident elsewhere. There are similar issues in relation to the change of domicile for Caledonian MacBrayne, under which workers might be employed by a company that is based in Cyprus. It would be

useful to know what implications, if any, amendment 18 has for those and any similar examples.

Hugh Henry: That is probably a matter for the Pensions Act 2004 rather than the bill, as I suspect that the matter is reserved. However, not being an expert in that area, I cannot give a definitive answer. Eligible schemes are occupational pension schemes under the Pensions Act 2004, so I suspect that UK legislation would address the problem to which Stewart Stevenson refers.

Amendment 18 agreed to.

Section 15 agreed to.

After section 15

The Convener: Amendment 19, in the name of the minister, is in a group on its own.

Hugh Henry: The Law Society of Scotland brought to the Executive's attention the unfairness that can arise as a consequence of the failure of the Family Law (Scotland) Act 1985 to allow for the backdating of variations and interim variations of minutes of agreement that cover alimentary matters. The Executive has embraced in their entirety the Law Society's proposals in that regard. Amendment 19 introduces a change to section 7 of the 1985 act to address the problem. It will address the problems of injustice that can happen at present and that prejudice a parent's ability to make adequate financial provision for their children.

I move amendment 19.

The Convener: Amendment 19 was suggested by the Law Society; does that mean that the 1985 act has been defective all that time?

Hugh Henry: I would hesitate to say that it has been defective all that time. We have identified potential for improvement.

The Convener: Obviously, that is what I meant.

Mr Wallace: I hope that that does not apply to those of us who passed the 1985 act.

The Convener: Indeed not. You are here to keep an eye on us, Jim.

Amendment 19 agreed to.

The Convener: Amendment 20, in the name of the minister, is grouped with amendments 22, 24 to 27, 41 and 29 to 31.

10:00

Hugh Henry: Amendment 20 deals with the concept of illegitimacy, which many commentators and other people throughout Scotland, including the Law Society, desire to see removed from Scottish law. That desire to remove a very old-fashioned and, to some extent, insensitive term has been echoed by the Justice 1 Committee. The Executive has therefore taken steps to achieve its removal.

As the committee will be aware, illegitimacy impacts on issues in two areas that are reserved matters: the succession to hereditary titles and the granting of arms. As such, it is not within this Parliament's competence to abolish the concept of illegitimacy in its entirety. However, amendment 20 will amend existing legislation in order to abolish the concept of illegitimacy from Scots law with a saving provision stating that that will not affect reserved matters. In other words, the only people who will be legally classified as illegitimate after the bill is passed will be certain people in relation to hereditary titles and to the granting of arms. Other than that, no one else will suffer the stigma of illegitimacy.

Amendment 22 will enter a new section dealing with private international law, which provides that questions of the effect of illegitimacy on a person's status will be determined by the law of the country in which that person is domiciled. Thus, any person domiciled in Scotland will no longer be branded as illegitimate.

Amendments 24 to 27, 29 to 31 and 41 are consequential amendments and repeals, which flow from the policy objective.

I move amendment 20.

Stewart Stevenson: Again, my question is just about a technical point. Proposed new section 1(6) of the Law Reform (Parent and Child) (Scotland) Act 1986 states:

"It shall no longer be competent to bring an action for declarator of legitimacy, legitimation or illegitimacy."

First, I am not clear whether that will leave or remove the option to change the status of people who are currently deemed illegitimate. Secondly, I am not clear whether that proposed subsection will interact with heraldry. Of course, there are coats of arms that have the appropriate marks showing that illegitimacy is part of the crest. I just wonder whether, in the absence of the ability to see the declarators, there will be an effect on the ability to claim arms, which may have within them an indication of illegitimacy in the family tree several generations back.

Hugh Henry: What we want or intend to do in relation to coats of arms is a separate issue which, as I said, remains a reserved matter. The fact is that the status of illegitimacy will be abolished, so no one in Scotland will be classified as illegitimate, irrespective of when they were born. Certainly, that is my understanding of the provision.

Without going into all the intricate details of coats of arms and heraldry, I cannot cast any more light on the situation. However, I reiterate that only a few people in Scotland, because of the reserved aspect, will be classified as illegitimate and the main reason for anyone being in that category will be because a hereditary title is involved.

Stewart Stevenson: If we leave aside the issue of heraldry, which is interesting but not very important, given that what amendment 20 proposes appears to abolish illegitimacy retrospectively for all living people, will that give people any rights in relation to undoing wrongs that they might feel were committed against them because they were illegitimate? If the provision is retrospective, will it open up any issues in that respect?

Hugh Henry: Without knowing specifically what the wrongs would be to which you refer, I am not sure, other than to say that, from the passing of the bill, the status of illegitimacy will no longer exist. If there are issues to be resolved in terms of people feeling that wrongs need to be righted, those people will need to seek advice on what the legislation means for them. It would not be competent for me to give such advice.

Stewart Stevenson: But is it not the whole intention that the provision be retrospective?

Hugh Henry: It means that, as from now, no one in Scotland will be classified as illegitimate.

Stewart Stevenson: So, if the bill is passed, it will not change the fact that somebody who was illegitimate on 1 January this year was illegitimate on 1 January this year.

Hugh Henry: Illegitimacy will no longer be a concept in Scots law. We are not arguing whether someone was previously illegitimate; we are saying that they are not illegitimate. If the status no longer exists, an action of declarator is not required. What would be the point of someone seeking to go to court to establish that a status that no longer exists no longer applies to them? I do not understand the question.

Stewart Stevenson: I am trying to support you. I am not trying to derail the provision.

Hugh Henry: Thank you.

Stewart Stevenson: I am just making sure that we understand the implications.

Margaret Mitchell (Central Scotland) (Con): I think that the point is that if someone is illegitimate, they can already make a claim on an estate. Being illegitimate does not prohibit someone from making such a claim. I am looking for some clarification on the point. If someone retrospectively will not be illegitimate, will they have any more of a potential claim on, for example, an estate following the death of a relative?

Hugh Henry: To be honest, we are starting to get into very detailed legal points that are not necessarily tied up with the bill. Better minds than mine could concentrate long and hard—and no doubt expensively—on the issues. I would hesitate before I offered any such definitive legal advice. I am not sure whether Jim Wallace wishes to do so, however.

Margaret Mitchell: With respect, if we are being asked to agree to the amendments in the group, we should at the very least be made aware of the consequences.

Hugh Henry: Perhaps I can address that point, which is on a slightly different issue from the question that you put previously. You are talking not about consequences per se, but about something that happened a number of years ago. We are talking about abolishing a status henceforth—no one from now will be classified as illegitimate. That is a different matter from me giving definitive legal advice on very complicated and technical areas of the law. I can speak only to the amendments in the group.

The provision would not affect the claim that someone might make to a parent's estate. As I said earlier, someone will not need to raise an action of declarator if the status no longer exists. I would counsel caution; we do not want to get into legal semantics and detail that are not entirely connected to the passing of the bill.

Margaret Mitchell: My understanding is that the provision was made some time ago—I do not know under which act—for illegitimate children to have the same right of claim as any other child on an estate. I raised the question to seek clarification that there would be no difference.

Hugh Henry: That is correct. Illegitimate children can claim on a parent's estate at the moment. The abolition of the status of illegitimacy would not affect that right. We are quite clear on the point.

The Convener: That is the key point. Thank you, minister. It was helpful to clarify the issue.

Mr Wallace: The amendments in the group are worth while. They make a fundamental change to our law, taking it in a direction that removes stigma from a child. Of course, the child took no part in the stigma becoming attached to them. I have two or three technical points to raise on the amendments in the group.

Section 1(4)(a) of the Law Reform (Parent and Child) (Scotland) Act 1986, as amended by amendment 20, will say:

"a legitimate or lawful person shall be construed as a reference to a person whose parents were married to each other at the time of that person's conception or subsequently".

It has been drawn to the committee's attention that, under some other legislation, for example the Legitimation (Scotland) Act 1968, "legitimate" can include children of putative and voidable marriages. Subsequent legislation covers children adopted by a single person and children born with no legal father as a result of sperm donation, under the Human Fertilisation and Embryology Act 1990. First, is the minister satisfied that the proposed definition of a legitimate person is wide enough to include other categories of children who are legitimate under existing legislation but whose parents are not necessarily married?

Secondly, the minister indicated that amendment 22 relates to private international law and the choice of law for determining a person's status. My concern is that a person might, as it were, go in and out of legitimacy. A person born in Scotland to Scottish parents whose parents are not married would, when the bill is passed, not be illegitimate. Let us say for the sake of argument that the parents separate and one party goes abroad to a country where the concept of illegitimacy is still alive and kicking. We are being invited to agree to section 16, which says:

"if—

(i) one of the person's parents is dead;

(ii) before the death, the person had a home with that parent; and

(iii) the person has not since the death had a home with the other parent,

the relevant country is the country in which the parent with whom the person had a home was domiciled".

Let us say that one parent goes abroad and the child stays in Scotland with the other parent, who then dies. The child, having been legitimate up to that point, then goes to stay with the parent who had gone abroad to the country where illegitimacy is still recognised. Is it right that that child might suddenly find himself or herself illegitimate—or have I got it wrong?

Hugh Henry: The answer to the first question is yes. Your second question—if I followed it correctly—was about someone who ends up in another country where the concept of illegitimacy still exists. You ask whether that would confer an illegitimate status on that person.

Mr Wallace: Yes.

Hugh Henry: If the person was domiciled in that country, the law of that country would apply. If the person was not domiciled in that country but just happened to be there, Scots law would still apply.

Mr Wallace: I believe that the important thing is indeed where the person is domiciled. I understand that section 16 addresses that—that is certainly how I read it. Someone might be legitimate and then go to stay with a parent who had moved to a foreign country where illegitimacy is still a working concept; if they become domiciled there, they can suddenly find themselves illegitimate, although they were legitimate before. I was just wondering whether the Executive was content with that situation.

The Convener: Is that something that we could do anything about anyway?

Hugh Henry: Exactly.

The Convener: If someone adopts the domicile of another country, we cannot legislate for what happens to them there.

Hugh Henry: That is the issue. We have no control over another country's jurisdiction and legislation.

Stewart Stevenson: At the risk of being boring, I take the committee back to the issue of a declarator for legitimacy as a potential mechanism. I am not suggesting that we explore that on the hoof here and now, but we might still consider that possibility for stage 3. I suspect that, under private international law, a declarator from a Scottish court would be definitive when it came to the question whether someone was legitimate. I leave that thought with you, minister; I am not seeking a huge degree of comment at this stage.

Hugh Henry: We will certainly investigate whether any further amendments are necessary in that regard for stage 3. I hesitate to comment further, but I would draw your attention to the section that amendment 22 seeks to introduce. It states:

"Any question arising as to the effect on a person's status … shall be determined by the law of the country in which the person is domiciled at the time at which the question arises."

That is fairly clear. However, we will certainly examine whether there might be any unintended consequences that we have competence to deal with. It would be foolish to suggest that we could try to deal with consequences over which we have no control.

10:15

The Convener: The reason for introducing proposed section 1(6) of the 1986 act, which will make it

"no longer … competent to bring an action for declarator",

is that we are trying to get rid of any law that suggests that such things as legitimacy and illegitimacy exist. That is the provision's purpose.

Hugh Henry: Yes.

The Convener: The problem is that even if the scenario that Jim Wallace talked about could be rectified—it is not clear that it could be—keeping such provisions would negate what we are attempting to do.

Hugh Henry: As far as the declarator is concerned, we are saying that there will no longer be anything to declare.

The Convener: I will not keep the subject going for much longer. I call Margaret Mitchell to speak briefly.

Margaret Mitchell: Does the minister think that the affirmative statutory instrument on civil partnerships that we will consider later raises the same issues about the recognition of one country's law in other countries? The same issues apply to civil partnerships as Jim Wallace outlined in relation to illegitimacy.

Hugh Henry: I see what you are driving at, but I am not sure whether the issues are entirely the same. The statutory instrument deals with a specific issue, but we will certainly consider whether wider issues need to be addressed.

The Convener: I see no harm in clarifying the points that the committee has asked about. That would be helpful and we would welcome that. The committee unanimously welcomes what the Executive is seeking to do in general—it is not before time. We strongly support that.

Does the minister need to say anything in winding up?

Hugh Henry: No, thanks.

The Convener: I asked just in case.

Amendment 20 agreed to.

The Convener: Amendment 42, in the name of Stewart Stevenson, is grouped with amendment 42A.

Stewart Stevenson: Amendment 42A exists only because of the process by which amendments are lodged. It was drawn to my attention that the inclusion by the draftsmen and women of the words

"who were or are living as a family"

in amendment 42, which were not in the draft amendment that I submitted, would cut off from the benefits of that amendment parents who had never lived together, but who nonetheless had parental responsibilities and rights. That would be inappropriate. I hope that the committee will without controversy agree to amendment 42A, which would change amendment 42.

Committee members have all at one time or another talked to various people about the substantive issue that amendment 42 encapsulates, which is ensuring that a duty lies on local authorities to provide support services. The amendment is—properly—silent on finance and on whether the resources of the local authority or the Executive are involved. However, the argument that many such services put—and which Family Mediation Scotland has put quite strongly to me—is that such services can reduce the financial burden on the public purse, because early and effective intervention in relationships reduces turmoil and the cost to councils, the Scottish Executive, families and probably the Scottish Legal Aid Board. Although there might be a period during the establishment of such services when financial support might be required, the measure would be self-funding and potentially cost saving, therefore cost is not a reason to oppose amendments 42 and 42A. The whole thrust of the bill, which has wide support, is support for families, and in particular support for children. It would seem a gross oversight if in considering the bill we did not create duties to ensure that services to support families in distress exist.

I move amendments 42 and 42A.

Margaret Mitchell: I welcome amendments 42 and 42A. My only point is that if the minister supports them he should be mindful that while some local authorities have an excellent track record of taking account of expertise in the voluntary sector and moving funding to it—if they control that funding—some local authorities do not. I ask the minister to be mindful of that if he supports amendments 42 and 42A. Perhaps some guidance could be produced to ensure that the voluntary sector is not sidelined when it has the expertise to help with family relationship support services.

Mrs Mary Mulligan (Linlithgow) (Lab): I have some sympathy with Stewart Stevenson's amendments 42 and 42A. This is a good stage at which to bring together our thoughts about the discussions that we have had on the issues.

We spoke last week about time limits for getting out of a marriage, and in previous discussions we talked about who offers support and advice to people who go into marriage. In the past, providing such support was often the responsibility of the churches, but with so many more marriages taking place in a civil context, that support is not available, and we allow people to marry without recognising the responsibilities that they are taking on. Likewise, we recognise that there are services for people who are experiencing difficulties within their marriage, such as couple counselling and reconciliation services, and that for those who seek to end their marriage there are mediation services. However, there is no one way to present such services to people, who do not know where to go or who is responsible for which aspect. It can be confusing.

Stewart Stevenson's amendments 42 and 42A are useful in bringing to the fore an examination of the provision that is available and the provision that we wish to be available, which we spoke about a lot when we took evidence at stage 1. When we discussed that with the minister, he helpfully offered information and advice about what is available. I know that the minister has set the national organisations the task of examining the services that they provide, how they should be funded and how successful they are. There is an issue in saying, "Let's just provide what is already there." We do not have the evidence that we need to say, "Yes, that is the right way to go forward."

I have identified two difficulties on which I would appreciate your comments, minister. Stewart Stevenson's amendments 42 and 42A seek to place a duty on local authorities to provide family relationship support services. My understanding is that local authorities already have a responsibility to provide such services. However, we know that they do not always do so and that provision varies. Minister, what discussions have you had with local authorities, perhaps through the Convention of Scottish Local Authorities, to ascertain why some local authorities think that it is not in the interest of their local communities for those services to be provided? We need to hear that side of the discussion, although I need some convincing that they should not provide such services. If discussions have not already taken place with COSLA, could you hold discussions and find out the answers for us?

I also want to return to the point that I raised earlier about what services work. I am not sure that we should use legislation to say, "This is the service that everybody should have." When the voluntary organisations gave evidence they were clear that their services had an effect. Stewart Stevenson said that there are ways in which they can actually save money. However, I am not sure that we have had a thorough enough examination of such claims. We would like to be fully assured that certain services are better than others or that certain ways of providing services are better than others. We need more information.

I am not sure that legislation is the answer at this stage. I am not sure whether we need to provide guidance or whether there should be provision alongside the legislation. Without practical measures to support the legislation, people might wonder why we had gone through the ordeal of working on it. If the supports are not in place, the legislation might make no difference to people. I am still to be convinced about how we ensure that services are provided, and until we are better informed, I am not sure that we need legislation, particularly now.

Marlyn Glen (North East Scotland) (Lab): As Mary Mulligan said, the committee has spent a great deal of time talking about and taking evidence on counselling, mediation, and reconciliation. In a way, we support Stewart Stevenson's amendment in spirit, although there are difficulties with it: I definitely do not support the idea of placing a duty on local authorities.

There are other difficulties with the amendment. Family mediation services for couples do not work just for those couples whose relationship has ended; they work for families that are experiencing conflict and separation. Neither do those services work just with couples: they do a great deal of intergenerational counselling. I have worked on the grandchildren's charter, which the committee also considered very carefully. The services also work with siblings and step-parents. The amendment does not reach as many people as family mediation and other counselling services would like to.

Contact centres are not only for meetings between parents and children; they also help to set up meetings between parents and the significant people in their lives, whoever they may be. There are difficulties with the amendment from that point of view, as well as the difficulty that I have with the idea of placing of a duty on local authorities.

Family Mediation has pointed out that it is encouraged by proposals from the Scottish Executive Education Department's children and young people in social care group. The proposals concern key performance improvement indicators, which include, at paragraph 2.5, making family support and relationship services available for parents and families who may need them. Therefore, the duty to provide family relationship support services that amendment 42 seeks to create is already covered by the Executive's proposals.

Everybody on the committee wants to express how much they support and value the services that are available; our not supporting the amendment does not devalue that support. Therefore, I will not support Stewart Stevenson's amendment.

10:30

Mr Wallace: I endorse much of what Mary Mulligan and Marlyn Glen said. We support the valuable work of the various agencies and voluntary groups. Since joining the committee by adoption for the purposes of the bill, I have learned even more about their valuable work.

I take Stewart Stevenson's point that pounds spent now could mean savings made in future. Although that is to consider it very much from a financial perspective, it would bring considerable

benefit to the relationships and the quality of life of the individuals involved.

What the evidence impressed upon me was that the coverage is patchy. There are parts of the country where services are not as readily available as we would like. It would be useful if the minister could indicate whether the Executive has done any mapping exercise of where the services that are referred to in the amendment are available and where they are not, and what steps can be taken to encourage local authorities in those areas to address that gap in service provision.

I share the view of the previous two speakers. At this stage I do not believe that primary legislation is the way forward. Apart from anything else, it is easy for the Parliament to say that each local authority shall have a particular duty, but not to say where the money will come from. These are statutory duties, and it is easy to pass the buck. If the Executive does not make the money available the local authority would have to make it available, no doubt by diverting it from other services or by raising the level of council tax. The statutory duty that would be imposed by amendment 42 is probably not the right way to proceed; there are other ways in which we can go about ensuring that those services are provided.

Mr Bruce McFee (West of Scotland) (SNP): Throughout stage 1 the committee heard different witnesses talking about the patchy delivery—or the non-delivery—of services. Services seem to vary greatly throughout the country, and much of the central belt is far better served than the more peripheral areas. Ultimately, it is not whether we believe that such services are a good thing, but whether we believe that someone should be required to deliver those services. Picking up on what Marlyn Glen said, we should not throw the baby out with the bath water just because amendment 42 does not cover every aspect of service that may be provided voluntarily at the moment. We would be better to regard the provisions in amendment 42 as the absolute minimum that local authorities would be required to provide. It would be a matter for the local authorities whether they wished to deliver part of that requirement by using the voluntary bodies to deliver those services or elements of those services. It is down to whether we wish to make the provision of such services a requirement and, if that requirement is not placed on local authorities, the question would have to be on whom it would be placed. Which other body or bodies could be required to deliver those services?

Jim Wallace was right to mention finance. As a society we seem to be prepared to spend a fortune on clearing up the mess that is left after the breakdown of families, but perhaps not quite as much on helping families to stay together and to work through their difficulties. It will not always be possible to save relationships, and therefore prevent the mess that failure creates, but there should be a change of emphasis. Warm words are fine, but if we see fit to legislate on these matters there should be a requirement to ensure that the appropriate support services are there. Amendment 42 is a minimum requirement—it should certainly be built upon. It should not preclude any local authority providing the services that it does at the moment. No local authority would wish to stop providing those services as a result of the amendment if it is successful. Agreeing the amendment would show that the Parliament and those who legislate are serious about delivering what they talk about.

The Convener: I support just about everything that has been said so far. I am grateful to Stewart Stevenson for lodging amendment 42, and I am tempted to support it. There are issues with it, though, particularly to do with the duties placed on local authorities. I need to think about that, because there would be no point in our agreeing amendment 42 and placing a duty on local authorities when we are not clear about what that means, or the financial provision that it would require.

There is strong evidence to suggest that family support services can make a difference. Three areas interest me. First, we should support families that are going through difficult times. Secondly, there is some evidence that conciliation can save relationships. I rate conciliation just as highly as mediation, if not more highly. Thirdly, I am attracted to doing more about the contact centres that we have heard about. There are concerns about standards and how to apply them, but when dealing with family law it is important that non-legislative issues—such as those that I describe—are considered alongside the legal provisions.

There is a certain frustration that family support comes under the justice portfolio, when family mediation and support services lie not just in that portfolio, but are the responsibility of other ministers too. The provision of family support services is an Executive—a Cabinet—decision and some way should be found for the Executive to be stronger about how it sees such support services working alongside family law.

Placing a duty on local authorities might not be the way forward. We did not have enough time to look at how it works in all the countries that we were interested in, but we chose to look at Australia, which influenced our thinking. We do not suggest for one minute that the minister should seek out the equivalent of 68 million Australian dollars—we are realistic about what we ask for—

but the idea of relationship centres that offer relationship support is appealing. To deal in a clinical, isolated way with the legal provisions of family law without asking us to consider provisions that should run alongside it is unrealistic.

I look for stronger statements than those previously made by the Executive about how it sees family support services. As the committee made clear in its stage 1 report, and as Jim Wallace pointed out, we would have preferred a review. We are not saying that the existing organisations should simply have their funding expanded; we are asking for a review to discover what kind of services make a difference. If that were known, the question of how they should be funded should follow.

Every member has spoken in this debate because it is important. I invite you to respond, minister.

Hugh Henry: I understand the depth of feeling, as well as the desire to see things happen at a local level.

A couple of fairly important principles were touched on. Mary Mulligan asked why we should go through the ordeal of legislation if the services do not exist. Notwithstanding what you said at the end of your contribution, convener—and I am by no means suggesting that this is what we want to do—even if we were not doing anything to improve the quality of services in Scotland, there would still be a need for legislation. We are addressing by means of the bill some fundamental issues that have been overlooked for far too long. As was highlighted in a previous discussion about illegitimacy, we are redressing some wrongs that have existed for far too long. Even if we did nothing about improving service provision, we would still have to legislate, because it is the right thing to do.

That brings us to a much bigger question about service provision and policy, which flows from legislation. Jim Wallace was right to say that it is easy to propose certain measures without specifying how they will be funded. Indeed, that lies at the heart of much of what has been said this morning. I know that Stewart Stevenson is something of a mathematical expert and has an analytical mind; however, he should forgive me if we do not proceed on the basis of his assertion that the measure in his amendment is cost neutral and will in fact save money. We have no evidence of that. All I can see is an aspiration that what he suggests will happen at some point.

Indeed, I argue that if we were simply to take Stewart Stevenson's proposal at face value its significant cost implications would not just send shivers of horror down the Executive's back, but would give the Scottish National Party finance spokesperson, John Swinney, who takes a close interest in these matters, more sleepless nights considering another uncosted promise.

That said, this debate raises the question of who should be responsible for the provision of these services throughout Scotland. It is worth putting on record that the Executive makes a significant contribution in a number of ways. For example, through grant-aided expenditure for children and family services, we spend a huge amount of money to allow local authorities to determine their own provision. I will return to that in a moment. I should also point out that we provide a specific grant of £65.5 million a year through the changing children's services fund to improve the quality of those services.

I take the convener's point about the different aspects of support such as counselling, mediation and reconciliation. It would be foolish to suggest that they are all the same, and in that respect Stewart Stevenson is right to refer to family relationship support services. We provide support to the four national groups and, as a result of an historical anomaly, to some mediation groups in Scotland. I have to say that that means that some parts of the country do not receive anything from us, but we do not particularly want to continue with that model. We believe that the money should be transferred to local decision makers.

In this debate—and, I believe, in discussions on an earlier amendment—some members highlighted the voluntary sector's role. I have certainly been impressed with some of the work that I have heard about and have seen for myself how people bring not just a huge amount of enthusiasm and commitment, but a great deal of expertise and care to the matter. As some local groups have pointed out, what they do has a multiplier effect. Apart from the direct grant that they receive, they manage to secure more funding through their local fundraising endeavours and volunteering activities.

As a result, it would be remiss of us not to pay tribute to the excellent work that many voluntary organisations do throughout Scotland and I would be dismayed if local authorities turned their backs on some of that work and believed that the only way of proceeding was to provide their own services. It is right to have what might be called a mixed economy, with a range of choices and service delivery agencies, and many of these local groups should be commended for the sterling service that they provide.

How do we decide on and map out what happens at a local level? Jim Wallace wanted to know whether we had undertaken a mapping exercise. Well, no. We do not go out and map local service provision on a range of things that it is the responsibility of local authorities to provide

in each area. Local authorities themselves need to do that. We fund some local groups; however, we know from having spoken to people that there are gaps in services throughout Scotland, as some local authorities provide very little in the way of direct support.

10:45

Bruce McFee suggested that, if we are prepared to pay for a mess to be cleared up, we should be prepared to spend money to prevent the mess being made. My argument is that we already do that through GAE, through the changing children's services fund and through the money that we give to the national organisations. To suggest, as Stewart Stevenson does—and Bruce McFee backs him up—that that should be a statutory requirement gives rise to a bigger question about the role of the Parliament and its relationship with local government.

Amendment 42 proposes that a specific model will be provided and that local authorities

"shall provide a family relationship support service, which shall include—

(a) relationship counselling services"

as a statutory requirement. The amendment would mean that those services would have to be there. Whether or not it was appropriate for an area, each local authority would have to provide those services. The amendment states that there shall be

"family mediation services for couples"

and also that there shall be contact centres, whether or not contact centres are the best way in which to take things forward.

There is a huge debate to be had about the role of contact centres. Some people are fervently in favour of contact centres and believe that they are the best thing since sliced bread; others have significant reservations about contact centres and what may or may not happen if people are forced to use them. There are big issues to do with women who have suffered domestic abuse and children who have witnessed such abuse. There are issues to do with unreasonable parents and children being brought to such centres or adults being forced to go to them. However, although there may be a legitimate debate to be had about the contribution that contact centres can make, to specify a model in legislation without having had that debate and without having taken evidence from across the country would be at best foolish, and could be, at worst, disastrous.

We then come to the issue to which I have referred on several occasions—the question of who makes those local decisions. Do we want the Parliament to determine what local authorities should provide? We give money to them. The Parliament has heard, on many occasions, the argument that we should not interfere and that there should be genuine subsidiarity. The Parliament was set up on the premise that subsidiarity would allow local decision making and that we would not interfere with that unduly. Indeed, since the Parliament was created, with cross-party consensus we have moved away from ring fencing.

Some of the local groups that are involved in family support services would support ring fencing because they are concerned about what happens at a local level; however, the political will of the Parliament has been to move away from ring fencing. If we decide that we want something to happen at a local level and we legislate for what a local authority shall do, will we ring fence our resources? We have politicians who come into Parliament whenever a grant for a local group is cut and demand that something happens; yet the same politicians are quite capable of saying that they do not want the Executive to interfere in the work that local authorities do. We need to make up our minds.

Incidentally, I am suggesting that we must make up our minds not just in relation to this specific aspect of this specific amendment to this specific bill, but in relation to the whole range of services. Do we want to specify how after-school care services are to be provided throughout Scotland? Do we want to tell local authorities what we expect them to do with the money? Will we tell them what we expect to happen with early years services and what we expect them to do with the money that we provide? Will we specify what should be provided for carers across Scotland with the money that we provide for care services, because many carers are unhappy about the level of support at a local level? Do we specify what each local authority should do to support people with disabilities? Do we specify what they should do in relation to the elderly? Will we specify what they should do to help small businesses, manage specific housing stock and maintain light standards, roads and pavements? Will the Scottish Parliament decide what local authorities should do and ring fence the money right the way down? We need to decide on that important principle.

As far as the issue that we are discussing is concerned, I have a genuine understanding of the points that members make. We have put money into local groups and we are putting money into the national organisations. I will go back to COSLA to discuss the issue. My officials have been discussing with COSLA some of the issues relating to local funding but there might need to be a discussion at a political level. I am prepared to make the point to COSLA that there is concern across the Parliament that there are gaps in local

services and that local groups feel that they are not being properly supported. I will make that point strongly. However, this committee and I need to consider carefully what will happen if COSLA says, "That is all very well, but how money is spent at a local level is our decision." At that point, we will need to think about what we do in terms of the argument that I have expressed, relating to subsidiarity and ring fencing.

The matter touches on a bigger issue that is starting to become more and more of a political hot potato as this Parliament's interest in a number of areas grows. I believe that it is right to allow local decision makers to make local decisions. I recognise that, sometimes, it will cause problems when those local decision makers do not do what others are doing or what we hoped that they would do. However, I want the message to go to COSLA that we believe that family relationship support services should be supported and developed, that there should be a mixed economy, with some services coming from the local authority and some coming from the voluntary sector, and that many of those organisations provide a sterling service. I am not giving carte blanche approval for everlasting support for every local group, because there must always be quality assurance checks and an examination of whether a group is delivering what it says that it will. However, generally, it is right that this Parliament sends a message not only that we value such services, but about what we put into those services.

I will have a discussion with COSLA and I will report back to Parliament on that matter, at stage 3 if necessary, and will let the committee know in writing what the outcome of those discussions is. However, I believe that Stewart Stevenson's amendment, far from saving money or being cost neutral, could add a significant financial burden that has not been costed. I also believe that it cuts across local decision making. I hope, therefore, that the committee will not support it.

Stewart Stevenson: This has been a wide-ranging and interesting discussion.

Mary Mulligan made the point that the duty to provide family support and relationship services already exists. However, there has been a general recognition that that duty has not led to a situation with which this committee is wholly satisfied. That leaves open the view that more needs to be done. I get the feeling that that is a shared view. Our differences are to do with how things should be done, rather than with whether things should be done at all.

The point was made that my amendment does not address siblings, step-parents, grandparents and significant others. That is fair comment in the sense that amendment 42 does not list every relationship that might exist, but in providing for relationship counselling services and contact centres, it seeks to create the infrastructure that would give siblings, step-parents, grandparents and others the opportunity to meet the young people with whom they have a relationship and would offer them support to do so. Amendment 42 certainly does not prohibit the facilities that it would create from being used for those purposes. It would be pretty bizarre if it were to be prescriptive as to the detail rather than to leave scope for development.

I am grateful for the minister's warm words about my analytical capabilities, although my wife might disagree—she is a mathematician, too, and a superior mathematician to me.

The Convener: You could always go to family support.

Stewart Stevenson: I admitted that there would be start-up costs. I accept that my comment that the proposals in amendment 42 would be cost neutral over the piece is not backed up by in-depth analysis; they would certainly not be cost neutral in year 1.

I want to illustrate some of the issues that are involved. It is clear that we can understand without great difficulty or huge research what the inputs would be—in other words, how much money we would have to put in. I have been given a suggested cost per case in family mediation of some £300 per year, which I have not independently verified. What would that £300 buy? We seek to buy improved relationships and to manage the breakdown of relationships. Although such soft things are quite difficult to measure, we must accept that that is the case in much of social and family policy.

In relation to value for money, it is clear that on the output side of the equation some hard and unambiguous things could be measured, even if they are essentially secondary to the primary objective of supporting people. If the cost of £300 for supporting a family mediation case is correct, I invite the minister to consider that that cost is probably balanced by the cost of a single court appearance. In other words, if investing in a family mediation case avoids a single court appearance, across the piece my proposal is likely to produce value for money, albeit that we are not trying to run such support services on a commercial basis because they are about supporting people. There are indications of cost neutrality that would bear further research.

I welcome the fact that the minister will have discussions with COSLA because I am not wedded to dictating that local authorities should provide such services. However, methinks that the minister may be protesting a little too much on the

subject of people in Edinburgh telling local authorities what to do. He will know from informal conversations that we have had that I share many of his concerns about getting right the balance between local authorities having the freedom that was encompassed in the recent act that conferred on local authorities the power of well-being, which allowed them to do everything that they thought was useful for the people in their area, and their being limited to doing only what is prescribed. That was an excellent change, the benefits of which we have yet to see.

What the minister said is somewhat at variance with the Executive's practice and policy. I can give an example of a case in which I sought to pursue precisely the course that the minister suggests that we should pursue, but was rebuffed—by the person who is sitting to my right. When she was a minister, I recall challenging Mrs Mulligan on why we were requiring local authorities to charge specific amounts for dealing with planning applications. I asked why they could not simply decide how much to charge on the basis of how efficient their planning departments were. I was told quite clearly that we could not have local authorities competing with each other. Then I was told, "Well, this is how it has always been done." I am paraphrasing, but that is what it boiled down to. Therefore, although I share the minister's aspiration, I doubt that the Executive's practice at the moment sustains the argument that he is deploying.

11:00

I would like three things to happen. First, there must be a commitment to investigate the hard and soft benefits that derive from the provision of family relationship support services. The soft benefits are the really important ones, but the hard benefits are the ones that may allow us to convince our respective finance spokespeople—John Swinney sleeps easily when I am on his team.

Secondly, I want a timetable for action in this area. The minister has indicated that he is prepared to return to the issue at stage 3 or during our deliberations in advance of that. He has hinted at that, but that is perhaps not enough.

Thirdly, at some point in our decision-making process, I would like to see an outline view that addresses the need for an increase in the depth of service provision. In other words, there should be more of such services where they exist. Picking up on the point that Jim Wallace made, which other members have made previously, I would like us to ensure that we have adequate geographical coverage for the services that we all want to be provided, to some degree and in some character, throughout Scotland.

On the basis that those commitments are not being made today—although the minister may go away and think about them—I am going to press amendments 42A and 42 to a vote. However, I expect that I may well return to the matter at stage 3, if I am permitted to do so by the Presiding Officer.

The Convener: Is there anything that you want to respond to, minister?

Hugh Henry: No.

The Convener: The question is, that amendment 42A 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 42A disagreed to.

The Convener: The question is, that amendment 42 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 42 disagreed to.

Section 16—Domicile of persons under 16

The Convener: Amendment 21, in the name of the minister, is in a group on its own.

Hugh Henry: The provisions of section 16 deal with the rule relating to the domicile of persons who are aged under 16. They were designed to replace the existing rules, which were predicated on the marital status of a person's parents, and have been included in the bill to eradicate further the condition of illegitimacy from Scots law.

In evidence to the committee, persuasive arguments were put that, although the goals of the provisions were laudable, section 16 as introduced was unnecessarily complex. The Executive has responded to those arguments by means of amendment 21. Amendment 21 removes the six rebuttable presumptions that were present in section 16 as introduced and replaces them with a rule that, although much simpler in its application, still achieves the policy objective.

I am aware that further concerns have been raised recently over the technicalities of the drafting of the amendment. Those new points warrant further consideration and it is our intention to lodge an additional minor amendment to address them at stage 3. However, amendment 21 is a substantive step forward.

I move amendment 21.

The Convener: Can you say what the problem with the amendment is?

Hugh Henry: Concerns have been raised by a couple of academics—

The Convener: Dr Carruthers and Dr Crawford.

Hugh Henry: The amendment therefore warrants further consideration. We will look at those concerns and return to the issue. If necessary, I will give the committee further information ahead of stage 3.

The Convener: We have received the same 20-page note that you had from Dr Carruthers and Dr Crawford. We have also had a note from our adviser, which says something different. We are just trying to take that in at the moment and we would welcome a further discussion on the matter at stage 3.

Amendment 21 agreed to.

Section 17—Parental responsibilities and parental rights of unmarried fathers

The Convener: Amendment 43, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 43 makes a technical change to the drafting of section 17. Section 17 extends parental responsibilities and rights to unmarried fathers who jointly register the birth of their child with the child's mother. Proposed new section 3(1A) of the Children (Scotland) Act 1995, which the bill will introduce, ensures that, just as registration as a child's father in England, Wales or Northern Ireland confers PRRs, it does so in relation to a child subject to the law of Scotland.

It was our policy intention to give Scottish ministers a power to make regulations so that registration as a child's father under equivalent overseas legislation could, when appropriate, also confer PRRs in respect of a child subject to the law of Scotland. However, at stage 1, the Subordinate Legislation Committee pointed out that, as the bill was drafted, that intention would not be met. We therefore agreed to look again at the drafting and, if appropriate, to lodge an amendment at stage 2.

On looking further at the issue of the rights of fathers from overseas, doubts arose about the relevance of proposed new section 3(1B) of the 1995 act. "Parental responsibilities" and "parental rights" are recently invented expressions. They have meanings assigned to them in the 1995 act, but it is unlikely that other countries have anything roughly equating to them. Indeed, we have as yet been unable to find any overseas jurisdictions that have a similar system.

Given the fact that we are not aware of any overseas jurisdiction to which the provision would apply, and taking into account the potentially far-reaching implications of the provisions as drafted, we have decided simply to remove proposed subsection (1B).

I move amendment 43.

Amendment 43 agreed to.

Section 17, as amended, agreed to.

After section 17

The Convener: Amendment 72, in the name of the minister, is grouped with amendments 72A, 72C, 72D and 72E. Members are reminded that there is no amendment 72B, as I said in my opening remarks.

Hugh Henry: Amendment 72 has been lodged directly in response to concerns that we heard from Scottish Women's Aid and its partners about contact arrangements for women and children when domestic abuse has occurred. We share those concerns, as does the committee. Domestic abuse is a scourge on society and, when women and children escape an abusive situation, their continued safety and well-being must be ensured.

We know that legislation alone is not the answer and we are working on non-legislative approaches to support amendment 72. Nevertheless, Scottish ministers were convinced of the need to strengthen our legislation to address the issues. Our officials were asked to work closely with Scottish Women's Aid to develop a workable legislative approach that would help us better to address the issues when they come before our courts. There have been a number of meetings and I pay tribute to my officials, who have worked long and hard and have come up with some imaginative suggestions. They listened sympathetically to what Scottish Women's Aid said and they then further amended and refined the

wording. A huge amount of work has been done on the issues and amendment 72 is the result of that work.

We have no wish to interfere with the core principles that underpin this aspect of the law or with the autonomy of a judge in considering the facts and circumstances of each individual case and in coming to a determination. However, we believe that the approach to cases involving domestic abuse is not consistent. That is something that generally concerns the committee and ministers—we believe that it is right that something should be done to address that. Through the new provisions, courts will be required to address those factors sympathetically. In key cases, judicial evaluation of the circumstances of the case, in light of its child welfare characteristics, will be recorded. I argue that that will be an important step forward in addressing domestic abuse in Scotland.

I will comment briefly on amendments 72A, 72C, 72D and 72E, in the name of Marlyn Glen. I understand her motivation and her desire to tidy up the drafting of the new section that amendment 72 introduces, but we believe that our drafting is clear and unambiguous. We consider that amendment 72A and its consequential amendment 72C would change the meaning of the phrase used in the new section, with the result that there would be no guarantee that the definition would be carried through to the second use of "conduct". Perhaps more important, our definition quite deliberately mirrors the definition of abuse contained in the Protection from Abuse (Scotland) Act 2001; we would not want to move from that position, which I believe offers clarity and consistency in the law. As for amendments 72D and 72E, we consider that the original drafting is clearer and I do not think that the amendments knit well together. I hope that Marlyn Glen will reconsider her amendments.

I move amendment 72.

The Convener: I call Marlyn Glen to move amendment 72A and to speak to amendments 72C, 72D, 72E and 72.

Marlyn Glen: I very much welcome amendment 72 and I express my appreciation for all the work that the bill team and the Executive have done. As the minister said, a great deal of consultation has taken place and the substantial amount of work that has been done has resulted in amendment 72, which I hope will be another real step forward in protecting people.

My amendments to the amendment attempt to clarify the use of the terms "conduct" and "relevant person" in amendment 72, but I am satisfied by the minister's assurance that the amendment as drafted covers the things that I was concerned about. I also appreciate the minister's choice of words in commenting on whether amendments knit well together.

The experts in the field appreciate the amount of work that has been done and I am sure that they would want me to express their thanks. As I said, amendment 72 marks another important step in the protection of people who find themselves in abusive situations. As the minister said, legislation on its own is not enough. Guidance and training are also needed before we can make a real impact on people's lives, but I think that the Scottish Parliament has already made a substantial difference and I hope that we will continue to do so. I whole-heartedly support what the minister has said and Executive amendment 72.

I move amendment 72A, although I do not intend to press the amendments in my name.

The Convener: Like Marlyn Glen, I appreciate the work that has been done and I recognise that the amendment represents a step forward. Sometimes it is important to restate our policy and position on how we expect domestic abuse to be dealt with in our courts, even if that position is already expressed in the existing law. Marlyn Glen's amendments have meant that the wording of the provision has been clarified. That is important, although I put on record my support for the measure.

Amendment 72A, by agreement, withdrawn.

Amendments 72C, 72D and 72E not moved.

Amendment 72 agreed to.

11:15

The Convener: I was looking for a point at which to have a break, but I think that we will continue until 11.30 am, if members are agreed.

Members *indicated agreement*.

The Convener: Amendment 73, in the name of Stewart Stevenson, is in a group on its own.

Stewart Stevenson: The minister will recall that, at stage 1, I raised the subject of advice to parents. I hope that amendment 73 is equality proofed, but its intention is quite clear: it seeks to create an opportunity for people at that golden moment in their lives when they register their child's birth to consider their future status, in particular whether they wish to think about entering into a marriage or civil partnership, or about other matters such as the effect of their co-habitation or their continuing status as a single parent. At that point, people have a whole range of options.

Amendment 73 is an enabling amendment that would allow the minister by order to require

registrars to issue such material. As I already sense his financial discomfort, I suggest that, on the basis of the leaflet issued to bereaved people who register a death, the material could be presented in an eight-page, A5, single-fold, stapled 50gsm leaflet with spot colour.

According to the estimate that I have obtained, it would cost about £3,000 to £4,000 to print the leaflets that would be required for the first five years. Although I am not offering to help with preparing the material or distributing it to registrars, I might be able to help the minister to accept the proposal by offering a personal cheque to cover those printing costs. However, I do not expect to be called on to do that, because I know that many organisations would be extremely willing to support the printing of such a leaflet.

If we continue to believe in the value of relationships that are formalised and represent a commitment between the partners, we should at the golden moment of a child's birth enable people to think about their future as parents not only for their own long-term benefit, but for the benefit of the child.

I have very great pleasure in moving amendment 73.

The Convener: John Swinney will be pleased to hear that, unlike your previous proposal, this one has been costed. You also appear to have refined your thinking on the issue. At stage 1, you called the birth of a child a magic moment; now you are calling it a golden moment.

Although I do not support amendment 73, I recall that the committee agreed at stage 1 that we needed to ensure that members of the public are made aware of the options that are open to them. Whether that should be done in the way that you have proposed is perhaps questionable, but you make a serious point about using the provisions in the bill to deal with the problem that many people do not know what rights they have in the relationship that they happen to have chosen in life.

If no other member wishes to speak to the amendment, I call the minister to respond.

Hugh Henry: Although we seem to have moved from Perry Como's "Magic Moments" to Stewart Stevenson's golden moments, I disagree with amendment 73 on the basis not of financial costs, but of other, more fundamental issues. I appreciate why Stewart Stevenson has been prompted to lodge amendment 73, but I do not accept his logic.

First, Stewart Stevenson suggests that new statutory provisions would be required before the Executive could give advice to the public. However, as he and the committee will know, the Executive already has powers to give advice on any policy matter that falls within our devolved competence, so we do not need further legislation. If we decided that it was appropriate to do so, we could, given a budget to sustain the policy, simply issue such advice. However, if we were to lay an order every time we launched an advice and information campaign on matters such as health, education or public transport, the Parliament would have no time to deal with anything other than legislating for our information campaigns.

Secondly, there are issues with the nature of amendment 73. Stewart Stevenson suggests that, when a couple registers the birth of their child, the registrar or another official would be right to question them about their relationship. After all, if registrars do not question the couple, how will they know what advice to give?

Stewart Stevenson talked about registration as being a golden moment, but at that moment people are euphoric about the birth of their child. If they were to wander along to the local variation of the Rev I M Jolly that Stewart Stevenson proposes, they would be asked, "Excuse me, I do not want to put a damper on your joy as you celebrate the birth of your child, but have you thought about what might happen if you die intestate? To further compound your joy at this time, when you and your partner are delirious at having produced such a fine offspring, have you thought about what might happen when you break up?" At that golden moment, do we want to throw a wet blanket on the joy that people feel?

I believe that there is something distasteful about the concept of requiring people who are registering the birth of their child to discuss their status and future with an official. By all means, let us provide advice and information on the range of issues that are associated not only with this bill but with other bills, but I am not sure that the registration of a child's birth is the moment at which to give advice.

On the issue of the child's status, as the bill will remove the final effects of the status of illegitimacy, the status of any child born in Scotland will not be affected on the basis of its parents' relationship. Therefore, I am not quite sure what advice could be offered on that issue.

Given the complaints that we sometimes hear from politicians about improper interference from the nanny state, I am not sure that we should require people who go to register the birth of their child to sit down and discuss with a state official issues such as whether they should make a will to avoid dying intestate and whether their relationship should be one of marriage, civil partnership or cohabitation. I am not sure that that is the proper way of tackling the issue.

Of course parents should be aware of their responsibilities, but I believe that there is a bigger issue for us beyond the bill about what we do to support parents and how parents bring up children. Fundamental issues around how our society is developing must be addressed. That is the responsibility not just of legislators, but of churches, individuals and families. We must reflect on that.

I accept that information campaigns from the Executive, local authorities and voluntary organisations can make a contribution, as and when needed. However, surely we are not going to destroy that golden moment by agreeing to the proposal in amendment 73.

Stewart Stevenson: Before drawing conclusions as to the potential effect of my amendment 73, the minister should read it more carefully. It certainly avoids suggesting that a registrar will sit down and interact with parents or a parent. That is precisely why the amendment uses the words

"advice of a general nature offered to a parent".

In other words, the advice would not be specific to a parent or their situation, or to the situation of any particular child; it would be entirely general. Furthermore, the amendment does not say that advice should be offered only to people who are not married and not in a civil partnership. The advice would be entirely general and non-discriminatory, if it were accepted in the form in which I have sought to present it.

I hope that the minister considers at his leisure his use of the word "distasteful", which I did not think appropriate in the context of saying that we should be promoting marriage. However, I am sure that he will answer to others on that later.

The minister made a serious claim, which I invite him also to consider further. He said that the status of parents has no effects on a child. In my amendment, I do not refer at all to a child's status; I refer to the status of the "relationship between parents" and the effect that that has on the child. I am sure that the minister will concede that various statuses have different effects on a child. For example, if we agree to pass the parts of the bill that relate to cohabitation—I suspect that we will, but we shall see in due course—we will provide additional protections. However, for parents who were not married, the tax position of the transfer of a deceased partner's assets to the surviving partner would be entirely different from that involving people who were married. The latter transfer is free from tax; the former is subject to inheritance tax. Therefore, the assets available to the parent of a child are entirely different in those two situations.

If parents who do not cohabit but who have joint responsibilities have not made a will or if they do not have a legal agreement to govern the distribution of assets to a child in a situation in which the relationship breaks down—contact between them might cease—or in which one of the parents dies, there are different financial outcomes for the child, depending on the circumstances. Therefore, whatever arguments might be deployed against amendment 73, the suggestion that the status of the parental relationship has no effect on a child does not, frankly, bear scrutiny. I think that the minister should think about that further.

Let me not argue too vigorously against attempts to keep my cheque in my pocket, because I could of course spend the money on other things. However, there is a real challenge for the minister. On behalf of the Executive, will he say when and by what means it is appropriate to give people information that will lead them to consider the options relating to, and the legal status and implications of, their relationship? Will there be some osmotic process by which information will filter through the membranes that separate too many couples who have no connection with the legal system and the vast corpus of legal knowledge that they barely touch? I would be happy to hear the minister answer those questions now, if the convener will allow that.

11:30

The Convener: I will allow the minister to comment if he wants to do so.

Hugh Henry: For the *Official Report*, I want to pick up on a slightly disingenuous comment that Stewart Stevenson made. He suggested that I said that giving advice about marriage is distasteful. I did not say that. I was speaking about trying to give people advice about different relationships, dying intestate and ending relationships when they register their child's birth. I think that trying to do so when people are concentrating on the birth of their child would be distasteful. To try to pry into someone's background or interfere with their lives when they were registering their child's birth would be inappropriate.

Stewart Stevenson asked when such advice would be given. Such advice is given in a range of ways and a range of organisations is involved. Earlier, we discussed the role of local services; members spoke about the value of local organisations in providing support and advice. People may seek advice at different times—they may not want advice to be forced on them or to be proffered to them at an inopportune moment—and they reach their own decisions on when they want to seek it. They may go to a citizens advice agency, social work services, welfare rights organisations, lawyers, Couple Counselling

Scotland or Scottish Marriage Care, for example. There is a range of organisations to which they can turn.

Our information campaign will be launched when the act comes into force and it will cover on-going processes. We will consider leaflets and the internet, but it would be foolish to say that that information will be the only information that will ever be provided. I hope that all the local agencies and services to which people turn for advice will continue to give a range of appropriate advice. To give ministers the power to make a specification by order that will require people to do certain things when they register a birth would simply be wrong.

The Convener: Stewart Stevenson will have the last word on the matter.

Stewart Stevenson: I will press amendment 73.

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Wallace, Mr Jim (Orkney) (LD)

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

Amendment 73 disagreed to.

The Convener: Do members agree that we should have a five-minute break?

Members *indicated agreement*.

11:33

Meeting suspended.

11:46

On resuming—

The Convener: Amendment 74, in the name of Stewart Stevenson, is grouped with amendments 75 and 76.

Stewart Stevenson: I have no partisan position on the three amendments. I will be interested to hear what the minister says about them, because they all point in the same direction.

First, I draw the committee's attention to the difference between amendments 74 and 75. The amendments are identical except for the omission in amendment 75 of the words "separated or separating" before the word "parents" in the definition of a parenting agreement. The reason for the two variants is that the words "separated or separating parents" were introduced by the bill team that drafted the amendment; they were not in the draft amendment that I submitted. I did not have time to clarify why the words had been inserted.

I can see that there might be difficulties with the wording, because I do not see any particular reason why a parenting agreement, which might cover such matters as the religion in which a child is brought up, should be denied to parents who remain together. Although it is not particularly likely, some parents might have a parenting agreement to cover such matters so there is no reason to exclude such a situation.

On the other hand, there is no reason to exclude parents who have never lived together but who nonetheless have a joint interest in the future of a child from the benefits of the parenting agreement. The difference between amendments 74 and 75 is, therefore, to test whether such a situation is valid; otherwise the amendments are identical.

All that I seek to do in amendment 74—the same as Pauline McNeill seeks to do in amendment 76, although she can speak for herself—is to add to the legal status of the parenting agreement. There is general support among committee members for parenting agreements, but the amendments will test whether there is support for giving parenting agreements additional legal force.

I recognise that there is discomfort among committee members about whether the courts already give sufficient force to agreements that are made or delivered from the court. That is a broader issue, upon which discussion of this group of amendments might touch.

I move amendment 74.

The Convener: Alan Finlayson did a superb job for the Executive in drawing up the parenting agreement, and I hope that parents will get good use out of that document in the future. The agreement is special because it attempts to get adults, in the event of separation, to focus on what is in the best interests of the child. I realise that agreements can be changed or overturned, but it is important that we encourage parents—certainly outwith the courts—to draw up agreements and to use the document.

I agree with Stewart Stevenson that the agreement should have some legal standing, in the sense that when a party goes to court and seeks to argue that contact arrangements should or should not be changed they can refer to the fact

that a parenting agreement exists. Alan Finlayson's intention when he drew up the agreement was that parties could refer to it and that sheriffs would acknowledge that it is a relevant document for parties to bring to the court, but I wanted to nail that down. I wanted to be sure that, for the purposes of discussion and argument about whether arrangements should be changed in the interests of the child, no defence lawyer could argue that the document could not be brought to the court because it had no legal standing.

I lodged amendment 76 because I feel strongly about that. I have received quite a lot of correspondence, particularly from non-resident parents, that welcomes the parenting agreement. Non-resident parents have other issues about the bill, but we will get to those later. If there are parents who have had difficulties, we should build what support we can.

The agreement would not be written in tablets of stone, and parents, in attempting to change the arrangements, would have the right to argue their case. However, the courts should be tough and get people to justify why, if it was in the interests of the child a year ago for the parents to sign up to contact arrangements, the arrangements are no longer in the interests of the child. If a parent has a good argument, that argument will stand up in court, but parents should not be allowed to change arrangements on a whim.

The parenting agreement is an important tool in the overall debate about the best interests of the child. If the Executive can give me complete assurance that parents who bring the agreement to the attention of the court will not be told that it is not relevant for the court to discuss it, I will not press amendment 76.

I welcome to the committee Sylvia Jackson, who has an interest in this area.

Mr Wallace: With all due respect, there are shortcomings in amendments 74 and 75. I am not quite sure what the consequences would be of any such agreement being made "legally binding". At the end of the day, the court is, quite properly, obliged to have regard to the best interests of the child. If the best interests of the child at the time that the court considers the case are not consistent with what might be, under the amendments, legally binding agreements, I am not sure where that would leave the so-called legally binding agreements. Although I understand perfectly what lies behind the amendments, I am not sure whether that is the right road to go down.

Amendment 76 indicates that the court will have regard to the parenting agreement, but does not make the parenting agreement in any way binding on the court; rather, the agreement is one of the many factors that the court will no doubt want to take into account. It would be perfectly legitimate to ask, for example, why contact was okay 12 months ago but is not okay now.

I share the convener's approach and agree that it would be useful to have some reassurance that, if someone has gone to the trouble of entering into a parenting agreement—we all agree that it is in the best interests of the child if such an agreement can be made between the parties—and if there is a breakdown and cause for the court to make a determination on a particular issue in relation to parental responsibilities, the fact that the agreement exists between the parties will be taken into account. I do not think that we can put it any more strongly than that. It would be useful to have that reassurance.

Mrs Mulligan: I, too, praise the parenting agreement that is proposed. It is very much along the lines of the discussions that we were able to have and it will benefit many people. However, Stewart Stevenson's amendment 74 does not allow for the kind of flexibility that is needed with regard to relationships. Things change and the situation for the child, who has to be at the centre of the agreement, can change. Therefore, it would be difficult to say that we need to refer back to that document as and when it was drafted and think that that is the right way in which to go.

I have a little more sympathy with Pauline McNeill's amendment 76. It will probably be the less combative parents who will use the parenting agreement. However, even they might find themselves in a situation that has changed or in which they want to change something. They may then need to use the courts to enforce an arrangement, or whatever. The parenting agreement would be undermined if it was set aside altogether; therefore, there should be some way of ensuring recognition of the fact that the agreement exists, whether by ensuring that, in the words of amendment 76,

"the court shall have regard to any parenting agreement",

or by some other means. If the agreement needs to change, some explanation should be given of why it needs to change and why it should be reconsidered. I am not sure how that could be done, but we do not want the agreement to be undermined, so some recognition of it would be helpful. I am interested to hear the minister's views on whether we need to do that in the way that has been proposed.

Mr McFee: Much of the debate was borne out by the evidence that we received from numerous people that even court decisions are not being enforced and that there is a specific problem with access for non-resident parents. There are views on either side about how the agreements could be

enforced, but there seems to be a general reluctance in Scottish courts—rightly or wrongly—when the child is resident with the mother to take action against the mother when, for whatever reason, access is denied to the father. I do not want to go into the various circumstances that could arise. It is possible that, in many cases, there are good reasons for access being denied; in other cases, however, the children are used as pawns. We have to recognise that.

I will treat Stewart Stevenson's amendments 74 and 75 as one amendment, as they propose only a minor change, which he has explained. The question is whether the amendments would achieve what they set out to achieve and whether they would have any adverse effects. My concern about Stewart Stevenson's amendments is greater than my concern about Pauline McNeill's amendment 76, but there is still a question to be asked about amendment 76. I will ask that question later.

I would have difficulty with a parenting agreement that both parents entered into voluntarily but which one parent could unilaterally enter in the books of council and session. In other words, two people could sign up to what they thought was a voluntary agreement, but one of them could unilaterally decide to make the agreement legally binding by taking that course of action. There would be a difficulty in their doing that.

The amendments in the name of Stewart Stevenson and Pauline McNeill would mean that the parenting agreement could later be relied on in court, and I think that it is clear that that would dissuade people from considering the agreement in the first instance. I suspect that a court might pay some heed to the content of a parenting agreement, regardless of whether any of the amendments are agreed to today. However, we are deluding ourselves if we think that, by making the agreements binding, we are somehow helping the bad situation that exists with regard to enforcement. Another change in the system will be needed if courts are to enforce agreements that they agree in the first place.

If we agree to the amendments—and I remain to be convinced in relation to Pauline McNeill's proposal in amendment 76—all that we might be doing is giving false hope to non-resident parents that they can rely on this mechanism to go to court. Of course they can go to court, but they might not be able to get the court to enforce the agreement. That is where the proposal falls down. If the proposal will not improve that situation, I will not vote for it. I think that it might put off some people who might not otherwise have gone down the road—

12:00

The Convener: I take your point but, as I understand it, Alan Finlayson said that any such agreement would be taken into account as part of the overall argument. Amendment 76 is just a reinstatement of what is already the case. As we have agreed previously, reinforcing the existing provisions is quite helpful, as it can remind a sheriff that they should have regard to a particular aspect.

Mr McFee: I take that point; I think that that might be one of the problems. I remember Alan Finlayson's view—I think that he gave it in response to a question that I asked—was that it was likely that a court would take the agreement into consideration. However, the only end product of our adding something to the parenting agreement at this stage would be that people might be prevented from signing up to the agreement in the first place. It is correct to say that it is those parents who are willing to come to some form of compromise who will go down the road of the parenting agreement. I believe that the aim of the bill is to try to bring in those who might not have considered going down that route. My concern is that, for no gain, we might dissuade other people from going down that route. I think that it is clear that that would be the outcome of Stewart Stevenson's amendment 74.

If the question of enforcement had been addressed properly—I have seen no moves in any of the evidence that we have taken towards that question being resolved—the amendments might have had some merit. However, given that the enforcement issue is likely to be with us for some time—we have reached a logjam that there appears to be no great desire to overcome—I do not see what the amendments would add to the bill. Conversely, I see what they might subtract from the bill. Parenting agreements might be of marginal significance, but they represent a small step forward in an area that is fraught with difficulty.

Marlyn Glen: I share Bruce McFee's concerns about the proposed changes being counterproductive.

As Hugh Henry's letter to the committee of 20 October 2005 states, parenting agreements are a proposal that arose from

"work carried out by the Family Law Stakeholder Group in developing two non-legislative measures designed to complement legislation."

Parenting agreements were designed to be complementary to the legislation, not part of it. If we are going to change the situation at this point, we would have to go back and change the draft agreement as well. However, we were all impressed by the draft.

The parenting agreements are not designed to be a legally binding contract. A space at the end of the agreement allows everyone to sign and take ownership of it, so it can involve not just parents and other involved adults but children. Problems will arise if the agreement breaks down, but that is not what this is about. The parenting agreement contains a section on making changes, so we need to look at it positively. If a couple or family makes an agreement for a child at a certain age and circumstances change, everyone should get back round the table and reach a new, mutual agreement. The matter should not be settled in the courts.

I reiterate that the agreements are voluntary. They are designed not for parents who are in real conflict, but to allow parents who are separating in whatever circumstances to sit round a table, work out with help from others what is best for their child and keep the matter out of the courts. However, if there is conflict, that is an entirely different matter. We need to look back at the origins of the parenting agreement and realise that it is a very useful tool in counselling and family mediation. As a result, I support the current form of the agreement and will not support any of the three amendments in the group.

Margaret Mitchell: I pay tribute to Sheriff Finlayson for producing the excellent parenting agreement, which seeks to get parents to focus not on their own needs but on the best interests of the child.

I have tremendous sympathy with what Stewart Stevenson is trying to achieve. After all, we all want the document to be used as widely and as well as possible, and I think that that impulse lies behind Stewart Stevenson's reference to making it "legally binding". However, I do not think that such wording is in the spirit of the agreement or would be workable. For example, it could result in one parent holding up the agreement and saying to the other, "I have this legally binding document and you are in breach of it". The agreement can work only if it is voluntary.

For that reason, I very much support amendment 76, in the name of Pauline McNeill, which strikes just the right balance by getting parents to focus on the child's needs. It is to be hoped that, even in moments of stress when the matter comes to court, parents will be able to work through things reasonably, to talk out differences and to return to the parenting agreement on which they had reached a consensus and in which they had focused on the child's needs.

Dr Sylvia Jackson (Stirling) (Lab): Although I have read an awful lot of material about this issue, particularly with regard to non-resident parents who have problems in gaining access to their children, I am sure that I have still not read everything that committee members have read on this subject. As a result, they might well know a lot more than I do about these matters.

From what has been said about the three amendments, even I have some reservations about amendments 74 and 75, in the name of Stewart Stevenson. In all fairness, he will most likely accept those reservations. On the other hand, amendment 76, in the name of Pauline McNeill, appears to take on board the points that have been made.

That said, I feel that the courts should consider parenting agreements as one important part of the jigsaw. I do not think that amendment 76 would solve the various problems in the legal system. Instead, we must move towards more specialised courts and introduce a quicker system. I have a constituent who spent eight years and £50,000 trying to get access to his children only to find that his position was worse than when he started the process.

We must do something and I think that the bill is a start. The UK Children and Adoption Bill shows that the Westminster Government is moving towards considering enforcement. I think that Bruce McFee said that no amendments to that bill have been proposed yet. However, I believe that issues that the UK bill raises could dovetail well with the convener's proposal.

I read with great interest Alan Finlayson's submission and I look forward to seeing the parenting agreement. As Marlyn Glen said, its thrust is to get parents round the table and to have a mediation process. The hope is that the parenting agreement would reach an agreement about access arrangements and many other necessary arrangements. Marlyn Glen also pointed out that it would be possible to change the parenting agreement. Other countries, such as Australia, are going along the same path as us. In fact, Australia has a draft bill that is similar to ours.

If there was disagreement, matters would have to move at some point from the parenting agreement to the courts. However, if someone had gone down the path of having a parenting agreement—as outlined by Alan Finlayson, it would be a central and important document—the court system would have to have regard for that. A parenting agreement should not be the only matter that is taken on board at that stage, but it would be an important aspect for consideration. I regard it as part of the bigger issue that we are trying to address.

The Convener: Thank you. I invite the minister to give his view of the amendments.

Hugh Henry: I join committee members in thanking Alan Finlayson for his sterling work. He has made an immense contribution not only to the

wider context of the bill but, I hope, to enabling disputes to be more amicably resolved in the future. Alan is almost uniquely qualified to address the problems, with his background of being a family law solicitor, the reporter to the children's panel and an honorary sheriff. He knows how painful and difficult these situations can be and he has seen them from different perspectives. It is important to bear in mind the fact that there are different perspectives and different demands, which make it difficult to achieve a balance.

Alan Finlayson's work in drafting a parenting agreement is immensely helpful. However, it is fair to mention the huge support that he had from a steering group that comprised representatives of diverse interests, including Scottish Women's Aid, Families Need Fathers and family support bodies. They all brought their individual perspectives to the work and helped to shape and develop it. Clearly, parenting agreements will not solve every problem, but I hope that they will be regarded as a useful tool in trying to help parents to work out what is in the best interests of their children.

Given what members have said, I believe that they share our purpose, which is to encourage parents, at or around the painful point of separation, to agree arrangements for the future care and welfare of their children. Like the courts, we want parents to be aware that they must put aside their differences and focus on what is in the best interests of their children.

I accept that that is easier said than done, especially when feelings are running high. Members have referred to the point scoring that can go on and the way in which children can be used as pawns. That is why Alan Finlayson was so strongly of the view that a parenting agreement could not and should not take the form of a legal contract. I re-emphasise the view that he has expressed to the committee, which is that a parenting agreement

"will simply be a record of the understanding that parents have reached".

In other words, such an agreement is intended to be used by parents as a tool for making a little easier the initial process by which they jointly decide how the future care of their children can be arranged.

12:15

There are concerns about what would happen if what is regarded as a flexible tool were given a legal status. We hope that a parenting agreement will be updated and amended as the children grow older, as their needs change and as their relationship with their parents develops. To make it a legally binding document that would need to be altered at every turn would introduce not only unnecessary complication, but unnecessary costs. The parties would not only have to reregister; if the agreement were a legally binding document, I presume that both parties would seek legal advice, which would mean getting lawyers involved.

In addition, as Bruce McFee said, the fact that an agreement was legally binding might make some people hesitate to enter into it. Although they might be quite prepared to work out an agreement between themselves, the implications of the document having legal status might put them off getting involved or they might not wish to proceed without taking legal advice. Making a parenting agreement a legally binding document would mean that, at every stage along the way, lawyers would be involved and costs and complications would be introduced.

The issue that the convener raised is about what the court would recognise. Stewart Stevenson has suggested that a parenting agreement should be a legal document or contract and I have said why we are concerned about that. In amendment 76, the convener proposes that the court "shall have regard to" any parenting agreement that exists. I understand what she is driving at, and a number of members have expressed sympathy for her view. Although I do not disagree in any way with her intention, her amendment is not needed and does not serve any purpose because the courts will consider such matters anyway.

I refer to the letter that Alan Finlayson wrote to the committee, in which he said:

"I think that the phrase I used in my evidence was that Agreements would have legal value, but not legal force. By that I meant that, in my experience, any judge would take a Parenting Agreement very seriously, and, if it had been breached, would want to know why."

That is the proper context in which to consider parenting agreements. I would fully expect a court to consider a parenting agreement; indeed, I would be astonished if it did not do so. When courts consider orders relating to children, they always take into account both the existing arrangements for the child and the views of the parents, and it is right for the committee and for me, as minister, to put on record the fact that, if a parenting agreement exists, we would expect it to have relevance. However, I am sure that a court would consider such an agreement, although it would remain a matter for the court to determine whether it was the deciding factor. Certainly, to stipulate in the bill that parenting agreements are legally binding would be the wrong thing to do, and even going as far as the convener suggests would probably be unnecessary. Nevertheless, a clear message is going out about the value that we attach to parenting agreements and the contribution that they can make.

It is recognised that courts take into account the best interests of the child. Therefore, we would

expect the courts to take into account a parenting agreement because it would indicate what the parents intended for their children. Alan Finlayson's phrase about an agreement having legal value but not legal force is the best way to proceed. He said that a parenting agreement would be a piece of evidence before the court, to which the court might give considerable weight.

The Convener: I agree 100 per cent with the minister and Alan Finlayson, but at the end of the day Alan Finlayson is only giving his opinion as the Executive's reporter. What matters is the effect of the law, and what the Executive has to say about it.

Hugh Henry: I accept that, and I hope that what I have said about expecting parenting agreements to be considered gives force to passing the bill. I repeat Alan Finlayson's phrase that

"any judge would take a Parenting Agreement very seriously, and, if it had been breached, would want to know why."

I would expect the courts to give due consideration to parenting agreements and I believe that they would take them seriously, as Alan Finlayson has suggested. If a parenting agreement had been breached, it would be right for a court to know why. Therefore, I would argue that amendment 76 is not necessary and, indeed, would not make a significant difference to the responsibility of the courts and the way in which they operate.

A slightly different issue, which is not before us but which Bruce McFee has raised, is about court decisions not being enforced. In my discussions with sheriffs, many of them have said that they agonise privately over the difficult decisions that they make and they take the best interests of the child into account. Bruce McFee said that there is no evidence of any push to resolve enforcement issues, but I do not know whether that is an accurate portrayal of the situation; it is just that the Executive has not heard any suggestions that can help to resolve the problem, and nothing has come before the committee that would help to resolve it. If someone had a suggestion that was not only enforceable but clearly in the best interests of the child, we would consider it, but we have heard nothing that would make any significant contribution to resolving this particularly thorny issue.

The other thing to bear in mind is that the courts have fairly serious powers to resolve such matters: they can fine a person who ignores a court order; ultimately, they can jail a person; and they can change the custody of the child. In every case in which that does not happen, the court will have concluded that it should not happen because that would not serve the best interests of the child. None of us has managed to come up with a simple formulation that meets the express concerns of the parent who has been wronged without having a drastic impact on the child. The courts have the power to address the interests of a wronged parent, but instead they consider the best interests of the child. That sometimes leads to difficulties, which have been well documented. I have no solution to offer the committee, and I do not think that the committee has been able to come up with a solution. It would take something unprecedented to happen for a simple solution to come up that will please every party. We should always bear in mind the fact that if we resolve the interests of the wronged parent, not only will another party be deeply aggrieved, but a child may be deeply affected.

Mr McFee: What I am suggesting is not necessarily the answer—indeed, I appreciate entirely what you are saying and accept that the disposal remedies that are available to the courts will often be detrimental to the child's interests. However, is it true that community disposals that may be available in other circumstances are not available in the circumstances that we are discussing? Should that matter be considered? I am not offering an instant solution—that would be stupid in the circumstances—but the range of disposals that is available may result in nothing being seen to be done. I appreciate that even if a community disposal were available, one would have to ensure that it would not be detrimental to the child's interests, but perhaps that could be considered.

Dr Jackson: I want to raise two issues. In his submission, Alan Finlayson stated:

"A Court would be likely to respect the fact that there had been an agreement and place an onus on the parent seeking change to show that material change was such as to warrant substitution of an alternative conclusion to that which the parents had jointly agreed."

Given the words "would be likely to" and in light of the minister's agreement that a court should see a parenting agreement as perhaps not the most important factor, but at least a very important factor, I cannot see the problem with saying that in the bill. Indeed, perhaps the bill ought to include something about parenting agreements themselves. Failing to mention such an important document just seems to be remiss.

Secondly, I did not realise that we were going to discuss enforcement orders today—I thought that we would discuss them next week. I have had to do a considerable amount of reading about such orders—without the support of any number of advisers—and I intend to examine what the minister knows about what exists at the United Kingdom level, because there have been ideas there about using community orders. Therefore, there are suggestions that we can consider and it would be incorrect to say that there is nothing to

consider yet because we are working to a deadline.

The Convener: I will clarify matters. Issues in the section that we are dealing with overlap with issues to do with the enforcement of contact orders that we have previously discussed. This week's new deadline will allow you and other members to lodge amendments. A new section will be discussed, so the debate will not close today. I thought that it would be in the interests of members to widen the discussion. However, it is a matter for members to decide whether they want to lodge amendments. So far, the minister is right. Committee members have raised issues and concerns, but so far we have not suggested anything to the Executive for it to consider.

Do you want to come back in, minister?

Hugh Henry: If I may, convener. I will be brief.

Sylvia Jackson asked why the bill does not mention parenting agreements. The parenting agreement process was always seen as being a non-legislative process, so I am not sure that putting it in the bill would make much sense or would change anything. We are clear about the context in which parenting agreements can be used.

I have made clear the Executive's position on how parenting agreements should be considered, and I am aware that we should not be seen to be interfering with the court's responsibilities. The act can create a context that will influence the legal process, but there is a line beyond which we should not go—we should not try to tell the courts what they should or should not do.

Bruce McFee asked about other opportunities. We did not examine what happens in England and Wales for the bill, although we can always learn from what happens elsewhere. We have sought to consider what is right in a Scottish context. Irrespective of what kind of order a court issues—whether it is a community order or any other order—the problem that is ultimately faced is what sanction the court can impose if someone ignores and refuses to go along with it. That is the problem that no one has been able to resolve adequately. What do we do when someone blatantly and deliberately breaches an order for their own reasons? Currently, there are sanctions that the court can consider imposing in individual cases.

12:30

The Convener: I hear what you are saying about amendment 76. You might have been happier if it had said "may have regard to" rather than "shall have regard to". As I said, I support 100 per cent the statement that the parenting agreement will have legal value but not legal force—that is of great assistance to me. However, before I decide whether to press amendment 76, I ask you to clarify that that is also the Executive's position. Will that be clearly stated? What significance will your saying today that that is the position have after the bill is passed, for the purposes of arguing the point in court?

Hugh Henry: The only significance of any comments that I make—or that any minister makes—during scrutiny of a bill is that people may refer to what was said during a bill's passage to seek the intention behind it. It is clear to me that nothing that I am saying is about telling the courts what they will or will not do, although I have argued that we would expect the courts to have regard to the agreements. Everything that Alan Finlayson has said leads me to conclude that that expectation is a realistic one. However, we do not think that it is necessary for the bill to state, as amendment 76 does, that that should happen. We think that the courts would have regard to the parenting agreements.

As I said, Alan Finlayson made it quite clear that any judge would take a parenting agreement seriously. He was speaking from experience, and that is what we would hope and expect to happen. In a sense, the difference between our position and the position in amendment 76 is a semantic one. We question whether it is absolutely necessary to insert the requirement in the bill for the desired effect to be achieved.

The Convener: Is that your final word on the matter? Would you not think about lodging an amendment at stage 3? I am having difficulty in deciding how to vote. You are saying all the things that I want to hear, and I do not see a difference of opinion other than on whether the requirement should be included in the bill. My concern is that, if I do not press amendment 76 today and I then worry about the parenting agreement not carrying enough weight because it is not mentioned in the bill, I will not be able to revisit the matter at stage 3.

Hugh Henry: I give you an assurance on that specific point. I will reflect on your concerns and look at what we can say at stage 3 to give the kind of assurances that you have sought. I will also see whether there is anything that I can put in writing ahead of stage 3, which may enable you to decide whether to return to the matter at stage 3. I will put what I can in writing to the committee and, if required, put something on the record at stage 3, although I am not sure what that would be. That would give you the opportunity to decide whether it is necessary to return to the matter.

The Convener: Thank you. That is helpful. I call Stewart Stevenson to wind up the discussion.

Stewart Stevenson: The absolutely clear thing that has come out of our discussion is the fact that

the process of producing a parenting agreement is more important than the agreement itself. That is when parents, in a child-focused way, compromise and discuss what is best for the child. With that in mind, our test for deciding whether we want to include the amendments in the bill is whether doing so is likely to improve the process or change the nature of the product. They might not change the words of the product, but they might change its nature, in that its status in the legal system would be changed, which could influence the process by which the product is produced.

I find it slightly perverse that an important element of the process of reforming family law should end up not making any direct reference to the important changes that Alan Finlayson has brought before the Executive and the committee. However, I am quite persuaded that amendments 74 and 75 go too far and would be likely to be counterproductive due to the adverse rather than positive effects that they would have on the process. If pressed by the convener, I will support her amendment 76, but I seek the committee's agreement to withdraw amendment 74.

Amendment 74, by agreement, withdrawn.

Amendments 75 and 76 not moved.

The Convener: Amendment 77, in the name of Mike Pringle, is in a group on its own. As Jim Wallace is Mike Pringle's substitute today, he will be speaking to and moving the amendment.

Mr Wallace: Mike Pringle has lodged amendment 77 and I am happy to speak to it. It would give step-parents rights in relation to children. I have no doubt that, during the committee's deliberations, members will have heard from Stepfamily Scotland and others about the situation in which step-parents find themselves if they want parental rights in respect of their stepchildren.

As I understand the law at present, a step-parent can acquire parental rights only by going to court to seek an order for those rights, or by way of adoption. Both those courses of action have disadvantages. As members will recall, the overriding principle or guideline for the court is minimum intervention—the court should not make an order if there is no need to make an order. Therefore, if the mother and stepfather or father and stepmother agree with the step-parent acquiring parental rights, the court is likely to refuse an application because there is no dispute between the parties. I understand that that is how the courts apply the legislation in practice, although it may not be a literal interpretation of the Children (Scotland) Act 1995. It is clear that the issue arises primarily in situations where relationships break down, but at that stage it may be too late for an application to the court.

The other process is adoption, which terminates all parental rights of the other natural parent. That is not always an appropriate way of proceeding. For example, where there continues to be contact between the child and his or her other parent, an attempt to proceed with adoption would be likely to be met with opposition; it could well be messy, expensive and acrimonious and would probably not be in the interests of the child.

Amendment 77 would provide for circumstances where the step-parent is married to one of the natural parents and has been living in a family relationship with the spouse and child for a continuous period of not less than two years. That addresses the concern about the possibility that a series of people could acquire an interest. The provision is designed to ensure some degree of stability in the relationship. Under the new section, such a person would be considered to be a step-parent. In agreement with those people who are set out in the subsection (3), that person would have the same parental responsibilities and rights in relation to the child as were held by the spouse on that date. Subsection (3) lists the individuals who are referred to in subsection (2) as being the spouse and the child's other parent, but only in a situation in which that other parent continues to have parental responsibilities and rights—that requirement would not obtain if it were not possible to make contact with the other parent.

No doubt, colleagues have heard some case studies. Mike Pringle has furnished me with a report from a one-day conference on stepfamilies and the law, which was sponsored by the Faculty of Advocates and W Green, the publisher, under the auspices of Stepfamily Scotland. The report details a number of specific cases in which there have been quite difficult family relationships as a result of the fact that the step-parent does not have any formal rights or responsibilities.

One case concerns a couple who have been together for 13 years. The woman had two children by a previous relationship and the man had a son. The children had lived with the couple for all those years and the woman's children had got to the stage at which they were calling the man dad. He provided for them, clothed them, fed them and helped to bring them up. When, sadly, one of the daughters went off the rails, as far as the social work department was concerned the stepfather simply did not exist; it did not view him as having any responsibilities or rights. He felt that he was made to take a back seat because he was not formally involved in circumstances in which, because of the relationship that had been established, he could have contributed much. All mail was addressed only to the mother, telephone conversations were directed only to the mother and so on. In that case, which involves a third

party, the proposal in amendment 77 would have been useful.

The issue that the amendment deals with is important. Our legal advisers tell me that there might be some defects in the drafting of the amendment and have suggested that, although the amendment relates only to married couples, it might be better if it included civil partnerships as well. The committee might want to discuss that. However, I believe that the amendment seeks to address an important issue in a considered way.

I move amendment 77.

Stewart Stevenson: Jim Wallace slightly spoiled his case at the end. One of the things that gave me some heart was that, for the first time, we had a proposal that directly encourages marriage, which—as I have said before—I regard as being the gold standard. In that sense, I think that the amendment is good. Of course, I am not going to rule out supporting the proposal if, at a later date, the concept of civil partnerships is added. The point is that the proposal says that the step-parent acquires those rights only when they step up and formalise the relationship with an actual parent.

One thing is missing from the proposal and, although that would not prevent me from supporting the amendment, I think that it will have to be addressed at a later point. If the step-parent is married to or is the civil partner of the natural parent and the natural parent dies, I do not see why the bill should not cover the acquisition of a further step-parent, so that the family would have two step-parents.

The nature of modern family life being what it is, there is a range of further possibilities. A step-parent may gain all the legal rights and responsibilities that a natural parent would have had and it should be possible to transfer those rights and responsibilities to any subsequent relationship that the step-parent might form that would be of benefit to the child. That would, in effect, give the child two parents in practice, if not in genetic inheritance. However, the lack of such a provision is not a reason in itself for opposing the amendment; it is merely an observation on how it might be enhanced.

12:45

Mr McFee: I would be concerned if we started having civil partnership step-parents. If we were to come back to the amendment at stage 3, I wonder where it would lead us.

I realise that Jim Wallace is not the author of amendment 77, but I have a question about the effect of proposed subsection (3)(b), under which a step-parent can gain parental responsibilities and rights if both biological parents—if, of course, they are available—agree that the step-parent should acquire them. What happens if the step-parent and the biological parent split? Can the other biological parent withdraw the responsibilities and rights from the step-parent? The biological parent may be happy for the step-parent to have those responsibilities and rights while the relationship endures, but may not be happy to let them continue if the relationship ends.

There could be unintended consequences. It is not that I am unsympathetic to the idea of the amendment. We have seen several cases in which grave injustices have been done to step-parents and to fathers. However, what we propose should be enforceable and should not make a mockery of the entire situation. There is a danger that Jim Wallace's reasonable proposal might, in some circumstances, make a bad situation worse.

Marlyn Glen: At the risk of repeating myself, I must say that, when we are talking about family law, we need to avoid making value judgments such as talking about "the gold standard" in families. We need to support families no matter what form they take. The central thrust of family law is to protect the child in whatever kind of family they live. All families need support: it does children no good at all if we undermine the kind of family that they happen to live in.

My problem with the amendment is that it complicates an already extremely complicated situation. If a proposal is to work, it cannot work just for one particular permutation; it has to work for all sorts of permutations. It has to take into consideration the separation, divorce or death not just of the first couple, but of any subsequent couples. The effects would have to be looked at all the way down the line. Although I have sympathy with the step-parent whom Jim Wallace was talking about, the amendment would add nothing to the bill, so I will not support it.

Margaret Mitchell: I welcome the intention behind the amendment, but I share Bruce McFee's reservation. If one of the parents or partners has acquired rights with the formalisation of the relationship, the case seems to be an open-and-shut one—there is no dispute. However—I am not making a value judgment—the amendment would make the possibility of walking away to form numerous different relationships easier. I would like some clarification on that point.

Mrs Mulligan: Like other members, I have sympathy for the step-parent. Indeed, we are all aware of the kinds of cases that Jim Wallace highlighted in which step-parents fulfil the role that we want them to fulfil. However, if we want the bill to focus on children, I wonder whether enshrining in legislation the provision in amendment 77 will complicate matters and make things more difficult for children if circumstances change. I repeat my

sympathy for step-parents and the roles that they perform, but I do not think that the approach suggested in the amendment is necessarily the right one in this respect.

The Convener: I echo Mary Mulligan's point. Although I want to make things easier for step-parents—and more must be done to acknowledge the number of step-parents in Scotland—my reservation about amendment 77 is that, if the courts have to decide whether to grant parental rights and responsibilities, they will presumably look after the child's interests. In any decision on granting rights and responsibilities to non-natural parents, thought would have to be given to who would look after the child's interests.

Hugh Henry: I understand the concerns that have motivated Mike Pringle to lodge amendment 77. Throughout Scotland, a vast number of step-parents care for and love their stepchildren, which is how it should be. However, the difficulty is what happens when things go wrong. As Mary Mulligan and Marlyn Glen have pointed out, the amendment will complicate matters for children and introduce complexities into the legislation.

The convener mentioned the court's role. In theory, the courts could, if required, extend PRRs to a step-parent. However, as Bruce McFee pointed out, what would happen if we agreed to the amendment and a relationship between a natural parent and a step-parent broke up a year after the two-year period suggested in the amendment ended? Both the natural parents and the step-parent could end up with PRRs. In fact, although Jim Wallace said that amendment 77 tries to address the problem of other adults coming in during that two-year period, we could end up with yet another step-parent having PRRs.

Stewart Stevenson: Proposed subsection (1)(b) refers to a qualifying period of "two years". Is the minister suggesting that a longer qualifying period would be acceptable?

Hugh Henry: No. I am simply suggesting that, with that qualifying period, a number of other people could be granted PRRs.

However, that is not the main issue. What happens if the mother does not want the step-parent in question to have PRRs? She will have to apply to court for a section 11 order to take those rights away. We will have introduced new rights for a third adult; a natural parent who wanted to get the third adult out of the child's life would have to take the matter back to court.

Such an approach introduces all sorts of problems, not least for the child. I understand what Mike Pringle is driving at, but I wonder whether amendment 77 addresses the issue from the perspective of the adult instead of the child. It would be in the child's interests if, as Jim Wallace pointed out, a step-parent wanted, for all the right reasons, to be involved in resolving a problem that the child had. However, if we then tried to use the law to address that specific concern, we would also allow the law to introduce rights for adults irrespective not only of whether the child wanted that, but of whether it was in the best interests of the child. That departs from everything else that we have considered in the bill.

The rights of step-parents are a complicated and sensitive matter and I understand not only what the issue is, but why Mike Pringle is attempting to do something about it. Trying to resolve the weakness of the situation in which many step-parents find themselves has an attraction, but I am not sure that amendment 77 represents the right approach.

We consulted on similar provisions in the past and, having taken evidence, we were persuaded that a legislative approach was not the best way forward. Organisations such as the Family Law Association and the Law Society of Scotland agreed on that. The commissioner for children and young people also concluded that such provisions would not be in the child's best interests.

I give a commitment that, as part of our public information campaign, we will give greater publicity to the powers available in existing legislation for delegating parental rights to step-parents, but I share the concerns of committee members that amendment 77 is probably not the right way of dealing with the matter.

Mr Wallace: I am grateful to colleagues for their contributions to the debate. We have been discussing a difficult subject and members have addressed it sensitively. Just as many people say that such provisions might make life more complicated for the children, equally, there are many circumstances in which not having such an opportunity to acquire rights could make life complicated for the children. The examples that have been given highlight some of the difficulties that can arise.

I add a further caveat: one of the concerns expressed was the possibility of having a succession of step-parents who would acquire parental responsibilities and rights. As the amendment is currently drafted, one would have to be married to the parent to acquire rights. Even if the provision were extended to civil partnerships, those involved would have to be in a formal relationship. Before anyone else could acquire step-parent rights, the initial marriage or civil partnership would have to be dissolved; there would be a legal action in any event whereby any problem about whether the step-parent should continue to have particular responsibilities and rights in relation to the child could be resolved. It is not as though we would have to invent a new legal

proceeding; there would have to be a legal proceeding to dissolve the existing marriage or civil partnership anyway.

That said, it is important that Mike Pringle, the lodger of the amendment, should have the opportunity to consider the points that the minister and other colleagues have made about his amendment; he should be able to address those issues and perhaps revisit the matter at stage 3. Therefore, I do not wish to press the amendment at this point.

Amendment 77, by agreement, withdrawn.

The Convener: I assume that there will be a fair bit of debate about amendment 78, which is next in the proceedings. In view of that and because we have other business to conduct, I suggest that we stop stage 2 now and continue with it next week. Is that agreed?

Members *indicated agreement*.

The Convener: We will start with Marlyn Glen's amendment 78 at the next meeting. There are two further items of business, but I will suspend the meeting for a couple of minutes, as members need a comfort break.

13:00

Meeting suspended.

13:04

On resuming—

Subordinate Legislation

Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 (draft)

The Convener: Item 2 is subordinate legislation. Once again, we welcome the Deputy Minister for Justice, Hugh Henry. I refer members to the note that has been prepared by the clerk. I ask the minister to speak to and move motion S2M-3511.

Hugh Henry: The draft Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 will incorporate into the Scots law of civil partnership the same grounds of jurisdiction as are contained in the European Union regulations—known as Brussels 2a—on matrimonial proceedings. They also provide for recognition of judgments from other member states that have been issued in civil partnership proceedings.

The regulations are to ensure equal access to justice for civil partners. European Union legislation has changed our domestic law concerning matrimonial proceedings by making some new grounds of jurisdiction available to the Scottish courts, and by providing for judgments to circulate through the EU. That legislation does not apply to civil partnership proceedings, as the situation in that regard is still rapidly evolving in the different member states. Some member states still have no mechanism to allow same-sex couples to enter binding legal relationships, although the trend is clearly for more countries to go down the civil partnerships route.

The issues for us are whether we should give civil partners the same access to the Scottish courts as they would have under the Brussels agreement if they had been married, and whether to provide for recognition of judgments in civil partnership proceedings from elsewhere in the European Union. If we do not do that, the effect will be to restrict that access to civil partners. If a civil partner were to discover that he or she could not bring dissolution proceedings here, for instance, even though he or she would have been able to bring divorce proceedings if they had been married, that civil partner would be likely to feel discriminated against on the basis of sexual orientation. I hope that members agree that such couples should have equal access to the courts.

I move,

That the Justice 1 Committee recommends that the draft Civil Partnership (Jurisdiction and Recognition of Judgements) Regulations 2005 be approved.

The Convener: Thank you, minister.

Margaret Mitchell: I seek clarification on the impact of regulations 8, 9 and 10. If another member state were to go beyond recognising civil partnership to recognising same-sex marriage, will we, in approving the regulations, be obliged also to recognise that status?

Hugh Henry: My understanding is that same-sex marriages that were entered into abroad will have the status of civil partnerships here. Any attempt to dissolve would be conducted on the basis of dissolving a civil partnership here rather than a same-sex marriage.

Margaret Mitchell: Regulation 8 will prevent a court from reviewing the jurisdiction of the court of the member state, and regulation 9 will prevent a court from reviewing the substance of a judgment. Regulation 10 will ensure that the judgment is recognised, notwithstanding that there might well have been a different outcome if the law of Scotland had been applied. Regulation 10 is where I think we are with same-sex marriages. Is there potential for the introduction of same-sex marriage under the regulations, which we will then have to recognise, albeit for different reasons?

Hugh Henry: My understanding is that there is not. Nowhere do the regulations mention same-sex marriages; they talk consistently about civil partnerships. I believe that any such relationship would be dealt with as a civil partnership rather than as a same-sex marriage.

Regulation 3, on application, states:

"These Regulations apply to proceedings for the dissolution or annulment of an overseas relationship entitled to be treated as a civil partnership, or the legal separation of the same".

It is quite specific in talking about civil partnerships; there are no references to same-sex marriages.

Margaret Mitchell: I am content with that assurance.

The Convener: Does that mean that, if another European member state does not have the same construction of the concept of a civil partnership as we have, but has something akin to it, that becomes a civil partnership for the purposes of Scots law? Is that what we are talking about?

Hugh Henry: Yes—I think that is essentially right. The Civil Partnership Act 2004 contains a provision to deal with that.

The Convener: I do not know what variety of different relationships there are legally in other member states. How similar do they have to be to our civil partnership?

Hugh Henry: Part 2, paragraph 5(2) of the regulations mentions:

"A 'court of a member State' referred to in paragraph (1)".

Paragraph 5(3) then mentions

"The 'member States' referred to in paragraph (1) are any of the following States",

and goes on to specify the states. The 2004 act also specifies the criteria that are required for that recognition.

The Convener: I see. Do other members have any questions?

Mr McFee: I want something to be clear on the record. Are you saying that if another European Union state recognises same-sex marriage, we do not have to recognise it here?

Hugh Henry: We would not recognise a same-sex marriage. We would deal with a civil partnership.

Mr McFee: So we would treat a same-sex marriage as a civil partnership.

Hugh Henry: That is correct.

The Convener: Part 2 of the regulations lists the member states to which the regulations will apply. Those states have something that is equivalent to the civil partnership.

Hugh Henry: That is correct.

The Convener: In essence, those countries are determined to have something similar to what we have in Scotland. If anyone from one of those countries wishes to dissolve their civil partnership in Scotland, they will be able to do so; our Scottish civil partnership regulations would apply, rather than the member state's legislation.

Hugh Henry: That is correct.

The Convener: I am clear.

Mr McFee: I just want to clarify this. If a member state has provision for same-sex marriage, a couple with such a marriage could come to Scotland and get a divorce.

Hugh Henry: They could have dissolution of a civil partnership.

Mr McFee: What would be the effect of such a dissolution in their home country? Would it have legal standing?

Hugh Henry: That country would have to determine how it recognises decisions of a Scottish court. In effect, the couple would have applied to a court here for the dissolution of a civil partnership. Such a dissolution would be legally binding in Scots law. I would have thought that, in terms of international treaties and agreements, whether the dissolution would be recognised elsewhere would be a matter for the particular country from which the couple came rather than a matter for us.

Mr McFee: So after a same-sex marriage was dissolved here as a civil partnership, the individuals concerned could form a new civil partnership at some stage—at least, in Scotland.

Hugh Henry: They would be able to form a new civil partnership in Scotland.

Mr McFee: What standing would that have in the other countries?

Hugh Henry: That would be a matter for each country to determine.

Mr McFee: Hmm—okay.

The Convener: Given that we dealt with Brussels 2a in terms of jurisdiction and recognition of family law issues, I suppose what we are doing here is applying the same rules to civil partnerships. Am I right?

Hugh Henry: Convener, it is difficult enough to give assurances to the Scottish Parliament without my having to look at Poland, Portugal, Slovakia, Slovenia and so on.

The Convener: But that is broadly what we are doing here.

Hugh Henry: Yes.

The Convener: So the concept of "habitually resident", for example, that applies to married couples in Scotland would apply to people in civil partnerships because of the regulations.

Hugh Henry: Yes.

The Convener: I think we have exhausted our lines of questioning on that.

Hugh Henry: Or you are just exhausted.

13:15

The Convener: In that case, the question is, that motion S2M-3511 be agreed to.

Motion agreed to.

That the Justice 1 Committee recommends that the draft Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 be approved.

The Convener: We are required to report to Parliament on the regulations. Unless I hear a counter motion, I suggest that we base our comments on the *Official Report*. The deadline for publication of our report to Parliament is Monday 28 November. If members have additional points to make, they will have to let us know about them. We aim to publish by Friday 11 November.

Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 (SSI 2005/494)

The Convener: I refer members to the clerk's note on the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005. I thank the minister for being with us for the previous set of regulations. As these regulations are subject to the negative procedure, he is allowed to leave us. Do members have any points to make on the regulations?

Stewart Stevenson: Just before making my comment, I draw attention to my entry in the register of members' interests on my membership of Edinburgh Flying Club, which places duties on me, as a member of a private limited company, in relation to matters in the regulations.

Paragraph 40(4) of the regulations refers to

"A document which purports to be certified by or on behalf of a member of the Scottish Executive as a true copy of a certificate".

The certificate in question relates to sensitive information. Paragraph 40(4) continues by saying that the certificate

"shall in any legal proceedings be … evidence (… in England and Wales …) of that certificate."

I wonder on what basis we can assert that the legal proceedings of a court in England and Wales would take any attitude to anything that we did. I wonder whether we can find out.

The Convener: Yes—we can put that question.

Stewart Stevenson: That is all.

The Convener: There are no other comments, so are members happy to note the regulations?

Members *indicated agreement*.

The Convener: That brings us to the end of the agenda. I remind members that the committee will meet next on Wednesday 16 November, which will be day four of our stage 2 consideration of the Family Law (Scotland) Bill. The deadline for lodging amendments for consideration at the next meeting is Friday 11 November at 12 noon. The target for that meeting will be published in tomorrow's *Business Bulletin*. It would be helpful if members could inform interested colleagues of that deadline.

Meeting closed at 13:17.

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