# JUSTICE 2 COMMITTEE

Wednesday 27 November 2002
(*Morning*)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2002.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

# CONTENTS

## Wednesday 27 November 2002



## JUSTICE 2 COMMITTEE
**45th Meeting 2002, Session 1**

**CONVENER**

*Pauline McNeill (Glasgow Kelvin) (Lab)

**DEPUTY CONVENER**

*Bill Aitken (Glasgow) (Con)

**COMMITTEE MEMBERS**

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

**COMMITTEE SUBSTITUTES**

Roseanna Cunningham (Perth) (SNP)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)
Dr Sylvia Jackson (Stirling) (Lab)

*attended

**THE FOLLOWING ALSO ATTENDED:**

Paul Martin (Glasgow Springburn) (Lab)
Mr Jim Wallace (Deputy First Minister and Minister for Justice)

**CLERK TO THE COMMITTEE**

Gillian Baxendine

**SENIOR ASSISTANT CLERK**

Irene Fleming

**ASSISTANT CLERK**

Richard Hough

**LOCATION**

The Chamber

# Scottish Parliament

## Justice 2 Committee

*Wednesday 27 November 2002*

(*Morning*)

[THE CONVENER *opened the meeting at 09:49*]

**The Convener (Pauline McNeill):** Good morning everyone and welcome to the 45th meeting in 2002 of the Justice 2 Committee. I have one item to report before we move to item 1 on the agenda. I inform the committee that we have made further progress on our asbestos petition. The deputy convener, Bill Aitken, and I met our advisers—Mike Jones QC and Grant McCulloch of Drummond Miller—and I felt that we made good progress. Our excellent advisers suggested proposals within 48 hours of that meeting, which is encouraging. We hope to have something to put to the committee soon, in advance of our meeting with the Lord President on 12 December. We will keep the committee updated on developments, but I thought that members would like to know that progress is going well. We will have something important to say on 12 December.

**George Lyon (Argyll and Bute) (LD):** I want to raise a concern. Would you write to the Executive to seek clarification about a document that was received from the Highlands and Islands Rivers Association? The document relates to the Land Reform (Scotland) Bill and the proposal to give crofting communities the right to purchase salmon fishings. HIRA has obviously taken counsel's opinion and raises several issues in the document as to whether the legislation would pass the European convention on human rights test. In particular, the association highlights the blight on the salmon fishings that would be introduced by that right. Most of us have rejected the proposal, but I would like an official response from the Executive to the document.

I raise the issue of blight in particular because the Executive has said that the creation of any absolute right to buy in the Agricultural Holdings (Scotland) Bill would blight the land affected. Indeed, the Executive put a figure of £100 million on it. I want the Executive to clarify its position on the absolute right to buy, whether in relation to salmon fishings or land. Could we ask for a response from ministers to the issues raised in the document?

**Stewart Stevenson (Banff and Buchan) (SNP):** It is proper that George Lyon encourages us to make that request. However, I suggest that we do not tread on the toes of the Rural Development Committee. I am not in a position to speak about that committee's private discussions on its stage 1 report on the Agricultural Holdings (Scotland) Bill, and I do not think that we need concern ourselves about that bill.

It might be useful to augment our request by asking whether the crofters' absolute right to buy their crofts that they have had for some 30 years has caused blight. We could ask also whether that right would now be ECHR incompatible. As a non-lawyer, I am fairly clear that the answer should be no. However, since the issue has been raised, it would be useful to include that, but not George Lyon's reference to the Agricultural Holdings (Scotland) Bill and the absolute right to buy for tenant farmers, which is another committee's concern.

**George Lyon:** For the sake of clarity, I was not referring to that. I was drawing a comparison between the two bills and highlighting the fact that the Executive's position seems to show a difference of opinion. I am seeking clarity only about the Executive's position on salmon fishings and the Land Reform (Scotland) Bill.

**Stewart Stevenson:** I agree with George Lyon on that basis.

**Mr Alasdair Morrison (Western Isles) (Lab):** I endorse what George Lyon said. It is totally within our rights and competence to make such a request.

**Bill Aitken (Glasgow) (Con):** Surely this is a matter of opinion that it is open to committee members either to accept or to reject. I do not think that HIRA would claim to have a monopoly of wisdom, but it may well be right. Like Stewart Stevenson, I am not sufficiently qualified in the nuances of the ECHR to be able to make a determination. It is a matter for individual opinion, and committee members can reject or accept the evidence, in whole or in part, depending on their inclinations. I doubt whether there is any value in pursuing it with the Executive.

**The Convener:** Members are trying to ascertain whether there is consistency between the Agricultural Holdings (Scotland) Bill and the Land Reform (Scotland) Bill. Counsel's opinion may be on the table, but members want an explanation of why land blight would be claimed for one piece of legislation, but not for another, apparently similar, piece of legislation. Therefore, the differences in the approach to the legislation must be questioned; counsel's opinion is incidental.

**George Lyon:** I am requesting that the committee be made aware of the Executive's opinion on the ECHR matters raised in the letter from HIRA.

**Stewart Stevenson:** The Agricultural Holdings (Scotland) Bill does not seek to create an absolute right to buy; the Executive has explained why it does not. Therefore, there is no question to be addressed in that context; if there were, that would be the responsibility of the Rural Development Committee.

**The Convener:** I am not clear about what George Lyon wants the committee to do.

**George Lyon:** I ask that the committee write to the Executive, enclosing the HIRA letter, and ask for a response on the ECHR matters raised, before we reach stage 3 of the Land Reform (Scotland) Bill.

**The Convener:** Do you concur, Stewart, or do you feel that the Rural Development Committee should do that?

**Stewart Stevenson:** I concur. I cannot share with the committee the private discussions that the Rural Development Committee is having on its report on the Agricultural Holdings (Scotland) Bill; that would be improper and it would get me into trouble with others. However, it is proper for me to say that members need not be concerned that the Rural Development Committee is not alert to the issue.

**The Convener:** What about a compromise? Will I write to the convener of the Rural Development Committee to say that the issue was raised at the meeting and that members have some concerns?

**George Lyon:** I think that Stewart Stevenson would support this committee raising points about the Land Reform (Scotland) Bill. I do not want to raise any points about the Agricultural Holdings (Scotland) Bill. I want the Executive's response to the issues raised in HIRA's letter about salmon fishings and a statement that rebutts some of them.

**The Convener:** It would be legitimate for the committee to do that because, although stage 2 of the Land Reform (Scotland) Bill is complete, we still have stage 3 to work through, and it is perfectly in order for us to seek further information.

**Mr Morrison:** If we do not move quickly, the bill will receive royal assent before we have made any progress.

**Stewart Stevenson:** I agree.

**The Convener:** On that basis, and for the sake of committee members' health, I will raise the matter with the Executive.

# Criminal Justice (Scotland) Bill: Stage 2

### Section 43—Physical punishment of children

**The Convener:** I welcome Jim Wallace and the Executive officials.

Amendment 121 is grouped with amendments 8, 9, 10, 122 and 45. If amendment 121 is agreed to, I cannot call amendments 8, 9 and 10, as there is a pre-emption.

10:00

**Scott Barrie (Dunfermline West) (Lab):** Amendments 121 and 122 seek to remove the defence of "reasonable parental chastisement" that is set out in section 10 of the Children and Young Persons (Scotland) Act 1937. That defence can be used as an excuse when a parent or someone with parental responsibilities has administered discipline to a child that might or might not have gone further than either they had intended or that a reasonable person might have assumed to have been appropriate.

When we took evidence on section 43, we found two diametrically opposed points of view. A number of organisations and individuals believed that a total ban on hitting children would be the best way of protecting children and ensuring that physical punishment did not reach an unacceptable level. However, other organisations and individuals felt that such a step was an unwarranted interference in parental responsibility and that parents should be allowed to punish their children as they see fit. It is fair to say that the Executive's proposals, as contained in section 43 and in the amendments it has lodged, took a middle way and tried to reach a consensus on what would or would not be acceptable.

The committee took different views on the matter. However, I dissented from its final view; as members know, I favour a total ban on the physical punishment of children because that would send a clear message about what is acceptable to parents and people with parental responsibilities and would be the easiest way of ensuring that children are protected. Amendments 121 and 122 simply put in the legislation what I have always felt should be the case.

Committee members who feel that the existing law is perfectly adequate in this respect are wrong, because there is substantial doubt about what constitutes acceptable parental chastisement. It is up to the police and then the courts to decide whether someone who has physically punished a child has done so within the bounds of

"reasonable parental chastisement". That phrase from the 1937 act does not clarify the legal position adequately. When we were discussing other sections of the bill yesterday, committee members were rightly exercised by the possibility that we might have agreed to something that was not very clear and had not been properly thought through. I argue that the existing law on the physical punishment of children is not clear. In any case, we should revisit legislation that was passed in 1937. Amendments 121 and 122 make abundantly clear what we are trying to do and what constitutes acceptable.

I move amendment 121.

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I welcome the opportunity to come before the committee to discuss this topic, which I seem to have discussed with it on a number of occasions. Fate has some interesting ways of displaying itself.

**The Convener:** We were saying the same thing only this morning.

**Mr Wallace:** It is important that I set out the policy objectives of section 43 at the beginning, because there has been much discussion on the issue. Some people support Scott Barrie's view; however, as Bill Aitken will probably point out when he speaks to amendment 45, others feel that the existing law does not need to be revised or amended. In the midst of all that, the policy objectives behind the section have probably been overlooked. They are: to provide protection to children; to clarify the law for parents on what constitutes reasonable chastisement; and, ultimately, to help steps towards reducing violence in society. The Scottish Executive remains committed to those objectives, which I hope will find support across the committee.

Obviously, some believe that the Executive's proposals in the bill as introduced do not go far enough, which is why amendments 121 and 122 have been lodged. However, for others, they go too far. It would be unfortunate if the push and pull of those irreconcilable arguments overshadowed the policy objectives of section 43 and led to the committee deciding that we should not take positive steps to achieve sound policy goals. After all, our research shows that our proposals have considerable support from parents throughout Scotland.

Amendment 121 would go further than any of our proposals, and would replace section 43 with a total ban on physical punishment. However, even allowing for the amendments that I will come to shortly, we believe that the provisions in section 43 would go a considerable way to protecting children and, as Scott Barrie pointed out, would represent some kind of consensus. Seeking such a consensus on the punishment of children could prove effective in changing attitudes and behaviour.

The research that was undertaken at our behest shows that 79 per cent of Scottish parents agree that there should not be a total ban on physical punishment at present. In fact, only 14 per cent of today's parents want a total ban. Such a ban would redouble the problems of compliance and enforcement that the committee foresaw with a ban on smacking children under a specific age. Because there is such wide disagreement to a total ban, the measure would probably have a less persuasive effect in changing parents' behaviour than if we were to move forward in a consensual way. That said, I fully recognise and respect the intention behind amendment 121.

An important strand of our policy will be to provide information on the effects of physical punishment, and to give parents access to positive parenting approaches to better discipline. Over time, parental attitudes to discipline have shifted; indeed, they might shift further. We hope that, with better information, attitudes will continue to change. Perhaps one day—which will probably be years rather than months away—physical punishment will be unacceptable to the majority of parents. However, that day is not yet here. As a result, I urge the committee to reject amendment 121.

Amendment 122 would ban punishment that was in a manner likely to cause a child

"unnecessary suffering or injury to health".

Although that is also a laudable aim, the amendment is unnecessary. It is inconceivable that, having considered the ECHR factors, any court would regard

"unnecessary suffering or injury to health"

as justifiable. As the amendment would add little clarity to the law, I ask the committee to reject it.

As I indicated during the committee's stage 1 consideration of the bill, our original proposals included a specific protection for the very youngest children, whom we judged to be at special risk of suffering inadvertent harm from physical punishment. However, it became clear that that particular restriction could not command support in the committee. Indeed, there was an even balance among parents about whether there should be a blanket ban on hitting children under three.

In its stage 1 report, the committee said that it was not convinced that the proposal would reduce harm to children to such an extent as to justify a blanket ban. During the stage 1 debate, I said that the Executive reluctantly accepted that it should not press ahead with legislation on that issue. However, we feel that the smallest children are

particularly vulnerable, and we seek to raise parents' awareness both of the potential effects of physical punishment on the smallest children, and of alternative positive parenting approaches to better discipline.

Courts should always consider the age of the child when deciding whether a physical punishment was justified. Amendments 8 and 9 would give greater prominence to the child's age among the list of factors that a court must consider, thereby emphasising the importance of protecting the youngest children. Moreover, amendment 10 would remove from the bill the provision of a blanket ban on assaulting children under three, which I indicated we would do.

On amendment 45, Bill Aitken has not followed what parents are thinking. Our research showed that parents are not in favour of a blanket ban on physical punishment, but an overwhelming majority of them agree that hitting children on the head, shaking them or using implements should be illegal. I remind the committee that 84 per cent of parents support a ban on blows to the head, 79 per cent support a ban on shaking and 79 per cent support a ban on the use of implements. All those punishments can be easily misjudged, particularly in highly charged situations, and can cause serious injury to a child. Clear rules can help, rather than harass, parents. A court must consider ECHR factors anyway, but it is clearer for everybody if the factors are listed in the legislation. The research also revealed uncertainty among parents about what the law says about physical punishment. That reinforces the need for a clear statement of the law.

Section 43 is essential, not only to improve the protection of children, but to clarify the law and send out a message about physical punishment in the 21st century. Legislation is needed and the bill, with the amendments to which I have referred, would provide clarity. I urge the committee to accept section 43, with the amendments that I will move on behalf of the Executive, and to reject Scott Barrie's proposals and those that I assume Bill Aitken is about to make.

**Bill Aitken:** We are going over old ground to some extent, as the committee has debated this matter at considerable length and in great depth. Scott Barrie has been entirely consistent throughout our considerations and I fully understand the strength of his feeling. However, the bill and the proposals that the minister has outlined today do not treat Scotland's parents as responsible.

There are interesting aspects of the law of assault. Scott Barrie was correct to highlight the fact that much of the legislation that deals with reasonable chastisement is of some antiquity, but we should examine the Scots common law of assault, the basis of which is not dissimilar to the civil law in respect of what is reasonable. As individuals or collectively, we may have different interpretations as to what is reasonable. However, we should examine the case law. I remind members of the cases that Professor Gane drew to our attention. Few could dispute the inherent common sense of those judgments on what constitutes assault. In almost every case, the courts had found that there was mens rea and that the parent was guilty. That demonstrates that the law is in reasonably safe hands in that respect.

Child abuse—whether it be sexual or violent and physical—concerns us all. The minister is correct to point out that the protection of children must be a priority in our thinking, but I suggest that the cases of violent assault that we sometimes hear about are unlikely to be deterred by legislation. They involve people who many of us think should not be in charge or control of young children in any event. It is clear that child abuse is of great concern, but it is equally clear that such people would not be deterred by the bill.

If amendment 45 is not agreed to, the bill could criminalise responsible parents. Being a parent is an awesome responsibility. The vast majority of Scotland's parents carry out that responsibility in a manner that is praiseworthy in the extreme. There is a danger that we are legislating for the tiny minority of people who are irresponsible and would not be deterred by the bill or any other piece of legislation.

The minister dealt with the circumstances that the court would take into consideration. When determining whether an assault had taken place, the court would also consider the age of the child in question. What would be a minor admonition to a 12-year-old child would severely hurt a two-year-old child. When assessing whether the damage that had been caused was likely to be long-lasting rather than temporary, the court would need to take into consideration the age and maturity of the child.

This is a difficult issue. I recognise the feelings that members of the committee have about it—everyone is taking an entirely honourable view. However, the law should not involve itself in situations unnecessarily. In this case, the law is sufficiently robust and firm to ensure that the rights of Scotland's children will be upheld and that the appropriate protection will be in place. The Minister for Justice and others should have confidence in our judicial system. It has worked for an awful long time and there is no reason why it should not continue to work in the future.

10:15

**Stewart Stevenson:** I commend Scott Barrie for lodging amendment 121. I have not the slightest

difficulty in supporting his objectives. In previous discussions, committee members by and large agreed that a blow to the head, shaking and the use of an implement were no longer acceptable.

It is disappointing that in recent days the committee has received a number of submissions that seek to reinstate the right to strike a child with an implement. There is no justification for that. The existence of such a strong lobby for the practice has considerably influenced my thinking on the subject—to the point where I reconsidered my opposition to a total ban on smacking. The evidence that we have received appears to indicate that some people are beyond persuasion.

However, I have spoken to a number of people and believe that there is still a case to be made for proceeding by persuasion to the point at which no child in Scotland is struck. Scott Barrie's approach, which involves using legislation to underpin that, is not the best way forward. Today, the minister may tell us what plans the Executive has for offering positive parenting support. He may not now be able to provide the detail that he will be able to provide at a later date, but it would be helpful if he fleshed out his plans for us.

I take heart from experience in Sweden, where some years ago a similar minority of people felt the need to continue using implements as instruments of chastisement, on the basis that the hand is for love and the implement is for punishment—an argument that I reject. The campaign of persuasion in Sweden appears to have been successful, even with that minority. It would be helpful if the minister indicated that we will be able to move by persuasion in the same direction.

On balance, the committee has got the issue right. Unless there is a substantial move in the debate, I am minded to support the amendments that the minister has lodged and not to support the amendments in the name of Scott Barrie. I will certainly not support the amendment in the name of Bill Aitken.

**Mr Morrison:** I support the position that has been outlined by the Minister for Justice. I cannot support the amendments that have been lodged by my colleague Scott Barrie. Bill Aitken rightly pointed out that we have discussed and debated the issue in some detail and I certainly subscribe to the view that it would be an act of lunacy for us, as legislators, to criminalise responsible, loving, law-abiding citizens and parents.

The position was outlined by the Minister for Justice, who was absolutely spot on when he said that, as regards compliance and enforcement, the position advocated by my friend and colleague Scott Barrie is completely unworkable. As a society, we all want a situation where none of our children is ever hurt or assaulted, but I genuinely believe that what Scott Barrie proposes is not the way forward. Positive parenting and a process of education are absolutely essential. Scott Barrie's proposal will do nothing to change attitudes.

I subscribe to the view that the current law is sufficiently robust to protect children. I certainly do not endorse the view expressed in the letters that the committee received this morning, one from Edinburgh and one from Ayrshire. I flippantly describe such people as the wooden-spoon fraternity. However, I find it worrying that people not only commit that logic and reasoning to paper, but actually subject their children to correction by use of an implement. In all the evidence and letters that came pouring into the committee, the wooden spoon appeared with alarming frequency.

I certainly do not associate myself with the view that the hand is associated with warmth and love and the implement with correction. How do those people hold the implement with which they are administering punishment or correction? We need attitudinal change and those who commit such views to paper certainly need assistance and direction in positive parenting.

I speak as the parent of three—no, two—young children. [*Laughter.*]

**The Convener:** Are you sure?

**Mr Morrison:** The Child Support Agency has not contacted me. One of my children is three years of age, which is what I intended to say, and the other is 18 months. I see the non-parent to my left, Scott Barrie, chortling merrily.

The position that Scott Barrie advocates is honourable, but not practical. It does not translate into our homes, streets, societies, villages and cities. I will not support it; I will support the position outlined by Jim Wallace.

**George Lyon:** I, too, support the minister and welcome his response to the committee's report. He took on board the concerns and addressed them.

I respect where Scott Barrie is coming from. He consistently argued his viewpoint in the committee from day one, but accepted the majority view when the committee report was published. However, amendment 121 goes too far and so I cannot support it.

As the minister made clear, section 43 puts the issues raised in the case of A v UK into Scots law. As we heard in evidence, currently there can be no certainty that cognisance is always taken of A v UK in court decisions. By inserting section 43 into the Criminal Justice (Scotland) Bill, there can be no room for doubt. It is important to support that view, which the committee reached in its conclusions.

With section 43, which will outlaw blows to the head, shaking and the use of implements, we take the protection of children a stage further. The committee fully supports going that step further. We heard evidence to support the proposition that we should outlaw the use of implements. I do not think that anyone could defend blows to the head or the use of implements as a way of chastising a child and I believe that it is right to make those actions illegal.

Of course, the committee parted company with the Executive on making it illegal to lay a hand on, or lightly chastise, a child under three. My experience as a parent of three children has shown me how difficult it would be to enforce such a law. Moreover, it is likely that parents would see that law as the state meddling in their right to discipline their children properly.

I supported the view that the committee could not go that far, but I have every confidence in the Executive's amendments and section 43. Therefore, I cannot support amendment 45, in the name of Bill Aitken, which proposes to remove section 43. There is a genuine argument that the law needs to be clarified and taken further, so that means of punishment such as a blow to the head and the use of an implement are outlawed. I support the Executive's amendments.

**Mr Duncan Hamilton (Highlands and Islands) (SNP):** I would love to be a fly on the wall when Alasdair Morrison gets home.

Most of the arguments have been rehearsed. I cannot support Scott Barrie's amendments 121 and 122. My reasons are well known. His proposal is unworkable and, although I respect his position, I do not agree with him in principle. His amendments would be a step too far.

Bill Aitken's amendment 45 gives me some cause for concern. Initially, I was attracted to it for the simple reason that I have been dubious about the argument that current law is unclear. However, I did not find Bill Aitken's remarks persuasive, especially the argument that a minority would not take cognisance of the law if it were changed. That is not an argument for not legislating. Members must understand that the law exists to do something about such people. The fact that some people might ignore the law is surely an argument for changing it.

I require further clarification. The minister will recognise this question because members have asked it about 34 times. He said that there are three different policy objectives. The first is protection, with which the committee agrees; the last is to reduce the number of assaults and the incidence of violence in society, with which the committee also agrees; and the second is to clarify the law. I still do not understand what is unclear about the current position, as other members have said many times.

I note George Lyon's comment that there is no harm in putting the factors outlined in A v UK into law, but I am still to be persuaded by the evidence that we heard that that is not done now. Although all members are against blows to the head and child abuse, that is not the issue. The issue is finding a balance between having no desire to reduce protection for children and having no desire to pass unnecessary legislation. Although I suspect that I will support the Executive's amendments, it would put my mind at ease if the minister explained what is unclear about the current position and provided evidence to show how it has been unclear in the courts.

**The Convener:** The minister is not bound to answer that question.

10:30

**Mr Wallace:** Thank you. I will respond to one or two of the points that have been made. We have had a good debate on what we all recognise is a difficult subject. We have all undoubtedly agonised about and debated it in our own minds, as well as in committee rooms, for some months.

I share Stewart Stevenson's views about the importance of information and support for good parenting. He mentioned the Swedish position, which has been based on a combination of legislation and persuasion. I want to make it clear that the Executive considers that an information campaign on positive parenting and alternative disciplinary tactics is as important as changes in legislation are. Officials in my department are liaising closely with colleagues in education and health—such positive messages might come better from the education and health departments than from the justice department—to consider the most effective ways of communicating messages on positive parenting. We want to ensure that we do not duplicate effort but draw on other information campaigns to ensure that we maximise the impact of the message when it is put out.

Bill Aitken said that the fact that some people will not obey a law is reason enough for not passing it. Duncan Hamilton responded well to that. If we took that attitude, I am not sure what there would be on the statute book. We certainly would not have any speeding laws, because some people will never obey the law on speeding, but the consensus in society is that it is worth having such a law. On clarity, the research that we commissioned showed that 62 per cent of parents said that they did not know much about the current law; only 2 per cent felt that they knew what it was. That research work was made available to the

committee. By specifically outlawing hitting on the head, shaking and the use of an implement, we will ensure that there is far greater clarity than there has been.

I do not accept Bill Aitken's point that we are not treating Scottish parents as responsible. He should note the figures that I gave in my opening remarks showing that the overwhelming majority of parents support the proposals, which will bring clarity. Most parents do not go around carrying the extensive case law, which Professor Gane showed to the committee, in their hip pockets. However, it is clear from our debate that it will be well known that hitting children on the head, using implements or shaking them will be not only undesirable, but, if the committee and Parliament agree to the section, unlawful. That makes the position very clear.

I welcome members' support for the Executive's position. I accept that the debate has not been easy, because people hold strong views for reasons that have been, in their own minds, well thought through. I respect that, but our proposals will clarify the law, protect our children and help to reduce general levels of violence in our communities.

**The Convener:** Thank you, minister. I am glad that you acknowledged that some thought had gone into the committee's stage 1 report. We spent a considerable amount of time considering whether the law was adequate and, if not, what it should be. We also took a great deal of evidence.

I have to say that I am greatly concerned about the way in which the committee's discussions have been portrayed, which makes them seem to some people to be about who cares more about children. We have to clear that up. We have different positions on the committee—indeed, having listened to what everyone has said, I can tell that each member has a slightly different position. That reflects the views that we get from people outside Parliament to whom we speak. Whether we take Scott Barrie's or Bill Aitken's position, I believe that both members care deeply about children. They just have different ways of trying to achieve the objectives. I object to the comments that were made about the committee report, saying that we do not consider the matter to be about child protection and child abuse—it is, as we said in our report.

As always, the committee was asked whether the law put before us was workable. I believe strongly that, when it comes to what rights we give parents and the removal of a defence, it is not possible to draw the line at sending out a message. By passing the provisions as they stood, we would clearly have removed the defence, ensuring that prosecutors would almost definitely have to act.

The provision differs from the Swedish position in that a level 3 fine and a penalty of up to three months in prison are attached to it. Such penalties are not attached to the Swedish model. We were asked not to consider the Swedish model but to consider something that would be akin to common-law assault.

I genuinely believe that the Executive has been extremely responsive in relation to all aspects of our report, particularly the one that we are discussing. If I had wanted to lodge an amendment, it would have been like amendment 8, under which a court will have to have regard to the child's age. As things stand, prosecutors do a good job of ensuring that they prosecute those who abuse and cause harm to children. However, although prosecutors take age into account, amendment 8 is necessary for the avoidance of any doubt. Our adviser was of the view that it would be useful for the age of the child to be included as part of the consideration of whether someone should be prosecuted.

Bill Aitken makes an important point about parents' responsibility. One aspect of the evidence that concerned me was how little parents are referred to in the context of recognising the difficulties that good parents have in bringing up children. That is why I welcome what the minister said in response to Duncan Hamilton about the Scottish Executive's overall approach to helping parents to bring up children. A more holistic approach is required. I also support Stewart Stevenson's comments. Although we might all agree that our objective is that a child should never be struck, the issue is how we achieve that objective. The Executive's response has been important.

The inclusion of reference to the child's age in section 43, which amendment 8 would achieve, will allow prosecutors to develop a more sophisticated approach to dealing with cases in which physical chastisement has gone beyond reasonableness. If we adopt the Executive's revised provisions in section 43, we will be doing something good.

Like Stewart Stevenson, I am stunned by some of the correspondence that we have received. I do not know whether the minister has seen any of it. Someone who wrote to us said:

"I choose to discipline my children with an implement rather than my hands."

They do not even provide any indication of what kind of implement it might be acceptable to use. That confirms my view that the Executive was right to include additional provisions.

The debate has been excellent. I invite Scott Barrie to wind up.

**Scott Barrie:** I echo the first point that the convener made. I do not think that members of the committee are 100 miles apart on the issue, which the popular press has sometimes suggested. All committee members support the principle of protecting children. We just differ in how we seek to achieve that. I would have put that worthwhile comment on the record even if the convener had not done so.

The position that I advocate would clarify the law for parents. Bill Aitken mentioned support for parents in the difficult job that they do. I do not underestimate that job—indeed, from personal experience, I know that a large number of parents face an extremely difficult job in bringing up their children in circumstances that can be trying.

Anyone who examines physical abuse of children and tracks it back will see that, in a substantial number of cases, the abuse started when the parent claimed or thought that they were administering discipline. When they found that that did not work, they administered progressively more severe discipline until they reached a point at which the law—even the present law—had to take some sort of action because the parent was deemed to be have behaved inappropriately and to have crossed into child abuse. That is the danger that the current situation presents and it is what underpins my position.

I welcome what the Minister for Justice said this morning about the Executive not viewing legislation as being the only way forward. It was made clear throughout the Executive's evidence that a continuing public education campaign was essential in order to show parents—who are doing what is a difficult job—that there are ways of disciplining children other than by using physical chastisement. I am glad to hear that there will be such a campaign.

The arguments have been well rehearsed and I do not think that we need say any more at the moment.

**The Convener:** The question is, that amendment 121 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Barrie, Scott (Dunfermline West) (Lab)

**AGAINST**

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

**ABSTENTIONS**

Stevenson, Stewart (Banff and Buchan) (SNP)

**The Convener:** Now Scott Barrie knows how Bill Aitken usually feels. The result of the division is: For 1, Against 5, Abstentions 1.

*Amendment 121 disagreed to.*

*Amendments 8 to 10 moved—[Mr Jim Wallace]—and agreed to.*

*Amendment 122 not moved.*

*Amendment 45 moved—[Bill Aitken].*

**The Convener:** The question is, that amendment 45 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)

**AGAINST**

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

**Scott Barrie:** Revenge is sweet.

**Bill Aitken:** That was a hearty raising of the hand by Scott Barrie.

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

*Amendment 45 disagreed to.*

*Section 43, as amended, agreed to.*

**After section 43**

**The Convener:** Amendment 116 is grouped with amendment 119.

**Mr Wallace:** At the beginning of the year, the First Minister launched "Scotland's Action Programme to Reduce Youth Crime 2002", which included the key objective of giving victims an appropriate place in Scotland's system of youth justice.

Amendment 116 was developed following the work of a multi-agency sub-group that was established in January 2002, which comprises members from the police, the Crown Office and Procurator Fiscal Service, children's panels, the Scottish Children's Reporter Administration, Victim Support Scotland, the Association of Directors of Social Work, the Association of Directors of Education in Scotland and officials from the Executive's education and justice departments.

The amendment will extend section 44 of the Children (Scotland) Act 1995 to cover cases reported to the principal reporter. It will cover any child connected with a case or hearing, as opposed to the present situation, in which only the

child who has been reported or referred has the right to confidentiality. In other words, it will prohibit the identification of the child victims of children and young people who are dealt with by the children's hearings system. It will also apply to those who are connected with such proceedings, for example child witnesses, regardless of whether or when a hearing is convened. Such protection is afforded in criminal justice proceedings, but has hitherto not been afforded in cases that come before children's hearings. The child who is the subject of a hearing rather than the victim already has the right to confidentiality. As a matter of practice, it is unusual for a child who is the victim to be involved in children's hearings. Amendment 116 proposes that the restriction on publication of information should also apply to information about a child victim who is concerned in proceedings before a hearing.

Recent publicity has illustrated this issue. During the past year newspaper articles revealed the identity of a child who had been the subject of an alleged assault, but there was no identification of the alleged perpetrator. There are concerns that if the media continue to take an interest in cases referred to the principal reporter, families might be dissuaded from reporting incidents to the police or the reporter. It is hoped that statutory protection of child victims' privacy will build confidence in the hearings system.

I hope that the committee will agree that there would be obvious benefits from amendment 116 and that the amendment commends itself to the committee. Amendment 119 is consequential and deals with a change to the long title to reflect amendment 116.

I move amendment 116.

10:45

**The Convener:** Thank you. Just for the purposes of clarification on section 43 and in case members wondered why I did not put the question on the section, I point out that by voting against amendment 45, which proposed to delete section 43, the committee was agreeing to section 43. Does any member want to speak on amendment 116?

**Mr Hamilton:** I agree with the minister's assessment of the situation to which amendment 116 refers, but I am curious about one aspect. Amendment 116 refers to

"Any matter in respect of a case."

Does that mean that not only the identity of those involved, but any information short of that could not be reported?

**Mr Wallace:** The intent of amendment 116 is to give privacy and confidentiality in respect of the identification of a child. The amendment covers any matter that could lead to someone being able to identify a child. Its purpose is to keep private the identity of a child who might be a witness or a victim. Obviously, there could be information that would not directly identify a child but might describe circumstances in which only one person could be involved.

**Mr Hamilton:** That is a fine line. For example, if someone were to write a newspaper article saying that a 14-year-old had been involved in a particular incident and giving the facts of the case, might there not be some news value in publishing the story even though the individual concerned is not identified? Would such a situation be covered by amendment 116?

**Mr Wallace:** I am fairly certain that it would still be possible to write a story about the fact that an incident took place and, indeed, that it involved a 14-year-old. However, if there were only one 14-year-old in a particular village, for example, then such a story could lead to the identification of the child. It is not the intention of amendment 116 to contravene the right to indicate that an event took place. I think that the amendment addresses that particular point, but I am willing to double-check.

**Mr Hamilton:** Further to that, it might be useful to provide some kind of guidelines for the media because I presume that for the provision to be effective the principal focus is to have a responsible approach from the media. Therefore, I wonder whether the minister would consider circulating a set of guidelines on how far the media can go.

**Mr Wallace:** Yes, I am willing to consider giving such guidance. I emphasise that the intent of amendment 116 is to encompass any matter that would lead to identification. However, because there could be fine lines, as Duncan Hamilton said, we will consider giving guidance and, of course, the media can always take legal advice. Media organisations usually have an in-house lawyer. If not, they have someone whom they can regularly contact who would be able to give them advice if they were thinking of printing a particular story.

**The Convener:** That would be my understanding of the general principle. Under the current law, confidentiality applies to any information that would identify a person. As we are on this subject, apart from court cases in which a child is a witness I am not sure whether children are protected from having their names reported in the media if they are victims in an adult court setting. Have you considered extending privacy provisions a bit further?

**Mr Wallace:** I understand that privacy provisions apply in such a case. Under section 47 of the

Criminal Procedure (Scotland) Act 1995, a child who is either a victim or an offender in the sheriff court or High Court cannot be identified. However, there is no prohibition on reporting before proceedings are instituted. Therefore, it is anomalous that a child victim can be identified when the case is being referred to a principal reporter. That includes a case that was referred to a reporter perhaps before it was decided to take the case in the criminal court as opposed to a children's hearing.

Similarly, if the grounds of a referral to a children's hearing were disputed and the case went to the courts, the protection would kick in. However, there is no protection when a case rests with a reporter. Amendment 116 would extend protection to cover proceedings prior to a case being referred to one of the criminal courts.

**The Convener:** May I come back to you at some future point on that subject? If there is a gap in the provision, the bill would be the proper legislation to remedy that. I am sure that when I asked about this matter in relation to a constituency case, I was advised that, in relation to High Court proceedings, a protocol is in place, but no legal provisions, to protect the identity of a child, unless they are a witness in proceedings.

**Mr Wallace:** By all means come back to me on that. We will obviously look at the matter to double-check that there is protection for privacy. It would be somewhat anomalous if we were comprehensively extending privacy protection to children's hearings but not to the High Court.

**Scott Barrie:** Without prolonging the matter unnecessarily, I ask whether amendment 116 will not just take us back to the situation that existed prior to 1997—when the Children (Scotland) Act 1995 came in and children's hearings were first set up under the Social Work (Scotland) Act 1968—when there was provision to do what amendment 116 proposes. We ended up with the current situation because the legislation was updated by the 1995 act.

**Mr Wallace:** I cannot give you a direct answer to that. If the current situation is the fault of those who produced the 1995 act, I plead guilty.

**The Convener:** No other member wants to speak. Do you want to say anything in winding up, minister?

**Mr Wallace:** Yes. I am advised that it was certainly the intention of the 1995 act to catch all children, but the terminology was such that it has left doubt. Amendment 116 is intended to address that by providing the necessary clarity.

*Amendment 116 agreed to.*

**The Convener:** Amendment 123 is in a group on its own.

**Mr Wallace:** Members will be aware of the importance of measures that have been taken to improve the flow of information to victims throughout the criminal justice system. Children's hearings, of course, are distinct from the criminal justice system, but we wanted to give consideration as to whether and how relevant information might be imparted to victims within the hearings system. Unlike the court process, which takes place in public, children's hearings take place in private, with the focus being on the welfare of the child.

By their very nature, discussions can often be confidential, involving personal details of family life. The confidentiality is needed partly to protect a vulnerable child from undue attention and create an atmosphere in which private matters can be properly discussed. Because of that, information about what is happening is limited to only a few individuals and victims, in particular, have been excluded.

We do not believe that that absolute bar on the disclosure of information can be justified. We have therefore been exploring with representatives of the children's hearings system and Victim Support Scotland what might be done to open up the system and provide information. Amendment 123 is the product of those deliberations; it offers the way forward in that it would enable the principal reporter to divulge information to those who have been affected by the child's actions.

The principle of passing on information to victims sounds simple, but the process of fitting that principle into the complex statutory structure requires time, particularly to ensure the maintenance of the necessary protection for the child. The complexity of doing that was such that the lodging of the amendment breached by one day the Executive's general five-day protocol. I apologise for that, but I hope that the committee will accept that we got the amendment right.

I move amendment 123.

*Amendment 123 agreed to.*

**The Convener:** If members are so minded, I propose that we take a five-minute coffee break.

**Members** *indicated agreement*.

10:54

*Meeting suspended.*

11:08

*On resuming—*

**Section 44—Youth crime pilot study**

**The Convener:** Amendment 46 is grouped with amendment 120.

**Bill Aitken:** I will, perhaps uncharacteristically, resist the temptation to be triumphalist when I see the subsequent Executive amendments.

Suffice to say that when the youth crime pilot study was mooted I thought that it was a daft idea. It has now been effectively withdrawn by the amendment to the long title of the bill. I note that the minister's explanation for that, at least in public print, related to the current lack of facilities and resources that could be made available. I do not think that it would be appropriate for the proposed course of action to be taken, no matter what resources were available. On the basis of the fact that the Executive has lodged the appropriate amendment, in recognition of the fact that its position had no credibility, I will pursue the matter no further.

I move amendment 46.

**Mr Wallace:** I indicated that we would review the proposal following the publication of the committee's stage 1 report, which highlighted its continuing concern about the lack of clarity in relation to the offenders and offences for the bridging pilots. As a result, the Cabinet agreed not to proceed with the proposal at this time and I wrote to the convener on 15 November to indicate that and the reasoning behind it.

We want to ensure that the current system is as effective as possible before placing an additional burden on it by way of services for the new group. We are already taking action by putting additional resources in to boost the delivery of programmes and support for children's hearings. We also plan to invest more in the front-line programmes for 16 and 17-year-olds to improve the range and effectiveness of such interventions.

There is a sizeable programme on youth crime, which includes pilots for fast-track hearings to deal with persistent young offenders as well as the work on youth court feasibility that is under way. A lot is happening both in the hearings system and in the youth justice system and things have moved on considerably since the measures on the bridging pilots were announced.

I cannot resist the temptation to remind Bill Aitken that in 1995 the Conservative white paper on youth crime said:

"By virtue of the seriousness of their offences and their maturity, many young people should no doubt face the full rigour of prosecution and the sanctions which follow a guilty verdict. However, there are also among this group young offenders who are immature and for whom a programme of care and supervision under existing powers through the hearings system would be a more effective way of changing their behaviour and reducing the risk of future offending."

We were developing some of that with bridging pilots but, as I have indicated, a considerable amount of activity is going on in the juvenile justice system. It is best to focus on the measures that are already under way, so that the system can deliver without being over-stretched. Before we proceed with bridging pilots there are practical issues to address in relation to timing and the need to ensure that proper support structures are in place. In the circumstances, the Executive accepts amendment 46, which will remove section 44 from the bill. If the committee supports amendment 44, I will move the consequential amendment 120, which will remove the reference in the long title.

**George Lyon:** I am disappointed that the Executive has agreed to the removal of section 44. We have to remind ourselves that the section was designed to allow pilot studies to be carried out to evaluate whether there was merit in transferring young offenders into the children's hearings system. I would have thought that it would make sense to allow the pilots to be put in place and evaluate whether they were helpful in addressing the problems of youth crime before deciding whether they should be rejected or introduced, on the basis of the information gathered during the studies. There is precious little logic behind the decision to drop section 44—it is more to do with politics.

It should be noted that the proposal was supported by virtually every organisation that gave evidence to the committee, such as the Association of Directors of Social Work, Barnardo's, Save the Children, the Scottish Consortium on Crime and Criminal Justice, and even the Association of Chief Police Officers in Scotland, although it had concerns about the added burdens on its officers. ACPOS was concerned, as was the committee, about the type of offences that would be referred across.

The first of the two main concerns that came across in evidence to the committee was on the type of offences. The Executive was not clear in its evidence to us about its intentions in this area. That gave the committee genuine cause for concern about the type of offences that would be included and it led to serious concerns about the whole project. Nevertheless, that could have been clarified and an initial restriction to first-time offenders would have been worth trialling.

The second issue that was raised with the committee was about the disposals available to the children's hearings system and whether the system was robust enough to cope with extra casework. However, the Executive made it clear in evidence that before any pilots were put in place, it would ensure that added resources and the disposals would be introduced. Therefore, it was worth while carrying out the pilots.

An issue that came through clearly in evidence was the need for baseline information on both systems—the adult court system that examines 16 and 17-year-olds currently and the children's hearings system.

If we are to make sensible decisions about the right ways to address youth crime, we need good statistics that demonstrate where we have success and failure. That key issue must be addressed by the Executive. I remain disappointed that we are not proceeding with section 44 and I will not support amendment 46.

11:15

**The Convener:** I am puzzled by what you said because I thought that you supported the committee's position.

**George Lyon:** I dissented from that view.

**The Convener:** Okay, I got that wrong. However, you said that the committee felt dissatisfied when it tried to clarify what was meant by "persistent young offenders" and what non-serious offences would be included in the pilot project. That was one of the main reasons why the committee felt that it could not support section 44 in its current form.

Committee members said that if the Executive wanted to proceed with the pilot project, it should consider it for first-time offenders. I would like to think that information about the numbers of 16 and 17-year-olds going through the adult court system would be collated because we could not find those figures. It would also be helpful if we started to get figures about return offenders who had spent time in young offenders institutions and in prison. Those statistics were lacking when we examined the question.

I was impressed by the approach to young offenders of some of the organisations, such as Barnardo's, and of the projects that I visited. The question that was not answered was why, if a persistent young offender had been offending since they were nine or 10 years old, keeping them in the system a bit longer—until the age of 18—would make any difference. If we had been asked to put through persistent young offenders to the children's hearings, those people who had been offending since they were nine or 10 would be included. Unfortunately, that is a common occurrence. I support amendment 46.

**Scott Barrie:** I was one of the committee members who supported the pilot in principle when the bill was first published. My view changed, for the reason that Bill Aitken and Pauline McNeill stated—that it was difficult to know exactly what was involved and what type of young offender would be referred to the pilot. The minister conceded that point this morning.

When we were taking evidence, I made the point to the minister that the current law for 16 and 17-year-olds who are referred to the adult court system allows for other intervention strategies to be used in areas where there are diversion from prosecution schemes. My point was that provision of those schemes is very patchy throughout Scotland. Some areas have good schemes, sometimes run by organisations such as Barnardo's or Safeguarding Communities Reducing Offending, and others do not. That patchiness makes things difficult because it is not equitable. In some areas there is the choice only whether to prosecute or not, whereas in other areas offenders can be diverted from prosecution, which is more effective. If we could spread that idea to other areas in Scotland, we could make a policy impact equal to that of diverting offenders to the children's hearings, where similar schemes could be accessed. That would meet some of the policy intention behind the pilots.

**Paul Martin (Glasgow Springburn) (Lab):** I welcome the Executive's willingness to review its position on the pilots. I will touch on two points. The first is the issue that George Lyon raised about the organisations that supported the youth pilots. I also want to note the feedback from the children's reporter in Glasgow on the system, which is so congested that it is at breaking point. It cannot deal with the difficulties that it faces.

I welcome what the minister has proposed, which is that consideration of the other proposals could be seen as a diversion.

At some point in the future legislative programme, there may be another criminal justice bill. We should then consider the reintroduction of the pilots. At the moment, we have to take into consideration the congestion of the system and the fact that it is at breaking point. The feedback from all of those who participate in the hearings system, particularly in Glasgow, is that to add to the congestion would cause further difficulties.

I repeat that at some point in the distant future, we could consider reviewing the legislation. At the moment, the position that the Executive is taking is helpful. I also believe that its position is one that people in my constituency will view as being a step in the right direction. A large number of the constituents that I am dealing with at the moment do not believe that the children's panel system serves them. They believe that it does not deal with those who carry out many of the actions that I will touch on when I speak to other amendments later today.

**The Convener:** Thank you. George Lyon has a point of clarification.

**George Lyon:** I will respond to what Paul Martin said. I understand where he is coming from on the

issue. Evidence has been given to the committee that suggests that there is a problem with the reporter's unit in Glasgow. I repeat that the proposal is to permit the introduction of pilot studies throughout Scotland. Just because there is a problem in the Glasgow children's reporters office, that is not a sufficiently robust argument to drop the legislation completely. From the look that Bill Aitken is giving me, I can see that one member of the committee begs to differ.

In other areas around the country, the children's unit works well. I repeat that, just because Glasgow is struggling under its present work load, we should not drop legislation that permits the pilot studies. We need to remember that the legislation is not to introduce the provision throughout Scotland, but to allow the Executive to trial pilot studies in order to evaluate whether there is merit in rolling out the programme throughout the country.

I cannot see the logic of preventing the legislation from being introduced to test whether there is merit in the proposal. Surely we are all concerned about addressing the problems of youth crime. If there is merit in the proposal, it is well worth conducting the pilot studies, receiving the feedback and undertaking the evaluation. If the pilots do not work, that is the point at which they should be dropped.

**The Convener:** That was George Lyon's second speech. The next time that he says that he wants to make a point of clarification I will not trust him to do so. I say that only in the interests of debate.

**Mr Hamilton:** My questions for the minister have been answered in the course of the debate. I do not have anything to add.

**The Convener:** I thank Duncan Hamilton for showing such discipline. As no other member wishes to speak, I call Bill Aitken to wind up.

**Bill Aitken:** The minister was not sufficiently provocative to enable me to go on at any great length. I regard that as the cheerful collapse of a stout party. What he had to say about what the former Conservative Government set out in its preamble to the 1995 act is quite correct but, on the basis of mature reflection, I can now say that that particular section of the act was not enacted.

The minister is to be congratulated, albeit at a fairly late stage in the proceedings, on realising that there were going to be problems with the pilot. It is significant that other members—particularly, but not exclusively, those from Glasgow—supported the amendment, because they have to operate in the current system. With the way things are out in the streets, the provision would neither have worked nor have provided the necessary degree of reassurance and confidence in the system.

**The Convener:** Fortunately for Mr Aitken, because of the procedure, he has the final word.

The question is, that amendment 46 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)
Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

**ABSTENTIONS**

Lyon, George (Argyll and Bute) (LD)

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

*Amendment 46 agreed to.*

### After section 44

**The Convener:** Amendment 35 is in a group on its own.

**Paul Martin:** Amendment 35 relates to wilful damage to property by children. Again, I refer to the experience in my Glasgow constituency. Vandalism costs Glasgow more than £10 million a year. One excuse out of the database of excuses that I have collected in trying to take action against the parents of certain children is that current legislation does not allow authorities to seek compensation from those parents for the wilful damage that their children have carried out.

Amendment 35 states that children's hearings "may require" the parents to consider paying compensation to the owner of a damaged property, which gives the children's panels or the court the option to take action against the parents. The issue for me is parental accountability. We need to establish a deterrent to ensure that parents consider their children's welfare and that they are aware of their children's actions in the community.

From my experience, making parents aware of the possibility that a local authority might seek compensation from them dramatically reduces the level of vandalism to property. Crystallising the legislation in that respect would ensure that local authorities have the full force of the law behind them. It would be a powerful argument for the Criminal Justice (Scotland) Bill and the work of the Parliament if the legislation dealt with the database of excuses used by the police, housing authorities and others to claim that the law is not on their side, but on the side of the children who carry out vandalism.

I have regularly raised this issue, and I would welcome the Executive's comments on it this morning.

I move amendment 35.

**Mr Hamilton:** I have a huge amount of sympathy for amendment 35, not least because it is as near as dammit SNP policy. I know that it is very odd for me to support SNP policy, but there you go.

The basic point that the system should be rebalanced to ensure that parents are accountable for their children's actions is very sound. Society has reached a point where such a measure must be seriously considered. I should make it clear that the problem is not confined to the central belt or urban Scotland and, unless the minister can put forward a very convincing argument, I am hugely minded to support amendment 35. That said, I note Paul Martin's point about discretion, which is a vital safeguard in his amendment.

**Scott Barrie:** I am not necessarily opposed to amendment 35, because Paul Martin is trying to engage parents who might have become disengaged from any responsibility for their children. However, I have difficulty with his definition of a parent. It is very rare for a parent to have their parental responsibilities removed from them. For example, if a child has not resided with a parent for some time, the parent might have very little to do with them. Indeed, the child might well have been looked after by the local authority. That does not mean to say that the parent has lost their parental responsibilities. The provision in amendment 35 might act as a disincentive for such parents to re-engage with their children if there is a chance that they might get caught up in paying monetary penalties for a youngster who is so troubled that they are committing many offences.

11:30

Although I am not opposed to the intention behind amendment 35, the practicalities of the situation might prevent us from achieving the results that Paul Martin and others want. It is an area that the committee must examine to find a solution. If it is serious about dissuading young people from committing vandalism, petty offences or offences against property, the committee must consider not only financial restitution but other forms of restitution.

One of the greatest problems of the children's hearings system is that sometimes that system does not use the more imaginative disposals available, whereby young people must face up to the consequences of their actions. That is the key to dissuading young people away from anti-social behaviour. Often young people do not realise the effect that the unintended consequences of their actions have on people. If the committee can broaden punishments by including other forms of restitution such as the participation in reparation schemes, that would go some way to making punishments more beneficial to young people and making the hearings system more valid to wider society.

**Bill Aitken:** There is considerable merit in amendment 35. The difficulties that Scott Barrie identified about whether parents who found themselves temporarily separated from their children would seek to re-engage if there were a potential financial penalty are covered by the caveat in Paul Martin's amendment, which states that the children's hearings system

"may require the parents of the child to pay compensation to the owner of the property".

I was surprised by the figure that Paul Martin quoted for vandalism costs in Glasgow, which at £10 million is quite low. My recollection is that the housing revenue account and the education account took a severe pounding from the results of vandalism and, therefore, I assumed that the figure would be much higher. That underlines the extent of the difficulty in Glasgow and how amendment 35 might help.

Paul Martin may address this issue when he winds up but, so far, he has not said how the money would be collected. Would it be collected by civil diligence, or does he envisage provisions being contained in subsequent legislation? A situation could arise, whereby if a parent did not pay the money or refused to pay the money, recourse would have to be sought through quasi-criminal sanctions, which may not be compliant with the European convention on human rights, or through the Debt Arrangement and Attachment (Scotland) Bill.

That issue must be thought through. However, there is a covering clause in amendment 35. Subsection (3) states:

"In determining the amount of compensation to be paid, the court or the children's hearing shall take into account the financial circumstances of the child's parents."

If a youngster burned down a school, causing £1 million of damage, it would be impractical to seek recovery of the money from their parents. Subsection (3) provides that, in such a case, there would be no reason to exclude a partial recovery based on the parents' financial means.

Amendment 35 is valuable. It seeks to restore a balance, which has been sadly lacking for too long, between the rights of the victim and the rights of the perpetrator. If Paul Martin deals with the question of how the money will be collected, I am perfectly relaxed with the terms of amendment 35.

**Stewart Stevenson:** I will support this amendment if Paul Martin wishes to persist with it. If, after reviewing the discussion, he does not wish to do so, I hope that the Executive will consider a response at stage 3.

Lest it be thought that the problem is an urban or city one, there are certainly children in rural areas to whom this amendment would be equally applicable. In a recent case in Elgin, a particular bunch of kids was involved with criminality and vandalism. I do not want to say too much about that because there is another court case pending. Indeed, the problem is not uniquely Scottish. A newspaper reported today that, for the first time in England, an anti-social behaviour order with a lifelong restriction has been imposed on three children.

As Scott Barrie quite properly drew to our attention, early involvement of parents in an meaningful and focused way, where parents are exercising parental responsibility, has a significant and useful contribution to make in bringing children back on the straight and narrow and back to society as a whole.

**George Lyon:** I have a great deal of sympathy with the intentions behind Paul Martin's amendment 35. However, several issues arise as to how it might work in practice.

One of my key concerns arises from experience in my constituency where youths have caused severe amounts of damage in certain areas. Time after time, the issue is loss of parental control. Despite their best attempts, the parents cannot control the child. The question then arises whether it is fair to make parents financially responsible for the actions of their children. I do not think that it is fair if loss of parental control is the issue that is affecting the family structure. In every case that I have dealt with, the key issue has been that parents or grandparents, where they have taken over parental duties, cannot control the actions of the children. I ask Paul Martin how expecting parents to make financial recompense for damage caused by their children, despite their best efforts to prevent such behaviour, would work in practice.

I am also interested to hear from the minister what provision could be introduced at stage 3 to address the intentions behind amendment 35 and whether the Executive has any proposals to consider whether the amendment can be brought forward in a practical and workable form.

**The Convener:** The discussion is very valuable. I can see what Paul Martin wants to achieve. He wants the law to focus on children taking responsibility for their actions and also to force early involvement of parents, not just when their child is involved in malicious vandalism or something else. I am interested to hear the minister's opinion about whether we should start to shift the law in that direction. That would be a departure from the position in the past. We would be saying that a person who is not directly responsible for the crime would have to be involved in some way, albeit by paying compensation.

Amendment 35 is also driving at parents beginning to take responsibility. George Lyon made an important point: in many cases, it is impossible for parents to control their children. If parents have done their level best but still have no control over the young person in question, is it fair to force them into paying compensation? The general issues that the amendment raises are worth prodding further.

I invite the minister to reply.

**Mr Wallace:** I am grateful for the opportunity to respond to an interesting and useful debate and I am particularly grateful to Paul Martin for raising the issue. There is widespread agreement that parents have responsibilities to their children and to the wider community. One of those responsibilities is responsibility for their child's behaviour.

I remind the committee that the action plan on youth crime was launched in June. "Youth Justice in Scotland: A progress report for all those working for young people" recommended, in order to

"promote the effectiveness of the system",

that

"While many aspects of the youth justice system are working well, there are some key pressures which must be addressed".

Action point 9 recommended the promotion of parental responsibility "through voluntary measures" and, "in the longer term", consideration of

"the feasibility of introducing further statutory obligations on parents"

of persistent young offenders. That shows that the Executive has recognised that there is an issue, although I cannot honestly say that we will be in a position to work up a proposition by stage 3.

We have certainly been conscious of the fact that we have lodged a large number of amendments. What I am about to say indicates that it is important that we pursue the issue, but the issue is not as straightforward as some members of the committee have suggested. Complex interactions between justice systems need to be considered if compulsory measures are to be imposed on parents.

Amendment 35 straddles two systems. In the criminal justice system, courts are intended to pass sentences on offenders that are appropriate

to the act that has been committed and those sentences should serve as a deterrent to the offender and others who may be considering committing similar offences. The children's hearings system identifies the needs of children who are referred to it and seeks to address those needs in order to reduce and preferably remove the risks that are associated with the child or young person.

Amendment 35 proposes placing an obligation—in other words, a financial penalty—on a third party. This is not the first time that the issue has arisen. Back in the 1960s, the Kilbrandon commission, which led to the establishment of the children's hearings system, considered the idea. It took evidence from witnesses on proposals for fining parents, making them the subject of compulsory measures and paying compensation—or restitution, as it was called—for the actions of their children.

For a variety of reasons, Kilbrandon rejected those suggestions and proposed the children's hearings system instead. The commission considered its proposals to be the best means of addressing children's offending behaviour, taking into account family circumstances. I accept that society and the law have developed since the 1960s and we need to consider whether current circumstances allow for a different approach and whether a change would have the outcome that is communally desired. However, it is important to understand that trying to merge the two systems, or to make a proposal that straddles the two systems, leads to some awkward results. I do not think that those results would be resolved by the amendment or that the desired results could be achieved without proper and careful consideration.

Bill Aitken properly raised the question of the ECHR. The children's hearings system, in which any proceedings or orders under the proposal would be made, is not a criminal court. Parents do not have the right to lead evidence or cross-examine witnesses. Therefore, the proposal would fundamentally fall foul of article 6 of the ECHR. Compulsion, in the manner proposed, is not straightforward and I do not think that it can simply be incorporated into the children's hearings system, as suggested.

11:45

A further point is worthy of consideration. Recent research into the children's hearings system concluded that, in cases of referral on offence grounds,

"the vast majority of children referred for offending were living in poor economic and social circumstances."

Any scheme requiring compensation would have to assess carefully whether a desired impact would be achieved, especially if the financial ability to pay were to be taken into account. I think that everyone recognises that that ought to be taken into account. However, we might find that that is not the best way of doing it, because the vast majority of children referred on offence grounds come from poor economic backgrounds and live in poor social circumstances. A requirement to pay might compound problems rather than resolve them.

In addition to voluntary action on parents, we are anxious to ensure that the young person concerned faces up to the consequences of his or her actions. The children's hearings system is meant to involve parents in a positive way. We might find that if they were in danger of being financially penalised, co-operation by parents might not be so readily forthcoming as we hope it would be.

As far as the children are concerned, reparation may form part of the decision of the children's hearing if it is considered appropriate for the child's welfare. Addressing offending behaviour is clearly in the welfare interest of the child as well as the community, and the hearings can make it a condition of a supervision requirement at present that some reparation is made. Scott Barrie, quite properly, drew attention to the fact that more imagination was perhaps needed in some of the orders that are made in the children's hearings system.

Members may have seen the 18 October newspaper report—I think that it is from the *Daily Record*, but *The Sun* will no doubt tell me if I am wrong—with the headline: "This will wipe the smile off your face". It says:

"Three yobs who went on a vandalism spree were forced to clean up their act yesterday—as part of a new scheme.

The embarrassed boys aged 12, 14 and 15, were marched in front of a crowd of their friends and amused park users and ordered to repair the damage."

That order was made by the children's panel that dealt with them. That is perhaps the sort of imaginative reparation that can do a lot of positive good by restoring much of the damage done.

Through the youth justice teams, the Scottish Executive is resourcing local authorities to develop such programmes, either by themselves or through voluntary agencies. It is important that children's hearings are presented with options to help panel members arrive at a decision on what is in the best interests of the child. I believe that, combined with the development of voluntary arrangements with parents, that is the best way forward. We must also take a longer-term look at what mandatory measures might be introduced, taking into account the different systems that are involved.

Amendment 35 has been helpful in highlighting what is obviously an issue of concern to members of the committee, but I think that it is premature and could be counterproductive, quite apart from some of the practical problems that I have outlined. The Executive's youth crime action plan commits us to enhancing parental responsibility through voluntary measures and, in the longer term, to testing the feasibility of introducing mandatory obligations. I hope that Paul Martin will therefore be prepared to withdraw his amendment.

**The Convener:** I would like you to clarify something about the action plan that you have described. What sense of immediacy does the Executive see for developing those plans? I realise that you cannot give me a specific timetable, but I would appreciate some clarification.

**Mr Wallace:** I cannot give you a specific timetable, but it is fair to say that the aspects of the action plan that we have been discussing do not have the same degree of immediacy as the youth courts feasibility project. There are things that we can do more immediately and there is always a need to prioritise. The two areas that we have specifically highlighted are the youth courts feasibility project and the pilot for fast-tracking persistent offenders in the children's hearings system. We are out ahead on those two priorities, and I hope that we will soon have results from those pilot studies. Other aspects of the youth crime action plans are not immediate. We take those parts of the action plans seriously, but we recognise the difficulties that are involved. Proceeding with promoting voluntary measures is probably easier than introducing mandatory obligation, because of the difficulties of merging the two systems to which I referred.

**Mr Hamilton:** I have just a brief point for clarification. The minister said that one problem, particularly under the ECHR, was the role given to the children's hearings system. Is it not right that if the amendment were passed, it would be open at stage 3 to keep the amendment with the exception of a power for the children's panel to refer the matter to the appropriate court, which could then resolve it? That would get round the problem.

**Mr Wallace:** That would make some fundamental changes to the children's hearings system and juvenile justice. As I mentioned in debating the previous set of amendments, there is a need to examine the general issue of children's hearings system. Those of us who support the Kilbrandon proposals want to ensure that the system works, although several issues have arisen. However, we do not want to rush into transforming the system on the basis of an amendment, without the consultation work that it would legitimately require, especially given the pride we as a Parliament take in proper consultation.

**The Convener:** If I heard Bill Aitken correctly, his ECHR point was that any person has the right to a fair trial and so on. If action—a compensation order, for example—were taken against someone, there would have to be some procedure for the parent to put their case for or against. Am I correct?

**Bill Aitken:** My concern is twofold. First, would it be competent under the ECHR for a penalty to be imposed on an individual as a result of the actions of another person? Secondly, there is the question of the independent tribunal and representation and the rights of audience within the children's hearings system. I would like clarification on both.

**Mr Wallace:** Both concerns are relevant. The second concern relates to article 6. On the first concern, imposing a criminal penalty on someone who is not responsible would be prima facie in breach of article 7. However, it is worth saying that, as far as civil law is concerned, if there is evidence of negligence on the part of the parent in particular circumstances, the parent could be liable in the civil courts under the law as it exists. That point was brought out in the Kilbrandon report. It was true then and remains the case today.

**Stewart Stevenson:** Is it not the case that such provision already exists in relation to road traffic acts? For example, the registered keeper of a car may be liable if the driver cannot be identified when it passes a speed camera over the limit, even if the driver was someone else. Is it not also the case that the driver of a car may be responsible for roadworthiness defects in the car that are the keeper's responsibilities? I am struggling. I am not bringing special knowledge, but simply saying that there seem to be at least some other instances in the justice system where the actions of one may fall to be the responsibility of another.

**Mr Wallace:** I put in the caveat that I am dredging up from the recesses of my mind various points about road traffic law—this is not a definitive statement of the law. From memory, I do not think that someone can be done for speeding when their car is speeding but they are not driving. There are provisions that require that person to say who was driving, but if they did not know or the car was stolen, I do not think that there is any way in which they would be criminally liable. Some regulations on bald tyres use the phrase "causing or permitting". The owner may not be driving at the time, but has to fulfil certain responsibilities for the car before giving it to someone else to drive.

There is a criminal liability nexus. In all those cases, those matters would be tested in the

criminal courts. Amendment 35 proposes using a body that is by nature, and fundamentally, not a criminal court and does not have the criminal justice system's ability to test evidence or to allow defences to be led, for example. Therefore, we are not comparing like with like.

**The Convener:** We have moved significantly away from the amendment, but it was useful to prod those issues and to discuss whether Scots law has adopted that principle.

**Paul Martin:** I am concerned that the minister says that the proposals will not be introduced immediately to deal with the issues that we have discussed. I appreciate that the youth crime action plan will deal with some matters, but we must consider seriously dealing with the issues that we have been discussing.

I take the minister up on the fact that those who live in poverty could have their situation compounded by the actions of the mindless minority. I would say that 99.9 per cent of the young people in my constituency are excellent young people and are happy to live in harmony in their local communities. The mindless small minority ensures, by its acts of vandalism, that the other young people end up living in poverty and in poor conditions. We are not helping tackle poverty by allowing the mindless minority to continue its actions.

I will use the analogy that Stewart Stevenson drew. Before a fine was available for not wearing a seat belt, we did not give as much consideration to wearing seat belts, but once the deterrent of a fine for not wearing a seat belt was in place, we decided that it was time to wear one. I would not expect amendment 35 to be used regularly against parents. George Lyon talked about parents who have lost control of their children. We want to help such parents. I want parents who do not care about their children to be targeted. I receive reports from police officers about kids as young as seven or eight who stay out until 2 am or 3 am, whom the police return to their homes. It is clear that their parents do not consider their children's welfare. We must consider the action that we should take to put in place a deterrent to parents behaving in that way.

Scott Barrie talked about the use of the word "parent". Perhaps the amendment should have referred to a guardian or parent. However, we must focus on parental or guardian accountability. Scott Barrie raised that issue to ensure that we push the agenda forward.

I say to Bill Aitken that the figure of £10 million came from Glasgow City Council's community safety partnership. Of that, £1 million was spent on brand-new replacement bus shelters in Glasgow. We are looking to reinvent the city, but nice new bus shelters are demolished almost immediately after their construction. FirstBus was also targeted through that £1 million.

I am concerned about what we did not hear from the minister: about the immediacy with which a deterrent will be put in place. I appreciate the web of complexity involved in the ECHR, but what about having a European Court of Human Rights for the victim? Victims are affected by the wilful damage of property in their communities. I always use examples from Glasgow, but I know that the issue is relevant throughout Scotland. Explicit examples exist of people who have been targeted by wilful damage to property. No deterrent is in place.

I believe that the minister referred to the database of excuses to which I referred earlier. The minister's excuse for not making a proposal in the immediate future was the complexities that are involved. I do not have a response that I can take back to my constituents to show that the Parliament will tackle the issue with some urgency. That also relates to the investments that are being made in Glasgow for new housing and for improving environments. I therefore move amendment 35.

**The Convener:** You have moved it already. Are you pressing the amendment?

**Paul Martin:** I am pressing the amendment reluctantly. I have no other option.

**The Convener:** The question is, that amendment 35 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

**AGAINST**

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

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

*Amendment 35 disagreed to.*

12:00

**The Convener:** Amendment 36 is grouped with amendment 96.

**Paul Martin:** The purpose of amendment 36 is to deal with several points that children's panel members have raised with me about the role of parents in children's panels. I have reflected on those points and I strongly believe that we should

involve parents in the children's panel system on a statutory basis, but only in a way that ensures that we assist parents to care for their children. At present, no statutory powers are available to the children's panel system to refer parents to an alcohol addiction course or a drug counselling session.

The feedback that I received from children's panel members is that a great deal of the difficulties that children face is down to the guidance and direction conveyed by their parents. It is a basic principle that young people model their behaviour on that of their guardians or parents. The option in amendment 36 should be available to the children's panel system.

I have received feedback from some people that parents should become involved in the children's panel voluntarily. However, we must accept that there is a core of parents in society who would not be willing to engage voluntarily. The children's panel system should have that statutory power for extreme cases.

Amendment 36 is a reasonable proposal that seeks to target ways of assisting parents who have extreme problems. It would also ensure that we assist children by referring their parents to those programmes, given that children's behaviour is modelled on that of their parents. We should bring together and consider ways of helping both the child and the parents in the same way, and my proposal does that.

I move amendment 36.

**Bill Aitken:** There has been quite a lot of interesting debate today about the children's hearing system generally. The minister was correct to point out that the existing system came about as a result of a report by Lord Kilbrandon, the recommendations of which were incorporated in the Social Work (Scotland) Act 1968. It therefore follows that the research carried out in the formulation of the Kilbrandon report probably dates from the mid-1960s. The question that the committee must address today is whether that research is irrelevant, bearing in mind that it is now the best part of 40 years old.

The existing youth justice system in Scotland is not working. Paul Martin in particular has given us a number of examples that demonstrate that we must radically rethink our attitude towards youth offending. Unlike Paul, I am not satisfied that the necessary degree of urgency is being shown. No doubt the youth crime action plan will be terribly interesting, but that does not help people who have to cope with the increasing problem of youth crime and disorder and upon whose lives it impacts.

It is with some hesitation that I accuse people of being out of touch. However, people who have sought to legislate in recent years have been out of touch with what is happening in the wider world. Sometimes politicians operate in a rarefied atmosphere, and I am probably guilty of that. People such as Paul Martin—who walks the walk as well as talks the talk—recognise the difficulties and how they have an adverse effect on the quality of life of many citizens, particularly in urban areas. Before Stewart Stevenson intervenes, I should say that I accept that those problems are not exclusive to our cities.

Amendment 96 seeks to strengthen the children's hearing system. I anticipate that the minister will say that it would be appropriate, apposite and in accordance with existing legislation for a hearing to require an offender to carry out reparation as part of a supervision order. Nevertheless, that is seldom done. The minister highlighted the recent press report that said that a number of youths were required to carry out reparations. I believe that that report related to an incident in the Maryhill area of Glasgow and that it is not clear how long the youths took to carry out the reparations. I understand that they took minutes rather than hours. Perhaps that should concern us.

If our present youth justice system is to retain any semblance of credibility, it is vital that it should be seen to work more effectively. Earlier in the debate, we dealt with the dearth of statistical information about recidivism and success rates in the children's hearing system. The deputy minister indicated that action would be taken at some stage to correct the obvious flaws. Amendment 96 seeks to take action now, rather than wait for a youth crime action plan that might be introduced before the next election. The amendment highlights the concerns that many people have about the operation of the system.

If the system is to work, we must take an approach that makes youngsters appreciate the consequences of their actions—not only for wider society, but for themselves. I am not suggesting reactionary or draconian measures, but the measures should be vaguely unpleasant, such as after-school or weekend detention in a school hall where the pupils would have only their books—no Gameboys, no Pokémon and none of the trappings of modern so-called civilisation. They would have simply to stay there and concentrate, and parents would have to take them to the hall and collect them. Parents could be compelled to ground recalcitrant youngsters. Most important, there would be an opportunity to bring home to youngsters the fact that if they are responsible for vandalism, they might well have to contribute significantly to the cost of repairing that damage. I do not think that that approach is too draconian.

Restriction of liberty would happen only in the most extreme cases. The minister will agree that

only as a positive last resort would a child be taken into custody and housed in secure accommodation. Clearly, we want to minimise such action because it would be undesirable for all concerned. However, at the same time wider society must be protected. Other measures, which do not follow the custodial route, will have a considerable impact on the growing problem of youth crime. We must reinstate the balance between the offender and the victim. Too many decent people who are trying to lead respectable and ordered lives are not being supported.

The temptations to which youngsters are subjected nowadays are greater than they were in 1968. Protections must be in place to ensure that those temptations do not reach young people, but we must recognise that today's young person is much more mature. In many cases, 15-year-olds are not children by any stretch of the imagination, and they must be made aware that they are responsible for their actions. That is why I have lodged amendment 96, which I hope is constructive.

**The Convener:** The clerks have advised me that Pokémon is very last year.

**Mr Hamilton:** I do not know where to start. I have some sympathy with amendment 36, but given that it puts children's hearings on a new level, beyond even that proposed in amendment 35, I am not inclined to support it. I accept that there is a strong argument that the proposal in amendment 36 would be in the interests of children if it were to be implemented. However, I would like the minister to advise us about the provisions that are available for such referrals, which takes me back to a point that I made in relation to amendment 35. If it is not appropriate for the children's hearing system to make such referrals, could a recommendation or referral be made to an appropriate court or body with greater expertise, through a fully joined-up system? I understand that that may be a slight change to the principles behind the children's hearing system, but if a problem is identified in one part of the system, it should be passed to another. Is there a system for referral? If not, should the committee consider one?

When I read amendment 96, I wondered immediately what the kids would do during supervised attendance. Bill Aitken gave us his usual bah-humbug approach to life and stated that they would do things of great worth. I have always thought of him as a Pickwickian character, but the committee is not implementing the combined works of Dickens—or of Thomas Hardy, if members appreciate his work more. A great deal more thought must be given to what he proposes.

In paragraph (3)(b) of amendment 96, there seems to be a hefty imposition on local authorities. What funding mechanisms and costings are envisaged? What would happen if the orders were ignored? How would the proposal join up with the rest of the system? What would happen if people were to renege on the arrangements? Who would decide what children will do during supervised attendance? Would their work be based on an assessment of their educational needs? Would it be purely educational or would it give young people more appreciation of their place in society? Who would provide the necessary facilities? There is a range of unanswered questions.

I understand Bill Aitken's sentiments and, to an extent, the slightly liberal part of me agrees with him, but there are too many unanswered questions to persuade me to support amendment 96.

I would like to hear more about amendment 36 from the minister before I decide whether a more appropriate forum exists.

**The Convener:** I cannot think of a reason not to support amendment 36 and therefore I am keen to hear the minister's comments. Amendment 36 is entirely in tune with our previous debate on when parents become responsible for the actions of their children.

Bill Aitken is right to lodge an amendment that allows us to examine the disposals that are available to children's hearings. I hope that, in his response, the minister will tell us that the powers will soon be reviewed because there is a connection between that issue and with what the Executive wants to do in relation to offenders who are aged 16 and 17. There is a strong feeling that the way to strengthen the children's hearings system is to make more disposals available to panels.

12:15

Like many members, I am more familiar with what is happening in Glasgow than in the rest of the country. However, I have seen papers from children's hearing panels on offenders as young as nine and 10 who appear before them for attempted murder or brandishing weapons and who are a danger. Those are not uncommon cases. Panel members have told me that they are fearful that they have neither the resources nor the disposals available to deal with those difficult cases.

I do not support amendment 96 as it stands, but there must be a commitment to a wholesale review of the powers that should be available to children's hearings to respond to modern-day situations, which may be different from the situations that existed in 1968. I have spoken to lawyers about their experiences, and they agree that it would be no bad thing to strengthen the

powers that are available to panel members in their deliberations, as well as their imagination

**George Lyon:** I may have misheard Bill Aitken. Did he say that he expected the minister to say that the proposal in amendment 96 is already on the statute book? Is that right or wrong?

**Bill Aitken:** It is wrong. To clarify, the minister quite rightly said that reparation could be ordered as part of a supervision order. The rest of my amendment is not competent at the moment.

**George Lyon:** I was going to question why on earth an amendment would propose a measure that already existed.

The important point about the dearth of baseline information on what works and what does not has already been made. We are all seriously concerned about youth crime, but it seems that we are making policy in a vacuum. We have no good, hard or clear information about the right direction to take to tackle youth crime. If anything comes out of this debate, it will be a message to the Executive: gathering information to allow us to judge on the correct way to make progress is fundamental.

I completely agree with Bill Aitken that we need to reinstate the balance between offenders and victims, but I am not clear that amendment 96 is the right way to make progress. All that seemed to be missing from his contribution was the suggestion that young offenders get a damn good hiding while in detention at school. He is obviously giving some thought to lodging a stage 3 amendment to that effect.

Duncan Hamilton raised some fundamental questions about the role of the school, the resources that would be used and, indeed, how the child would be expected to occupy their time in detention. We would appreciate an outline of what Bill Aitken has in mind, if it differs from what I have already suggested. I am also interested in the Executive's response to some of the issues that have been raised in the debate. Certainly, baseline information is fundamental.

**Scott Barrie:** I strongly oppose amendment 96. I welcome some of the intention behind amendment 36, which I will comment on first.

In a strange way, what amendment 36 seeks to do is already done unofficially in referrals of care and protection of young children at children's hearings. For example, if the parent of a toddler is severely misusing drugs or alcohol, and the panel is considering seriously the removal of the child from that person's care, the panel will take into account whether the parent is attending drug and alcohol counselling or a facility such as a parenting group. Therefore, such measures are in place for young children. The system does not, however, extend those measures to older children who may be living in circumstances in which parents are not fulfilling their parental duties or providing an adequate home environment for their children.

If I have understood Paul Martin, that is the sentiment behind his amendment. I have some sympathy with the desire to put some of the onus to take action on the parent as well as the child. Quite often, in unsatisfactory households, the only option that is available to a children's hearing is to put a supervision requirement on the child, regardless of whether the child is the main source of the difficulty. I am not sure that amendment 36 is the right way to go about doing that, but there is merit in the intentions behind it and perhaps those could be extended at stage 3. The fact that the system lacks the facility to put compulsion on parents is to the detriment of some children.

Duncan Hamilton's comments about amendment 96 were correct. After the most cursory of readings, the veneer of respectability that Bill Aitken tried to give his amendment begins to tarnish. The implications of amendment 96, especially the resource implications, are extensive.

The minister agreed with my earlier remark: we could be more imaginative and use supervision requirements to achieve some of what Bill Aitken was attempting to say, which is not necessarily contained in amendment 96. Some of the disrepute in which people seem to hold the children's hearings system is a reflection of social workers—I criticise my profession here—failing to recommend more imaginative disposals and children's hearings panel members not seeking more imaginative disposals.

The process is two way; it is not just a rubber-stamping exercise and it is not just about agreeing to social workers' recommendations. Children's panel members must make more demands about the other disposals that they could grant, because, within reason, any condition can be included in a supervision requirement. However, that rarely happens. Apart from the requirement to attend school regularly, which seems to be obligatory, few conditions are attached to supervision requirements.

We should start by making those improvements, rather than by saying that the system is not working.

**Mr Wallace:** This has been a useful exchange, during which several important issues have been raised.

I do not dissent from what Paul Martin and other members have said about the important role that parents ought to be playing in the upbringing of their children and the supervision of their

children's behaviour. Nor do I seek to minimise the impact that the behaviour, usually of a hard core of young offenders, can have on communities. The need to address that is widely acknowledged, and the 10-point action plan that the Executive announced in June deals with a series of issues to address such problems. I will come back to that in a moment. There was a feeling that nothing was being done with regard to dealing with parents. In the course of my remarks, I will mention a number of initiatives that are being pursued, or are about to be pursued, to address some of the issues that have been raised.

In amendment 36, Paul Martin focuses on how best we can secure the involvement of parents in the upbringing of their children and exercising control over their behaviour. The amendment raises various technical issues, which means that I cannot recommend it to the committee. However, unlike amendment 35, amendment 36 seeks to integrate the role of the parent with the action that is necessary to improve the child's welfare. That is consistent with the Kilbrandon approach and the welfare-based approach of the children's hearings system.

It is recognised that the involvement of parents ought to improve the chances of being able to tackle offending behaviour. The Executive certainly supports the increased role of parents in addressing their children's offending behaviour. Research shows that one of the crucial factors in trying to stop reoffending is the engagement and involvement of the parents. That is why we are looking for a series of voluntary measures through the children's hearings system to be fully explored as part of action point 9 of the youth justice plan, to which I referred. We will take account of what is being said in the committee about bringing forward that work.

It would be wrong to think that nothing is being done. There is recognition of the important role of parents and willingness to see how that role can be pursued through voluntary means. The voluntary nature of the approach means that it is more likely to have lasting effect. There are difficulties with Paul Martin's amendment 36, although we are sympathetic to its sentiment and the thinking behind it. I take the point that Scott Barrie made. The matter that the amendment raises ought perhaps to be considered in respect of older children, not only younger children. One difficulty is that the amendment involves compulsion to try to make someone address their problems with alcohol. There is widespread recognition that serious inroads can be made into addressing someone's alcohol problem only if they identify the problem themselves and are willing to address it. The compulsory nature of the provision in the amendment may not necessarily be in the best interests of the parent or the child; it could be counterproductive. What would the sanction be if the parent did not comply? Problems would arise from that.

The majority of parents have shown that they are willing to do what they can to support their children, but measures to enable such support to be given have sometimes been lacking. One or two committee members have questioned whether such measures are available. The perception—it has sometimes been the reality—is that there has been a lack of measures to give the additional advice and support that would enable parents to help their children.

Perhaps the committee will reflect on the range of measures that the Executive has taken to provide extra support for parents. Those measures feed through in a number of initiatives such as sure start; starting well; the children's services development fund; and the new community school initiative, which integrates services. We have funded projects to support vulnerable children and families, such as those who are vulnerable as a result of mothers with drug or alcohol problems. George Lyon's constituency is one of the places in which such support has been pursued through the health innovation fund.

The national crime prevention fund intends to make an investment in parents throughout Scotland. Applications have been invited and we hope to be in a position to announce successful applications in the middle of next month. Among some of the things that can be done is the provision of family support to help families to help their children to stop offending. The fund can also be used to provide support for parents in pursuing parenting skills and to get parents involved in programmes for young offenders. That recognises that the programme is more likely to have a lasting effect and to be more beneficial if there is parental involvement than when children alone are involved. Those are some of the things that we have been considering when responding to the applications to the national crime prevention fund. That is entirely consistent with trying to engage parents more and to identify a voluntary way forward.

The availability of services is key. Parenting orders in England and Wales have shown that, above all, parents welcome the opportunity to access services. That is leading to plans in England and Wales to make such services more widely available, including to parents who are not subject to parenting orders, on a voluntary basis. Although that is a matter for England and Wales, the voluntary approach that seems to be working there underpins our proposals along with the drive for greater integration of services to support children and families.

12:30

The children's hearings system can impose compulsory measures of supervision on the child although it cannot impose any compulsory measure on parents. The package of measures that ought to be presented to a hearing when it is deciding what a child needs should include an indication of how other services are supporting other members of the family. Parents can be encouraged to seek additional help and support from the local authority and other voluntary services. The children's hearings system might be a catalyst for work that could not be done previously because there was no interface or because parents had not sought to engage the services and help that were available to them.

When a child's case comes back for review, the progress or otherwise will be a factor in a hearing's decision on what should be done with the child. There is, therefore, some incentive for the parents to positively engage with the process.

We can take those steps within the current system. It is for those who are delivering the services locally to co-ordinate their action. The need to involve parents more is part of the work that we are doing. We wish to engage parents more, but the compulsion element that is implicit in amendment 36 is not the way forward.

Although amendment 96 is different, it too deals with the powers of the children's hearings system. The amendment seeks to give an apparent new power to the hearings system to make orders and to impose restrictions of liberty on young people under the age of 16 and not on their parents. In spite of Bill Aitken's eloquence, I am not persuaded that amendment 96 should be accepted. It is important to point out that the children's hearings system already has a wide range of powers. When I responded to the previous group of amendments, I indicated the powers that are available to the system in respect of being able to order reparation and the need for more imagination.

If the children's hearings system wanted to, and if it thought that doing so would be in the child's interests and welfare, it could require the child to spend a Saturday afternoon in a local drill hall without Pokémon or a pack of playing cards or anything else. That is a matter for the hearing. If a hearing considers that compulsory measures of supervision are needed, it would make a requirement for supervision. The hearing can attach any condition under section 75 of the Children (Scotland) Act 1995. Those conditions could include regulation of contact with a person or persons. The power is used to require the child to attend a particular programme. For example, in the programme in Maryhill to which I referred, the power is used to require a child to see a social worker and to report in at certain times. The power is also used to require children to clean up graffiti.

It is not just a question of making the power available, although it is important to do so; it is about ensuring that resources are available to deliver. It is important to remember that the Scottish Executive has doubled 2003 funding to local authorities and voluntary bodies to increase the programmes and services that are available to hearings. It is not just a question of bringing powers into existence. I recognise that the services must also be provided and the Executive is committed to helping local authorities in making that provision.

Action point 3 of the youth crime action plan, which deals specifically with restriction of liberty orders, says that we will review the scope for the use of restriction of liberty orders, anti-social behaviour orders and community service orders for persistent offenders. The initial assessment of the orders' possible future use for young offenders is under way. That assessment will consider the extent to which those disposals, along with others that are already available to the courts, might be made more suitable for use with persistent offenders. A paper detailing those possible options is being prepared.

It is important that we do not rush into such things, especially when many other aspects of the bill that is before Parliament have been the subject of considerable consultation. Tagging for the under-16s was considered when electronic tagging was first mooted. At the time, during the mid-1990s, there was cross-party consensus, which the then Conservative Government accepted, that such tagging would not be appropriate. That issue is being revisited to consider whether it is appropriate. Bill Aitken's amendment, as I read it, would apply not just to persistent offenders but to children of any age, perhaps to those who are referred to a hearing for care and protection reasons. I am sure that that is not what Bill Aitken intends, but that would be the effect of his amendment.

I expect the report to which I referred, and which is expected in the new year, to include consideration of whether and how restriction of liberty orders or some form of electronic monitoring might play a part in the children's hearings system. As our discussion on parents highlighted, there is a fundamental difficulty in trying to incorporate criminal procedures and sanctions into the welfare base of the children's hearings. However, I do not rule out that some mechanism might be devised to reinforce the restriction of liberty that a children's hearing can already require under the 1995 act. That is one aspect that the review is exploring.

I repeat that a hearing can already make a supervision requirement with a condition that a child's movement be restricted, provided that it is justified in being in the best interests of the child's welfare. I stress that whenever we talk about the welfare of the child, that includes measures such as addressing offending behaviour, attendance at community-based programmes and, if necessary, a requirement to stay at certain locations. Bill Aitken's amendment does not address those issues and, in its current form, is unacceptable and unworkable.

I hope that I have highlighted some of the practical concerns about the amendments. There is no need for the additional provisions in Bill Aitken's amendment, because the effect of those provisions can already be achieved. More important, I hope that I have indicated a clear commitment on behalf of Scottish ministers to address those issues not in name only, but with regard to the resources that we are putting in place and the funds that are available, in different ways, to help to support parents and actively engage them in addressing their children's behaviour. On that basis, I invite Paul Martin to withdraw amendment 36 and Bill Aitken not to press amendment 96.

**The Convener:** I seek clarification on one point in relation to amendment 36. You said that there would be an element of compulsion. Would not the amendment just give the children's hearing an option to make an order when doing so would serve the best interests of the child? I was not sure where the element of compulsion came into it.

**Mr Wallace:** There are two aspects to that. The children's hearing would not be required to make an order, but it could require the parents to do something. I did not say that it would be compulsory for the children's hearing to make an order. The amendment states that the hearing would require the parent to be referred to alcohol treatment, for example. That was the element of compulsion to which I referred.

I agree with Scott Barrie; many of the proposals are things that certainly could and, in many cases, should happen under the present system without a statutory requisition.

**Stewart Stevenson:** Amendment 36 says that the hearing

"may … require that the parent of that child be referred";

but can I take it, from the minister's interpretation of the amendment, that he is not implying that the parent be required to accept that referral and act on it?

**Mr Wallace:** If the amendment requires the parent to be referred, one would expect the referral to take place, or the whole thing would be entirely meaningless.

**Stewart Stevenson:** Do you accept that amendment 36 would require that the opportunity be given to the parent to undertake a programme of reduction and elimination, rather than require the parent to undertake the programme?

**Mr Wallace:** My advice is that if parents are required to do something, there is an element of compulsion. Amendment 36 is not just about offering an opportunity. At the moment, there is clearly an opportunity. I suspect that in many cases that is addressed and considered in the context of a hearing, where appropriate.

**The Convener:** That is helpful.

**Paul Martin:** The spirit behind my amendment was a wish to deal with compulsion. I agree with what Scott Barrie said. In the vast majority of cases, parents will look to be referred to a programme. They will actively seek a programme, and will complain if they cannot access one. I want to address the welfare of children and situations in which parents say clearly, "I am not interested in my child. I am not interested in modelling my behaviour to assist that child."

My main point is that children are being affected by the behaviour of their parents. Amendment 36 mentions drugs and alcohol, but the issue could be parenting skills and the parent may refuse to address the issue. I do not see how we can say flippantly on the one hand that we will require the child to be involved in reparations, when we say on the other hand that we do not want to apply that level of compulsion to the parent. The issue is one of partnership. We could propose reparation programmes that involve parents and children. At the moment, we cannot compulsorily refer parents and children together, but we can compulsorily refer the child. We appear to use compulsion on the part of the child, but not on the part of the parent.

We have to live in the real world. There is a core of parents who will show no interest. There are many examples in Glasgow and in other parts of Scotland in which people make it clear to children's panels that they are not interested. We have to ensure that the weight of the law is behind us and that legislation is in place. I heard references to the database of excuses, which we would like, but we have no legislative powers in respect of the parents.

I want to ensure that the legislation is behind children's panels. The minister asked how, if a parent is referred to a drugs and alcohol course and they are not interested in attending that course, we can ensure that they are rehabilitated. I sympathise with that point, but the same could be said of someone who is given a community

service order or who is put on a reparation course. In such cases, it is a requirement that we ask that person to correct their behaviour. People will not always involve themselves in the spirit of the particular order.

I wish to make clear our view of the role of the children's panel. Duncan Hamilton said that the measure would take children's panels to a new level. I agree with that. It is time that we considered children's panels as an effective means of dealing with many of the issues that we face. We should ensure that they have additional powers to deal with some of the problems that they face daily.

Children's panel members have told me that they see the behaviour of the child being modelled on the behaviour of the parent. They feel powerless—I am sure that Scott Barrie will have experienced this in his former profession—to deal with parents who clearly believe that society has a role in dealing with their children, and who do not view themselves as part of that process. For the small minority of cases, we should legislate and ensure that parents are aware that legislation is in place to refer them on a compulsory basis. We could tell that minority that the legislation is in our favour, rather than have such parents say, "I've been to my solicitor and I'm well aware that there's no action that you can take against me."

Reluctantly, I have to press amendment 36, because I believe that it is the way forward to deal with some of the issues that face the children's panel system.

**The Convener:** The question is, that amendment 36 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)

**AGAINST**

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)

**ABSTENTIONS**

Hamilton, Mr Duncan (Highlands and Islands) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)

**The Convener:** The result of the division is: For 2, Against 3, Abstentions 2.

*Amendment 36 disagreed to.*

**Paul Martin:** I won the moral argument then.

*Amendment 96 moved—[Bill Aitken.]*

**The Convener:** The question is, that amendment 96 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)

**AGAINST**

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

*Amendment 96 disagreed to.*

**The Convener:** That brings us to the end of the section that we said we would deal with today. I remind members that our next meeting will be on Tuesday at 2 o'clock in committee room 4, at which we will take evidence on wildlife crime and sectarianism. The next stage 2 meeting will be on Wednesday 4 December at 9.45 am. The announcement on targets for that meeting will be published in tomorrow's business bulletin, because we need to assess the parts of the bill with which we have dealt. If members check the business bulletin tomorrow, everything will be clear.

I thank the minister for his attendance this morning, which was at short notice. I thank the committee for this morning's work.

*Meeting closed at 12:46.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Monday 9 December 2002**

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

*Single copies: £5*
*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

*Single copies: £3.75*
*Special issue price: £5*
*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*
*Annual subscriptions: £150.00*

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

**The Stationery Office Bookshop**
**71 Lothian Road**
**Edinburgh EH3 9AZ**
**0131 228 4181 Fax 0131 622 7017**

**The Stationery Office Bookshops at:**
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

**The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:**

**Telephone orders and inquiries**
**0870 606 5566**

**Fax orders**
**0870 606 5588**

**The Scottish Parliament Shop**
**George IV Bridge**
**EH99 1SP**
**Telephone orders 0131 348 5412**

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

**Accredited Agents**
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178