

EDUCATION COMMITTEE

Wednesday 7 June 2006

Session 2

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EDUCATION COMMITTEE

15th Meeting 2006, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Lord James Douglas-Hamilton (Lothians) (Con)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

*Ms Rosemary Byrne (South of Scotland) (SSP)

*Fiona Hyslop (Lothians) (SNP)

*Mr Adam Ingram (South of Scotland) (SNP)

Mr Kenneth Macintosh (Eastwood) (Lab)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Mr Jamie McGrigor (Highlands and Islands) (Con)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

Mr Andrew Welsh (Angus) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Dr Salah Beltagui (Muslim Association of Britain)

Robert Brown (Deputy Minister for Education and Young People)

Rachel Edgar (Scottish Executive Education Department)

Father Daniel Fitzpatrick (Bishops Conference of Scotland)

Dr Gordon Macdonald (CARE for Scotland)

Morag Mylne (Church of Scotland)

Peter Peacock (Minister for Education and Young People)

Debbie Wilkie (Scottish Interfaith Council)

Peter Willman (Scottish Executive Education Department)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 6

Scottish Parliament

Education Committee

Wednesday 7 June 2006

[THE CONVENER *opened the meeting at 10:05*]

Items in Private

The Convener (Iain Smith): Good morning, colleagues, and welcome to the 15th meeting of the Education Committee in 2006.

Agenda item 1 is to consider whether we should deal with item 4 in private. Item 4 is our initial consideration of our stage 1 report on the Adoption and Children (Scotland) Bill. My primary reason for suggesting that we should deal with the item and subsequent consideration of the report in private is to allow our adviser, Professor Norrie, to be fully involved in the discussions on the draft report, which would be very helpful. Also, I believe that it is easier for committees to draft reports in private than in public session. The committee has shown that it has an ability to draft good reports, but I believe that it is easier to do that in private. Therefore, my proposal is that we take agenda item 4 and subsequent consideration of our stage 1 report in private.

I think that Fiona Hyslop wants to oppose that.

Fiona Hyslop (Lothians) (SNP): No, I will not oppose the proposal. I agree with the point about the need to ensure that our adviser can take a full part in the discussions, but I want to say that the committee has produced good reports both from considering them in private and from considering them in public. However, to ensure that the adviser can take part, I agree that the committee should deal with the report in private.

The Convener: No other member wishes to comment. Are we agreed that we take agenda item 4 and subsequent consideration of the committee's stage 1 report in private?

Members *indicated agreement.*

Petition

School Buses (Safety Measures) (PE892)

10:07

The Convener: Agenda item 2 is petition PE892, which was referred to the committee by the Public Petitions Committee on 3 May. The clerk's paper proposes that the committee invite the petitioner to give evidence as part of our annual scrutiny of the implementation of guidance on school transport. Are members content with that proposal?

Members *indicated agreement.*

The Convener: It will be useful for that meeting to have a note of which issues are reserved and which are devolved, given that the petition clearly includes reserved matters, such as the regulations under the Road Traffic Regulation Act 1984.

Fiona Hyslop: When Rhona Brankin was a committee member, before she became a minister, she was the committee's reporter on school transport and was supposed to examine the yellow bus system in Aberdeenshire. School transport includes a wide range of different aspects, so I hope that we can have a reasonable slot for our discussion. It would be helpful to have in advance some background on the committee's previous consideration of the issue, as we were keen to keep a close watching brief on the matter to check whether the guidance needs to be changed.

Mr Adam Ingram (South of Scotland) (SNP): It might be useful to get a picture of how standards vary across the country. As we all know, each local authority has responsibility for its area and regulations are implemented in different ways. It would be helpful to have an overview of what is happening. I do not know how we could get that.

The Convener: I have a vague feeling that reference was made to a Convention of Scottish Local Authorities working group on the issue when we considered the matter before.

Fiona Hyslop: I think that we asked whether there would be such a group.

The Convener: I recall reference being made to a ministerial/COSLA group. We can check that, but it might be easier to write to COSLA to ask whether it gathers any information on the issue.

Fiona Hyslop: Yes, we should do as much preparation as possible in advance of our meeting. That could be done over the summer so that we hit the ground running when we consider the issue.

The Convener: Okay.

Adoption and Children (Scotland) Bill: Stage 1

10:09

The Convener: Agenda item 3 is our final oral evidence session on the Adoption and Children (Scotland) Bill. I invite the various representatives on our first panel to come to the table.

The ministers are due to attend for the second panel at 11.30. If we complete this first discussion well in advance of that time, I propose that we take agenda item 5, which we will take in private, immediately afterwards, while we await the ministers' arrival.

Our first panel of witnesses is made up of representatives from faith groups. Salah Beltagui is from the Muslim Association of Britain—I probably did not pronounce your name correctly.

Dr Salah Beltagui (Muslim Association of Britain): It was okay.

The Convener: Father Daniel Fitzpatrick is from the Bishops Conference of Scotland; Dr Gordon Macdonald is from CARE for Scotland; Morag Mylne is from the Church of Scotland; and Debbie Wilkie is from the Scottish Interfaith Council. Unless the witnesses want to make brief opening remarks—you are welcome to do so—we will go straight to questions.

Lord James Douglas-Hamilton (Lothians) (Con): Father Fitzpatrick, in your submission to the committee you say:

"It seems odd that, wishing permanence and stability for children, the Bill intends to extend consideration to couples of the opposite sex who have not chosen to declare themselves legally to be a stable family unit."

Are you more comfortable with adoption rights for same-sex couples who have made a legal commitment to each other through a civil partnership agreement?

Father Daniel Fitzpatrick (Bishops Conference of Scotland): The Catholic church is clear in its opposition to civil partnership. Within the logic and context of the proposals, it might seem that a state that offers a greater guarantee of stability could be considered. However, the Catholic church, which has an attitude towards the importance of marriage and would not want—as the Executive did not want—to suggest that civil partnership is equivalent to marriage, would in no way want to draw that parallel.

Lord James Douglas-Hamilton: Your submission calls for further research to be undertaken to ascertain whether adoption by same-sex or unmarried couples is in the best

interests of the child. How should such research be carried out?

Father Fitzpatrick: Annex B to the adoption policy review group's report, "Adoption: Better Choices for our Children", contains an extensive review of research from around the world into same-sex parenting, which the group commissioned from researchers at the University of Newcastle.

The first paragraph of the conclusion of annex B says:

"there is no strong evidence which suggests that gays and lesbians should be excluded from consideration for adoption".

That conclusion assumes an equivalence between unmarried heterosexual couples and unmarried same-sex couples.

I draw the committee's attention to the conclusion's second paragraph, which says:

"However, the studies do seem to indicate some differences in the behaviour and attitudes of children raised in families headed by gays and lesbians".

It is important that the committee consider that.

The Newcastle researchers also noted that research is limited and that in the majority of studies at least one of the same-sex partners was the child's biological parent. According to the researchers, there is no evidence from reports anywhere in the world on the effect on a child who was born in a normal relationship between a heterosexual couple of being brought up in a gay household in which neither parent is the child's biological parent.

If the committee accepted the proposal to extend adoption rights to same-sex couples in Scotland, children adopted by such couples would be subjects for future study. We would embark on a social experiment that has not been carried out in most parts of the world. One or two European countries allow same-sex adoption, but there is little research on what happens when children from a normal heterosexual relationship are adopted into a single-sex household in which neither adoptive parent is the child's biological parent. Such research has not been carried out because adoptions by same-sex couples are not allowed in most countries. Indeed, Sweden, which allows such adoptions, had to opt out of the 1967 European convention on adoption because most other countries are uncomfortable with a country that allows same-sex adoptions.

Consideration of the research from other countries suggests that the proposed approach might affect interstate adoption. Many children from other countries would perhaps not be allowed by their state to come to Scotland as part of interstate adoptions if the committee went ahead

with the proposal to allow an equivalence between unmarried same-sex couples, unmarried heterosexual couples, married couples and single people for adoption purposes.

10:15

Lord James Douglas-Hamilton: I have two questions for Morag Mylne on much the same theme. The Church of Scotland's written submission states:

"research findings ... suggest significant problems faced by children brought up by gay couples."

Can you tell us to which specific research you refer? What form do those difficulties take?

Morag Mylne (Church of Scotland): I regret that I cannot be specific and I cannot give you the detailed information that you seek. Having had discussions with representatives of other churches, the Church of Scotland is aware of research that has been referred to elsewhere. It is not research that has been carried out by the Church of Scotland nor research in which the Church of Scotland has been involved. I regret that I am not in a position to amplify that particular reference. We simply note that we are conscious that such research exists.

Lord James Douglas-Hamilton: Is there a case for including in the bill provisions, which will be contained in regulations, under which unmarried couples who apply to adopt are subject to the same assessment process as married couples?

Morag Mylne: Yes. In answer to where I discern the question to be aimed at, the same procedures should be applied to a couple who are unmarried and a couple who are married. Of course, they should be subjected to the same degree of scrutiny—the same assessment—to establish that they have the required degree of stability, permanence and suitability for bringing up a child. If it is necessary to include such a reference in the bill, that would be appropriate.

Mr Ingram: I direct my questions to Gordon Macdonald and Father Daniel Fitzpatrick. You are both opposed to unmarried couples and same-sex couples jointly adopting under the provisions of the bill. However, currently, people in such relationships can adopt as individuals. Is not the logic of your position that you advocate the abolition of the current provisions? How can you justify that, given that the bill is not about promoting or undermining marriage, but is about providing for the best interests of children who come from disadvantaged and damaged backgrounds?

Dr Gordon Macdonald (CARE for Scotland): I hear the point that you are making, which has

been made by the Executive on a regular basis—that the bill is about tidying up the law, not changing the law fundamentally. There are a variety of scenarios in which single people might adopt. One scenario would be when a couple were killed in a car crash, and the unmarried brother or sister—the uncle or aunt—wished to apply to adopt. A different scenario would be when an unmarried couple whose only reason for not being married was the fact that they had chosen not to get married—the fact that they had chosen not to make that commitment—chose to adopt. In that context, as you say, it would be about single people adopting—a couple who wish, for whatever reason, to have children and go through the adoption process to do so. However, if people are not willing to make the decision to get married, what does that say about their commitment to each other and, therefore, the stability of the family? That is the fundamental issue.

Mr Ingram: Forgive me, but will not couples be assessed by adoption agencies and others to establish their suitability? Part of that assessment will be to establish the stability and commitment of the couple. Married couples might not pass that test, whereas unmarried couples might.

Dr Macdonald: Married couples might not pass the test; that is true. We will see what the statistics show in five years' time. As Father Daniel Fitzpatrick said, you are embarking on a social experiment. I predict that, in five years' time, the statistics will show that married couples provide more stability than unmarried couples who adopt. I do not think that that would come as a great surprise to anybody.

Mr Ingram: No, it would not.

Father Fitzpatrick: Marriage exists within the state as a legal context in which two people say that they want to be considered as an enduring family unit. It is a public means by which they declare themselves to be that. For two people to make a deliberate choice not to declare themselves to be a couple in law is to say how they see the relationship that they have with each other. At the moment, there are proposals to extend rights to cohabiting couples. If we extend the bill's provisions to those who do not wish to see themselves in an enduring relationship and choose to opt out of being seen within that framework, even if they are cohabiting, we open up an infinite extension of possibilities.

Regardless of the spiritual or theological attitudes that we might have towards marriage, within the strictly legal framework that exists within the state, two people have the choice—at a cost of about £47—to declare themselves to be, in the eyes of the state, an enduring family unit. That is why marriage exists, within a legal and state framework.

In the past, the purpose of enabling single people to adopt was probably, as Dr Macdonald said, to allow the family to stay together in the event of the demise of the parents, by allowing the children's adoption by an aunt or uncle. Historically, the right exists to allow the scenario in which the family unit, beyond the parents, cares for children belonging to that family. To extend that right, which was envisaged to allow for that specific situation, to enable anyone to adopt seems to me rather strange. Again, we do not have the evidence to back it up. We are not sure about it, and we cannot be sure until we do it. The question is whether the committee, in accepting the proposals, wants to be the group that goes ahead and begins that process.

Fiona Hyslop: The Church of Scotland points out that this is not about the right to adopt. What we have heard from the witnesses so far has been about marriage, whereas the bill is about the welfare of children. I know that love is at the heart of the Christian faith and other faiths, and I want us to get back to the principle of the welfare of children.

Our difficulty is that we have, in society, an increasing number of looked-after children whose educational attainment is adversely affected and who are, potentially, subject to homelessness later in life as well as greater criminality. They do not have a good existence; yet, all of us in society are responsible for their welfare. If we do not widen the pool of people who are available to adopt, what should we do with those children?

We have not received a written submission from the Muslim Association of Britain. How do you think that we should help those children? I am interested in what the Muslim Association of Britain, the Catholic church and the Church of Scotland have done, as part of wider society, to increase the number of adoptees. The figures show that all of us—the churches, local authorities and Government—have failed those children, as the number of children who are being adopted has fallen drastically.

Dr Beltagui: In considering the welfare of the children, we should try to work along two lines. First, we must reduce the number of children who are born outside families and in conditions that lead to their being adopted. That is not something for the bill, but part of the solution is to reduce the number of such children at source; however, we are now talking about a situation in which even more children may be in need of adoption.

Secondly, we must get people who are keen to practise their faith to be partners in the process. If faith people—Muslims and so on—say that they want the children to be brought up in their faith, we should try to make that possible. We should get

them involved in the process rather than just go to the social security and other agencies.

It is not just a matter of finances. It is also a matter of faith and spirituality. As Muslims, we believe that the only way to bring up children is in a family. Any other way is not acceptable in the Islamic faith. Perhaps, in some conditions, people have to do things in other ways. People are more keen to get involved in the process if they know that it happens in the right way and according to the right procedures. That applies especially to relatives of the children. I am sure that many grandmothers, grandfathers, uncles and so on would like to be involved in bringing up the children of their relatives. We should look further into that.

There is another point about adoption in Islam but, if you give me a chance, I will mention that later.

Fiona Hyslop: We will be interested to hear that.

Father Fitzpatrick: In our submission, we make it clear that we welcome much of what the bill has to offer in providing secure and stable environments for children who, regrettably, are not able to stay with their natural parents. We welcome many of the proposals in the bill. As you know, we have our own agencies, which have helped to provide accommodation over the years.

The circumstances and context of the adoption of children are changing. Permanence orders are to be welcomed because they will give stability to children who are perhaps older and do not want to sever all links with their birth families but want to have some contact with them. That is to be welcomed.

The bill boils down to an attempt to widen the pool of adopters. However, how many countries that are ahead of us in legislation have increased the pool of potential adopters by including people in same-sex unions? The figures from the Netherlands show that the number of people who want to declare themselves as being in a same-sex household is pretty limited. In the most recent survey in Scotland the figure was less than 1 per cent. The bill will not really increase the pool of available adopters.

The bill aims, rightly, to provide secure and safe environments for children—stability of family life and support. It is regrettable that what sets out to be something useful and good has taken along an ideological assumption that there is an equivalence in the different adoption situations. That is to be regretted in some way. The bill should be child centred and aimed at providing the best secure environment for children, but instead it will provide an experiment. That is perhaps a strong word, but it is a social experiment to see

what the long-term effects on children will be. Furthermore, as I said, the pool will not be greatly increased by the inclusion of same-sex couples.

We need to give more financial support and encouragement to grandparents and other family members and to adoption, caring and fostering services. We all know that there have been problems in the past. Foster parents who have wanted to adopt children have suffered a financial penalty in doing so. If we really want to make secure and safe environments, there will be a cost implication. We must take that on board and offer more support. Permanence orders look to be a useful measure for older children, but I hope that they will be funded properly. That is the key.

Fiona Hyslop: I have a question for the Church of Scotland. I was interested in your comment that, because the legislation creates no right to adopt, there might be no need for any exceptions or special rules for faith-based adoption agencies. Will you explain that a bit more? Our concern is that the adoption agencies of the various churches might want an opt-out. They have argued for that, but you are saying that they will not need it. Why is that?

10:30

Morag Mylne: I will turn to that in a moment, after answering the more general question that you asked at the outset. As we state in our submission, we accept that there is a need to widen the pool and encourage more people to adopt. To that extent, we welcome the proposals in the bill. I have to say that there are different points of view in the Church of Scotland on the issue that troubles some of my colleagues, but the submission was made on behalf of the church and it represents our view.

More specifically, you asked what the churches have done—and, for my part, what the Church of Scotland has done—to encourage people to adopt. The Church of Scotland does not have its own adoption agency, as the Roman Catholic Church does, but it encourages adoption. At a local level, it is a matter for individual ministers and congregations to encourage families in their area to adopt. At the national level, the Church of Scotland's social care council is the agency that is engaged in social work with elderly people, children and other people. That is where work on adoption is done.

You asked a specific question about the lack of a right to adopt and the necessity or otherwise of an opt-out clause. We make the point in our submission that we do not regard adoption as a matter of rights, with prospective adoptive couples seeking to stand on their rights and challenging an agency's refusal to take them on. We do not

understand the bill as giving rights that could be stood on in that way.

However, I will qualify the remark that is made in our submission. I can envisage circumstances in which it would be necessary to introduce an opt-out clause. That does not affect the Church of Scotland, as we have no agency that would seek or not be bothered about an opt-out clause. However, if other agencies felt that they would have to stop operating if they were not allowed an opt-out clause, the Church of Scotland would, I think, be comfortable with such a clause and would not have a strong view against it, as it is a matter of conscience.

Fiona Hyslop: Other witnesses have commented that an adoption agency with a faith-based background that was against same-sex relationships, let alone adoption by same-sex couples, would not be the best agency to consider the individual child's welfare, their rights and what is in their best interests. Do you agree with that?

Morag Mylne: I can only answer that question in general because, as I have said, it would not affect the Church of Scotland, as it does not have a specific adoption agency. It would be for the Catholic church, which has specifically Catholic adoption agencies, to deal with that question. I observe that those agencies currently do good work in placing children with families and that that work should be encouraged. I suggest that the fact that they have a particular limitation should not affect the understanding of the good work that they do currently, which should be promoted.

Fiona Hyslop: We were impressed by evidence on that at our previous meeting. However, if the law did not go the way that the Catholic church wanted it to go, there would be an issue about whether the Catholic adoption agencies were appropriate. That relates not to the institution of marriage but to the child's welfare.

Father Fitzpatrick: I would not distinguish between the two. The Catholic church's position is that marriage is in the child's best interests. To say that we would not be acting in the children's best interests by insisting that we would place children only with married couples would be to make a distinction that should not be made. I want to be clear on that point.

If there are different agencies that are clear about their approaches to placing and caring for children, it allows a degree of choice. The adoption policy review group's report allows for culture, racial origin and religious persuasion to play a greater role. Parents who are unable to care for their children might want to use an agency that they know will place them in a married environment. To forbid all agencies that work in

Scotland to specify that would limit the choices for people who are in that situation.

Fiona Hyslop: There are changes to the provisions on birth parents' consent. Our reading of the bill, which we need to confirm with the ministers, is that consent is conditional. That is, if a birth parent was asked for consent and said that they did not want their child to go to a same-sex couple, that condition would be listened to and accepted. The bill also provides for consent to adoption to be given by an older child. Do those provisions give you some reassurance?

Father Fitzpatrick: We referred to both those provisions in our submission—allowing birth parents to have some say in the placing of their child and allowing a child over 12 to have some say, too. Annex A to the APRG report contains interesting interviews with young people. When children were asked how they would feel about being placed with a same-sex couple, 15 said that it would be okay, 13 said that it would not and seven said that they did not know.

Fiona Hyslop: I see that Dr Beltagui is nodding.

Dr Beltagui: That takes me back to the point that I wanted to make about Islam. There is a misconception even among Muslims that adoption in Islam is not allowed, but that is not right. What is not allowed is for a child to take the name of someone other than his father. Adoption is allowed except in the legal sense that the child changes his name. People are very much encouraged to look after orphans or children who need to be looked after for other reasons, but the children must retain the name of their father or, if the father is not known, they should be given another name. There is good reason for that.

The consultation suggested that contact should be maintained with the birth father, which has implications for life in the future. When an adopted child grows up, he might marry his blood sister because their names were changed and they were adopted by different people. Someone might be prevented from marrying someone because they are brother and sister by adoption, when originally they would have had the right to marry. Under Islam, people are not allowed to marry a number of close relatives—not just the brother and sister, but a wider circle.

There are implications for inheritance. In Islam, there is a set system for inheritance that might include the father, grandfather, grandmother, uncle and so on. If someone from outside the family is brought into the system, that could lead to problems. There is an allowance for a will to give anyone outside the set family group something like a third of the estate. However, the principle is that a child's birth name is retained so that we know

who is who and who is related to whom, which helps later in life.

Some Muslims do not apply to adopt partly because they do not understand how adoption works under Islam, but the adoption system does not make it clear either. That affects permanence orders. Children can be looked after, but changing their name is not allowed; I do not know whether that could be reflected in the bill. As I said, we want to widen the pool of potential adoptive parents. We want to bring in people based on understanding their traditions and faith.

The Convener: That was an extremely helpful clarification.

Debbie Wilkie has not had an opportunity to say anything yet. Do you want to respond to any of the questions so far?

Debbie Wilkie (Scottish Interfaith Council): The Scottish Interfaith Council does not represent views; we try to facilitate and feed in views from different communities. In the fairly limited time available since we were invited to give evidence, we undertook consultation among various different faith communities. All the faith communities from which we received views said that they felt marriage was the ideal family situation in which to bring up children, but once we got beneath the surface there were differences among the different communities, depending on the choices available to the child.

For example, Hindu women felt that it might be okay for an unmarried heterosexual couple to adopt if the alternative was that the child had to remain in a residential care institution. The view was split. If the choice was stark between letting someone remain in a residential care institution or being placed in some kind of family environment, in some instances, people felt that the latter was acceptable. However, people of some faiths, such as Hindus, Sikhs and orthodox Jews, would on the basis of scripture totally oppose adoption by same-sex couples. Differences emerged when the stark choice was presented.

Dr Elaine Murray (Dumfries) (Lab): Some fairly emotive language has been used. Do the witnesses accept that the bill is about the welfare of children? It does not create a right to adopt and nobody has the right to demand to adopt a child if that is not in the child's best interests. Does the panel accept that?

Father Fitzpatrick: Yes. We make it clear in our submission that the bill does not give a right to adopt.

Dr Macdonald: The issue is what is in children's best interests. The answer varies according to whether we are considering an individual child or children as a collective body. I understand that the

Executive's argument is that not enough couples are coming forward, so the changes will increase the pool of adopters, and adoption is better than putting children in an institution.

What is the Executive doing outwith the bill to increase the pool of adopters? Anecdotal evidence has been given about the difficulties that people have in becoming adoptive parents, although it is clear that we need a rigorous process. What is the Executive doing in that regard?

Our position is that society should make every effort—I accept that the churches have some responsibility, too—to ask people about taking on responsibility for a child. We should place the question in the context of responsibility rather than rights. Society should take responsibility for the children and find ways to find homes for them.

Like the representative of the Catholic church, I have severe doubts about how many extra people will come forward as adopters as a result of the bill. I have asked the Executive for evidence from England, where the law was changed a few years ago, but my question has not been answered.

Dr Murray: You have talked about social experiments. Similar legislation has been enacted in England, but it came into force only at the end of last year, so only a short period is available for evaluation.

Dr Macdonald: That is right, so we argue that the Scottish Parliament should at least hold off for one or two years and see what happens in England. An experiment is taking place there, so we should wait and see what happens.

Dr Murray: What is happening is not an experiment; it is about the rights of children and what is in children's best interests. The legislation is not about giving anybody the right to adopt.

Dr Macdonald: Yes, but the question is what we understand to be in a child's best interests. Our argument is that the appropriate and best context in which to raise children is marriage. Ultimately, that is the way in which we are created as human beings. If we are to do something different as a society, we must think carefully about that before we do it.

Dr Murray: Significant numbers of children live in institutionalised care and we know that living in such environments damages children. Are you arguing that it is better for a child to live in institutionalised care under the control of a local authority than to be with a loving family?

Dr Macdonald: No, I am not arguing that—that is your interpretation of my argument. I argue that the Executive—and society as a whole, because the responsibility is not just the Executive's—needs to look seriously at how to encourage more married couples to adopt children.

Dr Beltagui: Some people have told me that they would prefer children to be in an institution rather than placed in a flat with a couple, when they do not know what happens once the door is closed. I have received some such responses. We are thinking mainly of the children and not of anything else. Some people still have not absorbed the idea of same-sex couples and they would not like their children to be in such a situation.

Dr Murray: I appreciate that that is the case, particularly for people in some faiths. As Fiona Hyslop said, last week, faith-based adoption agencies told us that they would like the opportunity to refuse to place children with unmarried people, as is allowed by the English legislation. Would you be happier if the bill allowed a faith-based organisation to refer an unmarried couple—heterosexual or homosexual—to another adoption agency? Such an organisation could tell people that it would be better for them not to work with that agency as it does not handle such adoptions and suggest that they go elsewhere.

10:45

Father Fitzpatrick: I will make two points in response to that. First, as members of society, we have a concern for all children. Therefore, our initial response is to ask what is in the best interests of the children. The research that is presented in annex B to the adoption policy review group's report is specific about the types of children who have so far been considered. The idea that it is in the best interests of children to move from an institution into a same-sex relationship is not contained in the research.

I will pick up on something that we have been saying regularly. Does it not say something about us—our society, our organisation and our social care departments—that we cannot provide children with a better degree of care in homes than we have done until now? Even if we go through with the bill—if you push it through—we might not increase the number of adoptions greatly. Children will still be in institutional and residential care. Perhaps we have to address that issue. Why are some children so disadvantaged?

The second point is about the matter of choice, should the bill be passed, taking into account the greater say that birth parents will have about the placing of their children. As has been mentioned, the bill could create some particular problems with interstate adoption. We would like there to be at least a possibility of an opt-out, through which it would be obvious to both sides where the adoption agency stands with respect to the people with whom it would seek to place children and with respect to the degree of choice of the birth parents, of social services and of those who come

forward seeking to adopt children regarding how they can proceed in the interests of the children concerned.

Dr Macdonald: In any area, there will be a range of providers. Any local authority will be faced with having a range of providers. If one of those providers is a Catholic faith-based agency that is not willing to place children with same-sex or unmarried couples, the local authority will presumably pursue placements with other agencies. There will not be an issue with authorities not being able to find agencies to work with. It would be healthy for our society, should the bill be passed, to have a range of options and for each local authority to understand that it should have such a range, so that we do not end up with faith-based agencies getting squeezed out.

Dr Murray: I understood that the faith-based agencies were concerned that they might be forced to do something that, from the point of view of their faith, they felt not to be morally correct.

Dr Macdonald: The likelihood is that faith-based agencies would not do that. They would either end up in court or they would cease to operate, in which case the problem would become worse, with fewer people coming forward for adoption.

Debbie Wilkie: I wish to highlight one point in relation to faith-based agencies, which I think Ephraim Borowski made in the submission from the Scottish Council of Jewish Communities. There is not a Jewish adoption agency in Scotland, and there is a desire to ensure that any legislation enables the sort of cross-border working between organisations to continue.

The response that we have had indicates that the orthodox Jewish community would wish Jewish children to be placed only with a married, heterosexual Jewish couple, and not with an unmarried or same-sex couple. That response raised the question whether adopted children, who already start at a disadvantage, would benefit from being in a situation that is different from that of the majority of children, for example being adopted by a same-sex couple. The council asked whether children might be harassed or stigmatised in some way as a result.

Dr Murray: The gay organisations that were represented at the committee last week countered that argument by saying that, because of their own experience of prejudice, gay couples might in fact be better equipped to assist children if they were bullied or suffered prejudice.

Mr Frank McAveety (Glasgow Shettleston) (Lab): Last week, we heard evidence from representatives of faith-based adoption agencies, including the St Margaret's Children and Family Care Society and the St Andrew's Children's Society. They said that they had dealt with

unmarried heterosexual couples who had presented themselves to them; presumably those people were from a Catholic background. The societies had worked with them until a certain stage and had arrived at an understanding with them about what would happen once the child was adopted. They could also refer people to other agencies. That has not jeopardised the good-quality work of agencies to date. As a result, I would be very concerned if, given the theological views, church positions and religious values that have been highlighted this morning, the system that we introduce at the end of this process were to jeopardise and undermine the incredibly good work of those agencies. The committee is trying to grapple with that very issue.

I will give you a perfect example of what I am talking about—which, I have to say, did not arise by design. Coming through from Glasgow this morning, I met a woman I have known for a number of years. She has been in a same-sex relationship for a long time—longer, perhaps, than some of my mates' heterosexual marriages—she knew from an early age that she was adopted; and she would also like to adopt. However, when she looks at local authority websites, she immediately gets the message that she has to have been married for five years before she can adopt. I have to say that I do not know whether that kind of message should be on a website in the first place, but the woman is in a stable relationship, understands what it is like to bring up children in difficult circumstances, cares passionately and possesses moral values that are as strong as those of anyone around this table. Why should she not be allowed to adopt?

Dr Beltagui: One simple reason is that those of us who believe in the traditional idea of marriage cannot teach our people such a way of life and then turn round and put a child into a different institution. If the parents accept that, that is fine; however, those who believe that children should be brought up by a father and mother who are married should be able to choose to put the child with such a family. We are not saying that there should be strict rules for everyone, but people who adhere to and observe religious rules and want their children to be brought up in that way should have that choice. After all, the issue is what is good for the child, which is best left to the parents. Of course, when the child becomes an adult, they can do what they like.

Mr McAveety: But if the adult happens to be gay or lesbian, they cannot adopt.

Dr Beltagui: If children are brought up in a gay or lesbian household, there is a greater possibility that they will follow that line. However, if they are brought up in a household with a mother and father, they could go either way. We give the child

what we know—and, after all, giving them what we know is better than giving them what we do not know. Because we have known for centuries that a family is headed by a father and mother, we put the child in such a situation, especially if that is what its parents want. If the parents do not mind, that is another matter.

Mr McAveety: I am sure that people have other perspectives on the matter.

I am the adoptive parent of two children. The assessment process that I went through was intense and rigorous. I was a schoolteacher at the time and saw for myself what 15 or 16-year olds who were expectant parents had to go through. However, although I was asked about my family circumstances, stability and commitment and was asked to provide testimonials from other people who knew me, I was never once asked about my sexuality. Given that professionals will be left to make those judgments and given the role that faith-based adoption agencies and your own organisations play, why, from some of the evidence that we have received, have you worked yourselves up into such a lather about the bill?

Dr Beltagui: You might not have asked that question before the civil partnership legislation came along.

Mr McAveety: I concede that point and, indeed, we could have an intellectual debate about it. However, we are grappling with the question of what is in children's interests. We understand the position of people in the Muslim and Christian faiths, but the question is how we address children's needs given that the legislative framework has changed since the issue of adoption was last dealt with.

Dr Beltagui: The legislative framework might have changed, but the beliefs of some people of faith have not.

Dr Macdonald: As far as the interests of children are concerned, that is a question of perspective. I have to say that I understand the Executive's position on the matter. However, our approach to the issue is based on first principles. For example, what is marriage about? Is it just a convenient social contract between two individuals or is it something more than that? My understanding is that it is an integral part of creation and an integral part of the revelation of God's character and purpose. Ultimately, it is in the best interests of children for them to be brought up in the framework that God has created for us to live in.

We understand that not all marriages are perfect, because none of us is perfect. However, as an institution, it is the framework that has been set down. That is where we are coming from. We, the committee and the Executive have a choice to

make. Do we believe that it is in the best interests of children for them to be brought up in that framework or not? That is the choice that we would lay before you.

Father Fitzpatrick: As I said, we have theological understandings of marriage, which are backed up by anthropology and psychology. We believe that the best circumstances in which someone can develop properly, psycho-socially and emotionally, are provided by the example of a loving father and mother. That involves the complementarity of the sexes. We are male and female. A woman and a woman or a man and a man cannot be parents, from a simple, anthropological point of view.

The second paragraph of the conclusions in annex B of the research report that was referred to earlier says that

"the studies do seem to indicate some differences in the behaviour and attitudes of children raised in families headed by gays and lesbians".

Mr McAveety: Does it say what those characteristics are?

Father Fitzpatrick: No, but that is not my issue. My issue—

Mr McAveety: So the differences could be that those children are positive, gentle, caring and thoughtful, could they not?

Father Fitzpatrick: The conclusions go on to say that further research is needed. They point out that most of the circumstances in which such adoptions have taken place concern situations in which a child is adopted by their parent's same-sex partner. That is a slightly different situation.

Coming from a medical background, I know that someone who wants to introduce a new drug, treatment or procedure has to prove that it is safe; you cannot—

The Convener: You have made that point several times and I do not think that we need to labour it. The question I would put to you is, how can you do the research if you never allow the thing to happen?

Father Fitzpatrick: My argument would be that, in the best interests of the children, we, perhaps, do not want to do that. We have 2,000 years of parenting and longer than that of human family development. We have an understanding of families within all cultures. Are we the nation that wants to begin that experiment?

The Convener: I am not trying to be difficult, but you are arguing that we should not allow this to happen because no research has been done. I am asking how we can conduct that research if the thing does not happen. It is a tautological argument.

Father Fitzpatrick: It is, but if we want to act in the best interests of children, we should stay where we are.

The Convener: I think that people's view of what is in the best interests of children might have been arrived at without research being done, but that is a different issue. I am concerned about the fact that you are repeating the same argument again and again. We have heard it and understood it.

Dr Beltagui: Earlier, there was a suggestion that we should wait a couple of years and see what happens in other places that allow it.

The Convener: That is a matter for the minister to consider. I am just saying that repeating the same argument does not help the committee.

Mr McAveety: Many of us come from various faith backgrounds, whether that is because we have been active in a faith or because we come from families that have been. We have heard, in at least two submissions this morning, that the issue is a matter of first principles for some people. That means that, unless some astonishing change takes place, the first principle will not change, whether we wait two years or not.

If the only choice was either to leave a child in care or, after full and rigorous assessment by social work professionals, to have that child adopted by a same-sex couple or an unmarried couple, what would be your view? Ultimately, that is the extreme test case, which I put to you because we have heard some absolutist views. I understand and respect those views, although I might not totally agree with them. Would you prefer children to remain in care or to be adopted by a same-sex couple or an unmarried couple?

Father Fitzpatrick: We might be being unfair with regard to the way in which we have been able to look after and care for children in residential complexes or foster parenting situations in the community. It is a good principle not to legislate for extremes or exceptions. The constant idea that our homes and institutions are not adequate places is something else that we need to look at.

11:00

Mr McAveety: None of us has a good history in that, Father, have we?

Father Fitzpatrick: Exactly. None of us has. We have all—I hasten to say “all”—let things go in the past that we know were not acceptable and which we regret and feel have been painful for many people. We should keep an eye on our residential accommodation and consider how we can improve the facilities that we offer.

Dr Macdonald: Frank McAveety referred to his friend. The comment was made earlier that the bill is not about a right of adoption. I accept that that is not the Executive's intention, but it is easy to stray into that mentality and that type of thinking.

On Frank McAveety's specific question, the important issue is to create a loving context. Our argument is that that is best created within marriage, and I said that we should try to do all that is possible to increase the number of people who are brought up in that situation before we have this debate. We do not believe that that has yet happened.

We may well be faced with the situation to which Frank McAveety refers, but I do not think that many extra people will come forward. The figures that the Executive gave me for single people adopting in Scotland were in single or double figures. Perhaps the Executive can clarify that.

Mr McAveety: So what are you worried about, if so few people will come forward and such adoption will not happen in a large number of cases?

Dr Macdonald: If the proposal is about the welfare of children—as you, on behalf of the Executive, say it is—how will it significantly improve the welfare of children if it applies to so few people? What is the problem with waiting for a couple of years? In the meantime, let us see whether we can do more to encourage couples to come forward to adopt children.

Morag Mylne: It is important to register that the Church of Scotland has a different view. As I have said, there is a diversity of views in the Church of Scotland. I represent the church and society council of the Church of Scotland. Having considered the matter with some care, the council came to the view that, in answer to the absolute question whether care should be provided in an institution or should come in the form of adoption by a same-sex couple—provided that all the assessments are in place and provided that the couple can satisfy all the requirements that the environment will be stable, loving and so on—it is preferable for the child to enjoy the benefits of that stable family relationship.

Frank McAveety gave a couple of examples. The person to whom he referred could no doubt satisfy the requirements—the same requirements that a married couple would have to satisfy—and if she and her partner could provide the required level of care, it would be appropriate for them to be able to adopt.

From the church's perspective, it is consistent to say that marriage is the environment in which the needs of children are best met and that, in general, marriage is the ideal circumstance for bringing up children, but at the same time to say

that there will be circumstances in which single parents—whose role in bringing up children in thousands of families throughout Scotland should not be undermined—do a fantastic job. It is consistent to say that, although marriage is the ideal, there are single parents who do a great job and that there will be circumstances in which unmarried couples and same-sex couples can provide the required level of support, care and stability for children. There is not a fundamental inconsistency in holding to the first principle but recognising the reality of circumstances as they exist.

Dr Macdonald: The ideal, which we would all recognise, is to try to sort out the problems that the natural parents might have so that they can bring up their own children well. However, we all know the difficulties in relation to that.

Ms Rosemary Byrne (South of Scotland) (SSP): That leads us nicely on to the next issue, which has been touched on: the role of the extended family and the need to extend the pool of people who can provide care. We are talking about a pool of adopters, but it is more than that. The bill does not really address the issues of the extended family, kinship care and the extra support that is required to make such situations work well.

Lots of families are providing such care at the moment, some of them without much help, support or recognition. The issue is not one of people seeking payment to look after their family members; it is about their wanting to take the children out of relative poverty. They want to provide the children with the things that other children have. Many grandparents are having to bring up the next generation and they are not being given the preparation to do so. If they are being asked to do that, they require support.

My questions are addressed to all panel members. Should the issue have been addressed in the bill? How would you like consideration of the issue to be extended? How does it link in with permanence orders, which I hope will take children out of looked-after and local authority care? I know that the issue is a huge one.

Dr Beltagui: As I mentioned earlier, one important aspect is to bring as many relatives as possible into the loop. That will solve a lot of the problems. Unfortunately, we are beginning to see an increase in the number of day centres that look after older people, even in young communities such as the Muslim community, which has been in the country for only a small number of years. That is happening because of the increasing number of older people in our communities. We have not yet got to the stage of having adoption agencies and so on. If such provision is included in the bill and is

pushed by the Executive, I am sure that it will be of assistance to grandparents.

Like the member, we too know of cases in which families are looking after the children of their relatives. For example, if one couple cannot have children and another couple has children, one of the children will stay with their uncle or other family member. We need to improve the situation, however. A lot of resources are being put into many areas; we should also give resources to families in that situation.

Father Fitzpatrick: The family is a primary unit involving not only mother and father but siblings, aunts, uncles and grandparents. My parish covers a very mixed area of Greenock. I know of numerous grandparents who are struggling not only because of their age and the generational differences but because they are looking after their grandchildren. That is normally because their children—the parents—are suffering from illness or addiction. The grandparents do not get the support and help that they need from the state. Everything that they get is given unofficially; their rights are not really recognised.

As I said, the family is a primary unit, and the state should do as much as it can to support and assist that unit. The state should intervene in the family situation only when it is absolutely and utterly necessary that the children be removed. Permanence orders might help in that regard. Funding never ceases to help; I am talking about not only funding care but funding the extra costs and burdens that are involved when aging couples care for their grandchildren. I know of one elderly couple in that situation whose grandson is getting to the troublesome teenage age. The grandfather finds it tiring to have to say, for example, "What time did you come in at, son?"

Perhaps it would have been good if the bill had concentrated not only on the care that is delivered through adoption but on the broader range of care options for children whose birth parents are no longer fully capable of looking after them, in the genuine sense of the term.

Dr Macdonald: Rosemary Byrne highlights an important point, which is that the debate can often become a bit polarised. The nuclear family can be seen as the only option, but the family is much bigger than that. Western society in particular places an emphasis on the nuclear family at the expense of the wider family, whereas many other societies have a broader concept of the family.

That wider concept does not need to detract from the primary responsibility that parents have for their children, but society as a whole needs to rediscover the place of the wider family. The first stop in an adoption case should be the question, "Who else is there in the family?" We need to

ensure that local authorities and the Executive enter into dialogue with families. They need to ask, "What can we as a society—as local or national Government—do better to help you?"

Morag Mylne: The Church of Scotland point of view is that the role of other family members and the value that they bring to relationships should, of course, be affirmed and upheld. How that is given practical support is important.

Our view is that grandparents, siblings and other members of the extended family who are involved in the care of a child should have the right to request support from a local authority and that local authorities should offer support, where it is appropriate to do so. Perhaps support should not be automatically provided, but it should be provided if requested.

From a church point of view, I do not want to comment on the question whether the support aspect should be included in the bill. However, I note the question.

Debbie Wilkie: People did not comment on the issue when we canvassed views prior to this meeting. However, having followed the earlier parts of the consultation, I am certainly aware of the issue. An example of the expense that can be incurred is the case that was raised of an elderly couple with a small car who might suddenly have to buy a people carrier if they got involved in taking care of children from within the extended family. I agree with Morag Mylne. The view seems to be that support should not be given automatically to people in such situations but that it should be considered.

Lord James Douglas-Hamilton: The panel has made important points about a possible opt-out provision. If any of you would like to send in suggested amendments on issues of concern to you, that would be helpful.

Dr Macdonald: I would like the committee to clarify something. My understanding is that the Executive considers the equality aspect a reserved, not devolved, matter, so it would be helpful to have independent legal opinion on that.

The Convener: In what respect?

Dr Macdonald: The Executive can argue for itself, but it is saying that the equality aspect in the bill would be an opt-out from equality legislation, which is reserved. In that case, the provision would get caught up with the Department of Trade and Industry, the women and equality unit and regulations on sexual orientation.

The Convener: The committee is aware of the issues to which you refer and we will obviously consider them for our report. However, that does not prevent you from producing suggested amendments. Obviously, it would then be for the

Executive and the committee to consider their position on such amendments. If you want to suggest amendments and committee members are willing to lodge them, that can be done. They would be considered at the appropriate time at stages 2 or 3.

Dr Macdonald: Okay.

The Convener: The Executive could then advise whether it felt that the amendments were competent in terms of our powers.

Dr Macdonald: Even if what the Executive says turns out to be the case, we can consider that. It would still be helpful if the committee drew the issues to the DTI's attention and informed it that we are concerned about them.

The Convener: My understanding is that the DTI is conducting a consultation on goods and services, which fall under its remit. Obviously, you are all free to make what representations you wish to the DTI.

Dr Macdonald: We have done so.

The Convener: It is not a matter for our committee, I am afraid.

Dr Murray: My understanding is that the adoption legislation in England and Wales includes regulations that allow agencies to refer on if they do not want to deal with particular types of couples. However, there may be challenges to that under forthcoming legislation from the United Kingdom Parliament. Even if we had something similar in our regulations, we would still have to discuss with the DTI how that would be affected by the forthcoming legislation.

The Convener: My understanding is that there is nothing in the English and Welsh primary legislation about opt-outs, but that there is something about that in regulations.

Dr Macdonald: There is concern about the way in which the English regulations have been written. Perhaps the Executive will want to think carefully about how it writes its regulations. For example, it should ensure that people with a strong faith perspective do not find that they are unable to get jobs in certain areas. I have an example that I can provide the committee with, if it so wishes. I think that such issues will have to be thought about carefully in the writing of secondary legislation.

Lord James Douglas-Hamilton: Do you accept that it is perfectly competent for this Parliament to express a view on reserved subjects?

Dr Macdonald: Yes.

11:15

Lord James Douglas-Hamilton: We would welcome any recommendations that you have.

I have a further question. About a third of applications for adoption are refused; there has been only limited research on the subject of same-sex partners adopting, and we do not know how many such applications there will be, but it might be only a limited number. Bearing all that in mind, if the majority of members of this Parliament were to take the view that there should not be a legal bar, would it be your recommendation that this area should be treated with particular care and caution? Indeed, I hope that that would be the case with all adoptions.

Dr Macdonald: I am not quite sure that I understood the question. Do you mean if the Parliament wished to accept the bill as introduced?

Lord James Douglas-Hamilton: If there is a majority vote in the Parliament that there should not be a legal bar on same-sex partners adopting, would it be your recommendation that that area should be treated with particular care and caution?

Dr Macdonald: The first point that I would make—in a sense, I am avoiding answering the question, but perhaps I am answering it in a roundabout way—in relation to unmarried couples is that whether a couple was married should be a primary consideration in relation to judging the stability of their relationship. In relation to same-sex partners, if the bill goes through, we would undoubtedly encourage caution, but that does not mean that we endorse the bill or the proposal.

The Convener: There are no further questions, so I thank the panel for giving evidence this morning. It has been useful to get your perspective, and I am sure that the committee will reflect carefully on all your comments.

11:16

Meeting continued in private.

11:32

Meeting continued in public.

The Convener: Our final panel of witnesses on the Adoption and Children (Scotland) Bill consists of the Minister for Education and Young People, Peter Peacock, the deputy minister, Robert Brown, Rachel Edgar, who is the head of the Executive's looked-after children and youth work division, and Peter Willman, who is the bill team leader. I welcome you all.

I invite the minister to make some brief opening remarks, which will be followed by questions.

The Minister for Education and Young People (Peter Peacock): I will take about five minutes to set out a few thoughts, after which I will engage with the committee in the usual way.

Robert Brown and I are grateful for the opportunity to give evidence today. I know that you have taken a great deal of evidence, so you will be up to speed on the detail of the bill. I will set out some of the rationale for the direction of travel of our policy and will pick up some points that have come up in earlier evidence.

My first point is that our recommendations and our policy approach are heavily informed by the work of the adoption policy review group, the members of which included people with direct experience of adoption—such as people who had adopted children, people who had themselves been adopted and people who had given up children for adoption—lawyers and social workers who worked in the area and Sheriff Principal Graham Cox, who chaired the group. The group made a series of recommendations to us, the overwhelming majority of which we accepted. They form the basis of our proposed modernisation of the adoption process.

The adoption policy review group was set up to examine whether adoption represented a way forward for some of our most vulnerable young children. The backdrop to that was a significant decline in the number of children who were being adopted and a shift in the pattern of adoption away from the adoption of very young children—babies—towards the adoption of older and much more challenging children.

The group's report came out in June last year. Later that month, we issued a consultation paper in which we adopted the overwhelming majority of the group's recommendations. Within a year, we introduced the bill, which is a big piece of legislation, in that it contains more than 100 sections. The committee is now well through the taking of evidence at stage 1. We were able to move so quickly because of the foundations that were laid in what was an extremely thorough piece of work by a well-informed group. We wanted to produce a bill quickly both because adoption is important and because there was a need, in cases in which adoption was not possible, to improve youngsters' lives by giving them much more stability.

By the time the bill becomes an act of Parliament, it will have been some 30 years since the last substantial change was made to the legislation on adoption. Patterns of family life have changed dramatically. Most of our proposals are completely uncontroversial—I will come on to deal with those that are controversial—and the broad thrust of the reaction to them by all who work in the field of adoption is that they are a welcome set of changes. However, we obviously need to get the detail right and I know that the committee will scrutinise the proposed measures closely and

produce suggestions on how they can be improved.

As you know, we have taken the opportunity to produce a stand-alone bill, which pulls together all the various existing pieces of legislation. It is better to do that than to amend the existing legislation substantially, because those who administer the law will be able to find all the relevant provisions in one place.

A key feature of the bill is the new permanence order, which for some children may lead on to adoption in due course. For those children for whom adoption does not prove to be the way ahead, the permanence order will ensure that they have a stable and secure setting for the rest of their childhood. That represents an important step forward for those children.

We aim to take a power to set a more national approach to the provision of fostering allowances. I am clear that we need to gear up our actions at national level significantly so that we can better co-ordinate our work on fostering, which is a service that is of inestimable benefit to Scotland. People who are foster carers are heroes, but the work that they do on our behalf goes largely unsung in society. My officials are examining a range of issues that will be dealt with in a new fostering strategy, which will enable us to gear up our actions on fostering. We hope to announce that strategy later this year. We concluded that the only way to take powers on fostering allowances was through primary legislation.

The bill includes a range of new measures to modernise and update the existing law on adoption, although, broadly, it retains the existing framework and principles. People who are affected by adoption will have clearer rights to access support services, and rights to information about adoption will be clarified. The absolute ban on applications by birth parents for contact once their child has been adopted will be removed, but safeguards will be put in place to ensure that such contact happens only if it is in the child's best interests and to protect adopted children and their adoptive families from repeated or vexatious applications.

The bill will also put in place additional safeguards for intercountry adoption. It includes powers to restrict adoptions from certain countries if there are concerns about particular practices—for example, if it is considered that coercion or financial gain might be a factor in adoptions from those countries.

As you are aware, the bill will allow unmarried couples to adopt jointly for the first time. Aspects of that proposal are controversial for some people, so I should provide a few words of explanation, especially given the evidence that I know the committee has received on the issue.

The first point to make is that the absence of a bar on adoption is very different to there being a right to adopt. I want to make it absolutely clear that, regardless of their status as an individual, no one has a right to adopt a child. All prospective adopters will be subject to intensive and rigorous assessment before any adoption takes place. In our society, it is far more difficult to become an adoptive parent than it is to become a natural parent. It is proper that the scrutiny process is so thorough.

In the final analysis, the court must be satisfied that it is in the best interests of a child to be adopted by the prospective adoptive parents concerned, taking into account all the circumstances. What is in the best interests of the child is the key consideration throughout the process. The courts will reach decisions that give children the secure and safe family lives that they require with parents who can meet their individual needs. That is the crucial thing. Every decision must be taken on the basis of the individual circumstances of the case and the individual interests of the child.

It is important to stress again that unmarried couples can already adopt—when one partner adopts as a single person and the other partner secures limited rights, through a court order, in relation to the parenting of the child. That has been true since 1930, whatever the sexual orientation of the people involved. The bill simply puts that existing ability on a more satisfactory legal footing from the child's point of view. It gives the child more rights. It creates a direct parental link to each of the couple and, to give a particular example, the child will have improved inheritance rights in relation to both parents. That might involve not only money and goods but rights to benefit from pensions, life insurance policies and so on. Our focus has been on improving the child's rights.

If we look beyond the purely legal considerations, for many children the most important advantage will be the emotional security of knowing that both partners are responsible as parents, not just one of them.

The simpler route to adoption will attract some unmarried couples who might previously have been put off the idea of adoption. Our purpose is partly to open up more opportunities for adoption. We know that the security that adoption can provide improves children's life chances.

I think that that is all I need to say by way of introduction to our policy rationale. I know that the Finance Committee has raised financial issues with you that you will probably want to explore with me. However, I intend to write to the committee to pick up on all the financial points that have been raised. I will try to send a further submission to the committee very quickly.

Robert Brown and I are happy to take your questions. Because parts of the bill are highly technical, I may well look to my officials to rescue me from the difficulties that, without their help, I might get into.

The Convener: Thank you for those opening remarks. Many issues have arisen during our evidence taking, and our questions will try to follow the order of the bill as closely as possible. We will come on to the report from the Finance Committee in due course.

I will start our questions. Chapter 1 of the bill is on adoption support services and chapter 4 is on post-adoption support services. What practical differences will the proposed revised framework for adoption support services make to those affected by adoption?

Peter Peacock: Pre-adoption services concern the assessment processes for trying to secure a placement or matching for the young person, and they will remain largely unchanged. However, post-adoption services could change. Currently, local authorities have the power to provide any necessary support for those involved in adoption. Practice across Scotland varies, as does quality. As you know, the proposal for post-adoption services is that there will be a right to an assessment for those who are most involved—the children, the adoptive parents and the birth parents. Other people, such as siblings or grandparents, may request an assessment.

When people are given a right to an assessment, there is a duty on the local authority to produce a care plan. That is new. There is a ministerial power to issue guidance and possibly regulations. We intend to use that power, certainly in relation to guidance. We will also be putting in more resources. We want to improve the quality of the services available; we want them to be of equal quality across Scotland.

We have evidence from the Fostering Network about a lack of understanding among those who are involved in adoption of the range of services that are available. As part of the new approach, we want to gear up the system and ensure that the services are available and that people are much more aware of the opportunities to take them up.

In practical day-to-day terms, I suspect that many of the services that local authorities offer at present to provide advice, support, information and guidance to parents, children and others will remain, at their core, the same. However, we want the services to be enhanced and people to be able to recognise more readily that such services are available. In giving the right to an assessment and creating a duty to create a care plan, our aim is to ensure that the process is much more properly planned and coherent in delivering for people. The intention is to gear up the present system.

11:45

The Convener: In much of the written and oral evidence that we have received, concerns have been raised about the language in the bill. For example, one issue is why the term “post-adoption services” is used rather than “adoption services”. Concerns have also been expressed that the term “care plan” perhaps sends the wrong message, given the relationship with looked-after children. Why has that language been chosen?

Most respondents agreed that support for adoptive families and those who are affected by adoption should be lifelong, but the care plans will be in place for a fixed three-year term. Nobody is clear why that period has been picked or what the implications are for those who need continuing support beyond three years.

Peter Peacock: I am not hung up on the language. If there are better ways of describing the proposals, I am relaxed about considering them. As members know, in creating bills, we pass over our policy instructions and the detailed bill language comes back. I am happy to consider any recommendations that the committee makes on language.

I ask my officials to keep me right on this, but I understand that the thinking behind the proposal for three-year care plans is that, if a child and family who receive a package of services move to another local authority area, the originating local authority will be responsible for financing and delivering the care plan for the remainder of the three-year period, at which point the new authority will take over responsibility. I ask Rachel Edgar to confirm that that is broadly correct.

Rachel Edgar (Scottish Executive Education Department): That is correct.

Peter Peacock: The intention is not that the care plan process will last for only three years. I take the point that, in an adoptive family relationship, there is a potential requirement for continuing support for long periods. Also, additional support may be required at particular points, such as transitions. We intend support to be available to the family throughout. I want to make it absolutely clear that we in no way seek to limit the support to a three-year period. If any dubiety arises about the interpretation of the bill, we will consider that and try to remove the dubiety.

The Deputy Minister for Education and Young People (Robert Brown): Another point is that, with adoption and, to some extent, with permanent fostering, part of the aim is to create as normal a family situation as possible. Therefore, as Peter Peacock said, the need for support goes up and down over time. For example, a greater need may arise during the teenage years, when new questions are asked. Behind the measures is

the policy that we should intervene as little as possible and in accordance with the family's needs and desires. However, all-encompassing support should be available.

Mr Ingram: I move on to chapter 2. Sections 9 and 10 restate the existing law on the matters that the courts and adoption agencies are to take into account, but they add a requirement for consideration of

"the likely effect on the child ... of being an adopted person."

What practical difference will that addition to the current law make?

Peter Peacock: I will ask my officials for guidance in a moment or invite them to pick up from where I lead off. I think that, in part, that provision relates to the new options that will exist for children where adoption is not the only option. If we are constantly thinking about the test of what is in the best interests of the child, at some point we presumably need to apply that test by asking whether adoption would be in the best interests of the child in the circumstances. The new provision will at least allow that matter to be considered. To me, the provision is simply about ensuring that we constantly ask what is in the best interests of the child. I presume that the provision simply allows that to happen, but a further technical reason might lie behind it as well.

Peter Willman (Scottish Executive Education Department): All that the minister has said is correct, but I should add two points. As has been pointed out, section 9(4)(c) is a new provision that is not contained in the Adoption (Scotland) Act 1978. Our thinking behind that is that, with developments in research on adoption over the past few years, we have come to realise that adoption can have an effect on the person not just as a child but when they become an adult. Given that adoption can create difficulties and counselling needs not just in childhood but well on into adulthood, we simply wanted to reflect that in the provision and give that signal to the courts.

Mr Ingram: Certainly, when Ken Macintosh and I visited Barnardo's in Glasgow, we met people who had been in that situation.

Access to so-called after-adoption services, which can provide people with information on their origins and so on, is very important to people. Is it envisaged that access to such services should be taken into account?

Peter Peacock: There is a distinction between making decisions on what is in the best interests of the child—which allows us to embrace all those arguments and the research about what happens at different stages—and the services that are ultimately available. The services should be

available for people who seek to access information in the way that has been described. We know from research evidence—perhaps further questions will be asked about this—that, on the particular issue to which Adam Ingram has alluded, counselling services are often required. Our intention is not in any way to limit those services but to embrace the knowledge that we need to seek to provide services for people at the appropriate time.

Robert Brown: I think that there is a broader view of individual identity these days. The issue is not as black and white as perhaps it was thought to be at one stage, when people would say that the child was either a child of the birth family or a child of the adoptive family. There is an increasing recognition that people often end up resuming contact with their birth family even if there has been a gap of some years in between. The bill reflects questions about what the child's identity is and how the child views the situation, which might have a lot to do with the child's age at the time of the adoption.

Mr Ingram: I have another question on the matters that need to be taken into account. When we heard evidence from LGBT Youth Scotland last week, we were asked to consider whether a wider range of factors could be taken into account, including, in particular, the child's developing sexuality. Some people were attracted by the formulation in the English legislation, which refers to

"any of the child's characteristics which the court or agency considers relevant".

Is the Executive willing to consider lodging an amendment in similar terms to those?

Peter Peacock: We do not intend to do that. As always, I will listen to any views that the committee might have on the issue, but we have already extended the range of issues to be considered, including by providing for the child to be able to express their view on the process that they are going through and the outcome for them. Where a child is mature enough to do so, we will be able to capture their views. The bill already provides at least the opportunity for people to express a view.

The range of considerations in the bill is the minimum that is required, but we think that we have captured what we need to capture in the bill. However, if the committee has particular recommendations on the issue, we will obviously consider them.

Lord James Douglas-Hamilton: The Faculty of Advocates noted in its evidence that the bill creates a new range of criminal offences and said that it did not consider criminal law to be appropriate to deal with all adoption disputes. The inference that I drew was that it thought that any

inappropriate criminal conduct could be dealt with effectively under the existing law.

Robert Brown: We are considering that issue further. We recognise that some of the offences have been taken forward from the old law to the new law, which might not be entirely appropriate.

Rachel Edgar: There seems to be confusion because existing provisions are being replicated. Questions have been asked about whether that is appropriate, but the offences are not new.

Lord James Douglas-Hamilton: The inference drawn from the faculty's remarks was that the bill was in danger of being overprescriptive and of duplicating criminal law. I just mention that in passing. It is a drafting matter. I do not think that anyone doubts that criminal offences must be dealt with effectively.

Peter Peacock: Given that the matter was raised in evidence, we will consider the implications. If we need to tighten up or clarify the bill, we will seek to do so in a sensible way that is consistent with our policy of dealing with criminal acts.

Dr Murray: The Adoption and Children Act 2002, which is the English legislation, states that cohabiting couples who are not married should be living together as husband and wife or civil partners in an enduring family relationship. The bill requires them to be living together as husband and wife or civil partners and to be in an enduring family relationship. Is the bill's intention different?

Peter Peacock: My understanding is that the intention is not different. I suspect that it is a drafting point rather than a policy point. We will have to ensure that there are no unintended consequences.

Dr Murray: The evidence that we received earlier suggested that including unmarried couples would not add substantially to the pool of potential adopters. What is your response to that? It was suggested that only a few tens of people would be added.

Peter Peacock: We got clear advice on that from the independent review group. Its view was that anything that is consistent with the best interests of the child and which could increase the pool of potential adopters is certainly worth considering. We know that adoption has benefits for young people. It is impossible to estimate precisely whether an extra 20 adopters—unmarried couples who already have children or unmarried couples of a different status—will be added to the pool. The intention is to make adoption easier for unmarried couples given the joint nature of the commitment. It has been suggested to us that a number of unmarried couples want to make a joint commitment but the

law does not currently allow them to adopt jointly. We think that the pool will be increased, but I genuinely do not know by how much. If the outcome of the process is to secure in the course of every year half a dozen, a dozen, 20, 30, 40, 50 or 100 more adoption placements for young people, it will, unquestionably, have been worth while to pursue that policy objective.

Dr Murray: It was suggested this morning that there might be problems with interstate adoptions. That was a new argument to me. Have you investigated that?

Peter Peacock: We are not aware of any such problems. Will you expand on the point?

Dr Murray: Father Fitzpatrick said that Sweden had had to withdraw equivalent legislation, because it had found that it had problems with interstate adoptions.

Peter Peacock: I am not aware of that. Perhaps Peter Willman can comment.

Peter Willman: Before an interstate or intercountry adoption takes place, the exporting country—if I can call it that—approves the match between the specific child and the adopter or adopters. In a sense, the exporting country can apply its own criteria. At the moment, most intercountry adoptions come from China, and if a single person is adopting, they are asked for an assurance that they are single and not living in a couple relationship.

12:00

Dr Murray: So that is a condition placed on adoptions rather than a means of preventing interstate adoptions.

Peter Peacock: The matter was raised earlier and we will consider it to see what lies behind it and its implications.

Dr Murray: Some of the private adoption agencies, particularly those that are faith-based, have asked for some kind of opt-out that would allow them to refuse to take on in particular single-sex couples, but I presume that unmarried couples could be included. They say that the guidance for the equivalent English act permits that. Is anything similar planned for the Scottish regulations that would enable faith-based adoption agencies to send a same-sex couple to a different adoption agency that might be better placed to help?

Peter Peacock: I understand where people are coming from on that question and the concerns of the church and the faith-based agencies. I have offered to meet the church to talk through the issues, so that I can understand fully where it is coming from; I think that I understand but I want to make sure. I also want to provide them with the

assurances that I hope I can provide. It is not our intention that our policies should place the church and faith-based agencies in any difficulty compared with where they are today.

The bill does not in any way change the current position; nothing in it will change how those agencies operate in Scotland. They can set criteria that they believe are appropriate for them and their work, and the bill does not change that. Therefore, as it stands, the bill should not interfere with their work in any way, but I am more than happy to discuss that with the faith-based agencies and with the church.

On your point about referral, we know that those agencies, and others, can and do refer couples in circumstances in which they cannot provide a service. The national care standards, I think, cover good practice—if I can describe it that way—and the desirability, in keeping with proper practice, of referral to another service if an individual agency, whatever its characteristics, cannot provide a service. What is happening fits with current good practice.

It is important that potential adopters have the range of services available to them in the Scottish context and are not deprived in any way. Who provides those services is less important. The bill does not affect how agencies operate today or will be able to operate.

Dr Murray: Our understanding is that forthcoming UK legislation might make that more difficult and might make how agencies provide their services appear discriminatory. Have you had any conversations with the DTI about how that will affect the current position?

Peter Peacock: I am aware of that. I am also aware that several of the faith-based agencies in the south have been making very vigorous representations to the DTI about the consultation paper. As part of Governments' normal dialogue about such issues, I have been involved in exchanges with DTI colleagues. That still has a long way to run. I have certainly asked that the DTI be alert to the situation that pertains in Scotland and to our desire to ensure that the Catholic or other faith-based adoption agencies have a continuing part to play.

As I have said, both the current and the proposed systems of adoption will give consideration to a person's cultural background. We strongly believe that faith-based agencies have a continuing role to play in the administration of adoptions in the Catholic community. Our wish to enable such agencies to play their role will be the context for our discussions with the DTI.

Dr Murray: Are you saying that it will be possible for faith-based adoption agencies to refuse to accept a couple because they have

religious concerns about the couple's relationship, but that in such circumstances, and in the context of the national care standards, they will be expected to refer the couple elsewhere?

Peter Peacock: The national care standards do not make explicit comment on sexual orientation but address good practice in the round. If an agency cannot administer an adoption, for whatever reason, it is right to ensure that the person who wants to adopt can be dealt with elsewhere. Referral is the obvious answer and there is nothing in current legislation or in the bill to prevent that from happening.

On an agency's refusal to deal with a prospective adopter, there is a genuine tension between society's desire to act equitably and properly and not to discriminate against people because of their sexuality or marital status and its desire to respect people's firmly held religious beliefs. The bill does not bring those two desires into direct conflict, because it does not change the existing position, whereby faith-based agencies can set their own ways of working. My concern is to ensure that anyone who seeks to adopt in Scotland is properly considered and subject to the appropriate scrutiny. We can achieve that.

The Convener: Many members want to ask about those issues.

Fiona Hyslop: Catholic adoption agencies have opportunities because they work in a wider geographical area than do adoption services that are largely local-authority driven. Would it make sense to set up a national framework for adoption and a single point of contact that could link prospective adopters and local authorities that have children awaiting adoption? Such an agency could also provide support to Catholic adoption agencies that refuse to deal with certain people, because agencies with internal processes that discriminate against same-sex or unmarried couples will be in a potentially difficult position in relation to the Equality Act 2006.

Peter Peacock: We should be careful about the language that we use. Robert Brown and officials have met Catholic adoption agencies and I have offered to discuss such matters with the church. I do not think that agencies are refusing to deal with people on the basis of prejudice; I think that they are saying, "We have a particular ethos and view, but we will ensure that people who approach us are referred to a place where they can get the services they require." There is no hard-edged refusal to deal with people. Unmarried people have been able to adopt children since 1930 and homosexual people can and do adopt children in Scotland. The Catholic adoption agencies have existed in such a climate without there being problems and I see no need for problems in future. I do not want people to think that we are

encouraging agencies to take a prejudicial stance against a particular group of people. There is a way of managing the matter sensibly and the bill attempts to find the right balance.

I understand your point about a national approach. If referral arrangements operate effectively as part of the national care standards, there should be no problem, but I will reflect on your suggestion. If there is a way of reinforcing the point through a system of connections between local authorities, I will be happy to consider it.

Rachel Edgar: Work is being done on developing a national consortium. Already, there are local consortiums that share the names of potential adoptive parents and potential adoptees. A national system could help local authorities to place Catholic children with Catholic families that do not have an arrangement with one of the faith-based organisations.

Mr McAveety: You are saying that, as long as people enter into this area with reasonable good will, whether they are activists in the gay rights lobby or faith-based organisations, the adoption agencies that they are involved with should continue to do the valuable and incredibly good work that they do. You are saying that, if we can get some recognition of the various issues, we might arrive at a situation in which people recognise the values of various people in the debate and can continue to do the work that they do.

Peter Peacock: That is very much the spirit in which I want to continue. In the Catholic and independent adoption agencies, we have extremely experienced people who know their business and are there to help. We want them to play a part and we think that they have an important part to play. The more they can play a part in the overall picture, the better. I want those agencies to continue to do the valuable work that they do. As you say, with the right approach, we can achieve that. I am more than happy to keep trying to secure the reassurances that will help that process.

Mr McAveety: On research into same-sex adoption, the evidence that we have received raises two points. One point is that most of the cases that have been examined concern children who have been adopted by their parent's same-sex partner. That is a point that is worth conceding.

The second point is interesting. Annex B of the adoption policy review group's document says that children who are in a family that is headed by a same-sex couple have certain characteristics, but it does not say what those characteristics are. Do you have any further knowledge of that? I imagine that the reason why the point was raised by a

church spokesperson might be because those are characteristics that the church might consider to be of a more negative nature. Can you enlighten me a bit more about that research?

Peter Willman: We agree with the first point. The great bulk of the research relates to situations involving genetic parents who have moved into a same-sex relationship.

On the second point, my recollection is that annex B of the document surveys a large number of research studies of greater or lesser worth, in terms of the care with which they have examined the topic, the size of the sample that has been used and so on. My recollection is that one of the points that came out of some studies was that some same-sex households had what was arguably a more sensitive approach to the upbringing of children, which might or might not be a good thing. That would be one of the differences that they had in mind.

Peter Peacock: I am sure that the committee has access to various pieces of research, but we are more than happy to make available any research that we have. I have to say that the research that exists is from a limited base and is quite difficult to interpret because of that.

12:15

Robert Brown: The situation is a bit wider than it appears at first glance—it is not black and white. For example, many cohabiting couples get married after a baby is born. The distinction between marriage and cohabitation is not clear cut.

As the officials have said, there really is no reliable evidence on same-sex adoptions. Very few people have been involved. The evidence relates only to situations involving a natural parent, rather than children who have been adopted. Therefore, there is a limit to what one can learn from the research evidence.

Mr Ingram: We heard earlier from witnesses from faith-based organisations. As Elaine Murray has said, they were quite sceptical about the number of extra people who would get involved in adoption. They asked us to ask you what you are doing—apart from tinkering about with the law—to extend the pool of adopters. There has been a significant rise in the number of children who need care in a family situation.

Peter Peacock: You are right to highlight the need to increase the pool of adopters. We will also have to increase the pool of foster carers. We know that outcomes for children who remain in their own natural home can often be dire. Changes in our society, such as an increase in drug taking, can lead to chaotic households, which can cause intense problems for kids, and it may be that a

greater number will require to be removed from their home. We also know that outcomes for children in residential care are consistently pretty awful and have been for generations. Residential care is not the best place for young people; about 1,500 young people are currently in that situation, out of a total of 6,500 who are away from their home.

Everything points towards more fostering and more permanence orders, which the bill provides for, but also towards trying to increase the pool of adopters. In parallel with our work on the bill and on our fostering strategy, we are considering all the ways in which we can encourage people to think about adoption. The bill will give us a platform for that.

Members will probably know this statistic—my officials will keep me right—but 47 per cent of live births in Scotland today are to people who are not married. Of that 47 per cent, 85 per cent are jointly registered. A huge number of people in Scotland—and the trend is increasing—have children but are not married. The changes in the law in relation to that group will help to encourage more people to consider adoption in future. They will be able to adopt jointly and to take joint responsibility, just as they can for their own natural children.

Yesterday, I read an article from the *Scottish Catholic Observer* that mentioned the need to encourage more married people to come forward to adopt children. I completely support that. The Executive has to gear up to promote all the different facets of better care for children. When the bill becomes an act, we will have a platform to help us do that.

The forces at work, and the way in which adoption has been declining, mean that we have to gear up to provide the right kind of security and permanence for the most vulnerable young people in our society who have been dealt the worst possible hand. That is no fault of theirs, and we have to do better by them. That is what motivates all our thinking.

The Convener: Section 32(1)(d) allows a single natural parent to adopt his or her own child when the other natural parent is dead or missing. Why does the Executive think that that is necessary? I understand that it is taken from the 1978 act and that it could be used to make legitimate a child who is born to a single woman. Given that the Family Law (Scotland) Act 2006 abolished illegitimacy, when would it ever be appropriate for a parent to have to adopt their child?

Peter Peacock: I will have to seek the technical help of my officials on the question.

Peter Willman: The convener is right in saying that the provision is taken from the 1978 act. I will be honest and say that we will have to look at it

again in the light of the comments that have been made to us.

The Convener: Thank you. If I had known that the answer would be so short, I would not have made the question quite so long.

Fiona Hyslop: My question is on the dispensing with of birth parents' consent. Concerns have been raised that the definition in the bill replicates the very broad definition in the English Adoption and Children Act 2002. The adoption policy review group expressed concerns on the ground of European convention on human rights considerations, and thought that the definition should be drawn more tightly. Why did you reject the review group's approach and proposals? Are you convinced that the broad test in the bill is ECHR compliant? Is this the right thing to do?

Peter Peacock: I am sorry, which section are you referring to, Fiona?

Fiona Hyslop: Section 33, on parental consent. The definition is quite broad. People could interpret it in a way that made it easier to dispense with parental consent. The balance of power would then shift from the birth parent's giving of consent to the social worker or whoever being more prescriptive and saying, "We do not need to get consent."

Robert Brown: It is fair to say that behind all of this lies the overriding and fundamental requirement that the actions that are taken are in the best interests of the child. That needs to be seen against the background of the additional criteria according to which adoptions will be assessed—are they necessary and are they in the best interests of the child? That underlies the consent issues where the natural parent objects. Obviously, that does not always happen; it happens only sometimes.

I will have to pass over to colleagues on the technical bit.

Fiona Hyslop: Why did you reject the review group's recommendations?

Peter Peacock: We will have to look into the technicalities of the issue, but I can pick up on the point of principle. There is no intention in policy terms to alter the nature of when consent can or cannot be sought. Are you referring in part to the permanence order provisions and the way in which they will operate?

Fiona Hyslop: No. I refer to the making of adoption orders.

Peter Peacock: That may relate to the procedures for freeing, to which the bill proposes changes. In this instance, convener, all that I can do is come back to the committee on the point. We need to look into it a bit more closely, in light of what Fiona Hyslop has said.

Fiona Hyslop: Similarly, under section 33, the ground that

“the welfare of the child requires the consent to be dispensed with”

is very broad, especially in the context of what the First Minister said about children from drug-abusing families. We need some reassurance on the matter, minister.

Peter Peacock: I completely understand the point. We will look again at the wording. The policy intent is not to shift the grounds.

Fiona Hyslop: For my final question on this area, I return to the issue of adoption by same-sex couples. Is your view that, where parental consent is sought, the birth parent should have the right to provide conditional consent on the basis that the child does not go to a same-sex couple? Similarly, would the views of those who are aged 12 and over who were against being adopted by a same-sex couple have to be taken into account?

Peter Peacock: I may be oversimplifying the situation; if so, I ask Fiona Hyslop to correct me. If she is suggesting that a birth parent should be given a veto, my view is that that would not be desirable. As Robert Brown said, at the end of the day, we have to do what is in the best interests of the child.

I do not think that saying to an adoption agency, the courts or whatever that the birth parents' views should have primacy in such situations would hold water if the aim is to act in the best interests of the child. That said, the bill aims to ensure that the family's views and religious and cultural backgrounds are among the factors that are taken into account in considering what is in the best interests of the child. The views of the child should also be taken into account if that child is regarded as having the capacity to give views.

In the final analysis, all such information should be made available to those who make recommendations to the courts and to the courts themselves so that they can make final decisions. Decisions must rest there—there cannot be any veto as a result of primacy being given to one particular view. The views that are expressed must be given their proper weight. The courts will have to make the final decisions and judge whether the proper weight has been given to people's views. I think that the mix of safeguards and intentions in the bill is correct.

Ms Byrne: The Family Law (Scotland) Act 2006 gave fathers parental responsibilities and rights, but its provisions are not retrospective. I am concerned about what would happen if a child was to be adopted with or without the consent of the parents. Would a father who did not have the responsibilities and rights that I mentioned, but

who had registered the birth and been excluded from having input into the child, and the family of that father be included in discussions about whether the child should be adopted? The circumstances might be difficult—they might have been marginalised and not included in the process. How will the legislation deal with such matters?

Peter Peacock: I have just tried to clarify two points with my officials. I understand that the provision on taking into account the views of the family and relatives means that if the father still had parental responsibilities, he would be part of the wider family and his views could therefore be taken into account.

There is a wider point. Through family group conference adoption techniques, people seek as much agreement and resolution of issues as possible among all the different components of wider families to ensure that disputes arising from concerns and anxieties relating to adoptions do not arise. In practice, people try to reconcile differences.

On the legal provisions, I think that a father with parental rights would be entitled to make representations in the same way that the wider family would be, but I will double-check that. If I have made an error in saying that, I will come back to the committee on it. However, that is my understanding.

Ms Byrne: What about fathers who do not have parental responsibilities and rights? The Family Law (Scotland) Act 2006 is not retrospective.

Rachel Edgar: If the identity of a father is known, he will need to be notified, which will allow him to apply to the court and exercise his responsibilities and rights. However, we are talking about a trickier process that will gradually change over time as the Family Law (Scotland) Act 2006—

Ms Byrne: I can envisage situations in which relationships have broken down, perhaps as a result of drug misuse. Grandparents, for example, find themselves dealing with such circumstances. Half of the child's family might not be included in the process and a child could be put up for adoption while the father and grandparents were still seeking access. I wonder whether the bill covers such situations. It worries me that it might not.

Peter Peacock: I will check that and get back to you.

Peter Willman: Section 98 is on notification of a proposed application for an adoption or permanence order, which is a new provision and does not replicate something in the 1978 act. It places a duty on local authorities, where they are

aware that an application is about to be made for a permanence order or an adoption order, to notify the father if he can be identified.

12:30

Peter Peacock: There is a wider point, which Rosemary Byrne might have been trying to touch on, relating to future provision. There is currently an absolute bar on those who have lost birth-parent rights from seeking access in a whole variety of ways, but that is perhaps a slightly different point. We are seeking to amend section 11 of the Children (Scotland) Act 1995 to ensure that there is leave to apply to the courts to secure access in such circumstances. For example, someone who has been a drug-abusing or alcoholic parent but who has subsequently recovered and got stability back in their lives might want to re-establish contact with a child who has been adopted. We are trying to make provision in the bill to allow that case to be argued, so that someone could re-establish contact with their child in such a case, but that might be a slightly different point to the one that Rosemary Byrne was raising.

Ms Byrne: That is quite reassuring.

Robert Brown: It is fair to say that the section 98 provision will allow much better involvement of people who, under previous legislation, have felt excluded—and have, in fact, been excluded—from the process. It is a difficult issue, because of the number of people with different relationships who might be involved. If committee members have specific views about the nuances of that provision, we would appreciate their guidance. It is a difficult area in which to balance the interests of people who have a legitimate involvement, those who have a technical involvement and might become more involved than they are at the moment, and those who are just being difficult, as is sometimes the case. A whole series of different situations could arise in such circumstances, and a reasonable process will allow consideration of what is in the best interests of the child, which is what underlies the whole bill.

The Convener: Do any members have further questions on part 1?

Mr Ingram: The Subordinate Legislation Committee was concerned about sections 39 and 40, which give ministers the power to make regulations for the disclosure of information kept by adoption agencies

“to adopted persons and other persons”.

The Subordinate Legislation Committee questioned the scope of the power. Is there any limitation to the “other persons” who can receive that information? The committee was also concerned about the nature of the information that

will be collected, as no detail on that is given and there is therefore no detail on what information could be disclosed under section 40. What consultation have you been doing in that area? Can you give us some more detail?

Peter Peacock: On your latter point, I imagine that the information gathered would also include medical information and that the provisions are being made in relation to that. We shall look into the point that you raise to ensure that there is clarity about the wording and that we are not creating a situation in which people are able to misinterpret the wording in any way. I shall ask Rachel Edgar to respond to your specific point about the words “and other persons”.

Rachel Edgar: One of the main categories would be adoptive parents. There might be information that they need so that they can care for the child properly. However, we recognise that it is a complex area, where different people's rights could be in conflict, so our intention is to consult on the regulations and to allow people to express their views at that point. There will inevitably be tension, but the overall policy intention is that people such as adoptive parents should have the information that they need to best care for the child.

The Convener: We move on to part 2 of the bill. Rosemary Byrne has the first question.

Ms Byrne: My question is about the making of permanence orders, which is covered by section 84. Is there a mistake in the drafting? The current wording requires “an adoption agency” to apply for a permanence order, which might or might not lead to adoption. Should it not just refer to the local authority, as that is the body that will acquire parental responsibilities and parental rights?

Peter Peacock: I am happy to challenge our lawyers to see whether they have made a mistake. I suspect that the answer will be no, but I can take up that point.

Rachel Edgar: People have asked about the drafting of the provision. As it is drafted, it means a local authority. The question is about the exact words that are used. We have asked our draftspeople to look at the provision and see whether they are content with it.

Peter Peacock: It is not wrong, but we could improve it.

Ms Byrne: I will move on, then.

Many respondents expressed concern about the lack of detail about the interaction between permanence orders and the children's hearings system. The APRG spent a lot of time on the matter. How do you envisage permanence orders interacting with the children's hearings system? Do you accept that much more detail needs to appear in the bill?

Peter Peacock: As ever, if things emerge from evidence and we think that the provisions in the bill need to be looked at, we will consider them. I mean that genuinely—we will pick up on points and clarify our intentions if that is necessary.

On your point about the interaction with the hearings system, under the current adoption process the children's hearing would be involved initially in relation to a supervision order on welfare or residency grounds. If a more permanent arrangement—that is, adoption—was not made reasonably quickly, the hearing could renew the supervision order after six months. The court system would seek advice from the children's hearing in relation to any freeing for adoption orders, and the hearing might also be asked for advice in relation to the final decisions of the court. There is interaction at a number of levels.

Under the new permanence orders, which will replace freeing orders, the process will be truncated. Also, when a permanence order has been granted and permanence has been established, that will take over from the dimension of the hearings system that relates to welfare and residency. There might still be interaction with the hearings system if the child has supervision requirements and other needs that are being addressed through the hearings system, but that is a separate point.

One of the reasons for permanence orders is the desire to give the child a greater feeling of permanence, security and stability. It has been argued that one of the things that acted against that in the past was the need to go back to the hearings system every six months—or whatever—to re-establish what was going to happen to the child. For people in those circumstances, things were obviously very uncertain.

In that context, there could be much less interaction with the hearings system, but it will still have an initial role. It might subsequently have a role in certain aspects, but not in the same way, as I described.

Ms Byrne: Why does section 84 give no grounds on which a permanence order can be made? Again, that is contrary to the recommendations in the review. The section merely states that an order can be made if the parents agree or the parents' agreement is dispensed with. It does not say why an order should be made.

Peter Peacock: I did not follow that. Perhaps my officials can help with that. You mentioned section—

Ms Byrne: Section 84. It does not state grounds on which a permanence order can be made. It merely states that an order can be made if the parents agree or if the parents' agreement is

dispensed with. It does not state why an agreement should be made.

Rachel Edgar: The intention is that an order is made when it is in the best interests of the child. If that is not clear, we will have a look at the provision.

Ms Byrne: Will you clarify it?

Peter Peacock: We will look at that.

The Convener: The issue is that section 84 does not state the grounds on which a permanence order would be made. Those grounds seem to be taken as read.

Peter Peacock: I am with you now. We will look at that.

Robert Brown: I suppose that what we are getting is a broader range of possible situations, from short-term or temporary fostering through the permanence arrangements to adoption. It is a question of how they all fit together. I take the point.

Ms Byrne: Do you envisage the permanence orders including extended family members?

Peter Peacock: In terms of the arrangements for permanence?

Ms Byrne: Yes. I do not want to labour the point about kinship care, as we will come to that later, but I think that it is relevant to ask how you envisage the extended family members' role. The issue has been raised by several witnesses, but there is nothing much in the bill to tackle the issue. It seems to me that permanence orders fit quite nicely with families who look after children within their family.

Robert Brown: You are talking about the eligibility of extended family.

Ms Byrne: Yes, and encouraging that pool of people to be available.

Peter Peacock: There are several dimensions to this, and I will ask Rachel Elgar to pick up one of them. Part of the purpose of the permanence order is to divvy up the parental responsibilities, in a way that is not possible today, between the local authority and the foster parent with the permanence order or the person who is subject to the permanence arrangement on behalf of the child. If your question is about the extent to which that divvying up will involve the wider family, I am not sure that it will. However, the wider family will be involved in the process of deciding the permanence order. I ask Rachel Elgar to pick that up.

Rachel Elgar: As the minister says, the permanence order allows various parental rights and responsibilities to be shared. There is nothing

to preclude a family member—a grandparent, for example—having some of those responsibilities under a permanence order.

Ms Byrne: What I want to know is whether the Executive would regard extended families as part of the pool that we need to engage with.

Peter Peacock: To have the order?

Ms Byrne: Yes. Absolutely.

Peter Peacock: Yes.

Ms Byrne: Right. That is fine.

Fiona Hyslop: I have a question on section 87. We do not need an explanation of why permanence orders can be made. However, under sections 87(1)(a)(i) and 87(2), an adoption order will be revoked automatically when a permanence order is made. Is that a mistake, or is that part of your consideration? There are concerns that, once adoption orders are made, they should not be revoked. Why does the bill allow that?

Peter Peacock: There will be circumstances—there have been such circumstances—in which an adoption does not work out for a variety of reasons. Therefore, an adoption order may have to be revoked if that is in the best interests of the child. Rather than having the child left in an impermanent situation, a permanence order might be appropriate as a subsequent action. The provision allows that to happen. Sometimes, it just does not work out for folk and the situation has to be rectified.

Fiona Hyslop: It might be that the concerns that have been expressed are about the legal status of adoption and the fact that adoption orders should not be revoked if that would weaken the situation. However, there is obviously a case for that when the adoption breaks down. Perhaps guidance on that would be helpful in explaining the conditions under which that would happen.

Peter Peacock: Yes. We will have a look at that.

Peter Willman: We will have another look at that. At the moment, there are a number of orders that can allocate parental rights and responsibilities within an adoption order, although it is rare that that happens. Alongside the main effect of giving the adoptive parents the adopted child, the adoption order can also include contact conditions. Section 87 may also deal with that situation.

Robert Brown: In a sense, there is an equivalence between the adopted child in that situation and a natural child in a marriage or other relationship. Things can go wrong, and the adopted child can end up in the procedures—almost anew—in the same way as a natural child can. That is the point, is it not?

Peter Willman: We discussed a minute or two ago the grounds for making a permanence order. Sections 85(3) and 85(4) contain general requirements that the court should not make a permanence order unless it considers that it would be better for the child that the order be made. Subsection (4) refers to the fact that the need to safeguard and promote the welfare of the child is the paramount consideration.

Fiona Hyslop: I am glad that I asked the question, as it has allowed you to find the provision again.

12:45

Mr McAveety: I refer you to section 91, on variation proceedings. Why permit parties to make representations to the court to vary a permanence order rather than allow them title to oppose the action?

Peter Peacock: I definitely have to look to my colleagues on that point.

Rachel Elgar: We want to stop repeated vexatious applications for variation of a permanence order. The idea of a permanence order is that it provides stability and security for the child. We would not want to give title to somebody to make repeated vexatious attempts to vary the order.

Robert Brown: It would be the terms of the order as much as anything else—the contact arrangements or whatever—that would be the subject of an application by the birth parents to change, regulate, improve or alter in some way. In many instances, there can be an obsession about the whole matter—rightly or wrongly, with justification or not—and there needs to be some sort of regulation of that. The original draft of the bill allowed such applications to be made. That was a reform of the law to give that right. Nevertheless, there should be some restriction of that if it is abused by people.

Peter Peacock: Perhaps the point that you are making is that the description of those circumstances in the bill is inadequate. We need to look at that again, to see whether they can be described in a different way.

Mr McAveety: I am going to ask my next question in an authoritative way, but I thank the committee's legal adviser for making me sound so grand, as I would never have thought of this question. It is not trying to catch anybody out; it is just an attempt to tidy up the issues. In order to vary a permanence order, section 91(4) requires persons other than the adoption agencies to obtain leave to appeal against a permanence order. The Faculty of Advocates has criticised the provision on the ground that it creates an

additional opportunity for—as we mentioned a moment ago—contentious litigation. In any case, the provision seems to be inconsistent with section 100—which itself is contrary to the recommendations of the review group—which does not require leave. Do you accept those criticisms?

If you understand that question better than I do, congratulations.

Peter Peacock: I will give an answer to the question in the same spirit in which it was asked. As you have raised the matter, we will look into it to ensure that the bill is clear and that the policy intentions are properly expressed. We will get back to you on that specific point.

Mr Ingram: What is the policy intention behind the exclusion of section 11 orders when a permanence order is in force?

Peter Peacock: Do you mean the leave to apply procedures and the automatic bar on access, and so on?

Mr Ingram: No. Basically, people cannot apply for a section 11 order when a permanence order has been made. There must be a policy reason behind that.

Peter Willman: You are referring to section 96, which talks about restrictions on making a section 11 order. The policy thinking behind that is that we want the permanence order to encapsulate the position of the child whom the permanence order concerns, so that they have a clear understanding of where they are and what their position is.

Mr Ingram: Is it to stop disputation?

Peter Willman: Not precisely. A section 11 order can give someone contact rights, but those can also be included in a permanence order. It seems better to include everything in the one permanence order, rather than have two orders and, potentially, two court processes running in parallel.

Dr Murray: In the current situation, once an adoption order has been made, birth parents cannot seek a contact order. The review group felt that birth parents should have the right to go to court to argue that they should be awarded some contact. The review group also thought that, to avoid repeated vexatious applications, that should be allowed only with leave of court. However, in section 100, section 11 applications do not require leave of court. Why did you decide not to go along with the review group's recommendation?

Peter Peacock: We intend to lodge an amendment at stage 2 to deal with the question of leave to apply. We just did not have time to prepare that in the early stages of the bill's drafting. We have signalled our intention to

remove that absolute bar on contact and leave to appeal will be part of our proposals at stage 2. I think that we notified that intention to the clerks to the committee, but I apologise if we did not.

Dr Murray: You touched on your intentions about fostering, but some of the fostering organisations raised concerns with us that the bill deals only with allowances. Why did you not make it an adoption and fostering bill? Do you intend to introduce fostering legislation in future? Can all the issues that were raised by the review group be dealt with by regulation rather than primary legislation?

Peter Peacock: The answer is in your final point. The law on fostering is pretty robust and provides for a series of regulations to be made and for guidance to be issued. We can pick up every one of the recommendations that we need and want to from the adoption policy review group through either regulation or guidance without creating primary legislation. The only area for which we require to use primary powers is allowances, which is why we put that provision into the bill. However, we are confident that we can deal with all the other matters through the existing statutory framework.

Dr Murray: Can you assure us that you will consult the fostering agencies on those regulations?

Peter Peacock: Absolutely. We will consult them on any regulatory change and on allowances in particular. We have been looking at a range of issues as part of the wider fostering strategy that is being developed by officials, including how we plan for the supply of people into fostering. We do that in a sophisticated way in teaching and social work, but we have not applied the same techniques to this sector.

We are looking at training, allowances, support services for foster carers, how current legislation serves or does not serve our needs and what new regulation might be required. A whole package is being worked through to make sure that we gear up our action on fostering.

Dr Murray: What is the timescale for the strategy?

Peter Peacock: It is a very big exercise. I hope to say where we have got to before this year is out, but I am not in a position to say exactly when.

Ms Byrne: Will you be looking at limiting to three the number of children placed with foster carers, unless of course a family group is to be placed, for which other arrangements would be made? The Fostering Network raised that important point with us.

Peter Peacock: I am aware of the request and of the position south of the border. We will

consider the matter further and listen to the arguments as part of the fostering strategy. I remain to be convinced about the need for a change in that area; nonetheless, we will look at it.

The Convener: In relation to the proposed regulations on fostering, I presume that it is the policy intention to bring eligibility for fostering into line with what is proposed in the bill, for unmarried and same-sex couples, for example.

Peter Peacock: We have powers to do that by regulatory change under existing statutory provisions. It is the intention that once Parliament has expressed its view on the Adoption and Children (Scotland) Bill, we will make the appropriate parallel changes through the regulatory mechanism.

Fiona Hyslop: Step-parent agreements were rejected when we considered the Family Law (Scotland) Bill. Are you thinking of reconsidering them in the current bill, given that a huge number of adoptions are step-parent adoptions? It might not be appropriate or desirable in today's world for, say, a stepfather to adopt when the natural father is still around, so to make sure that the welfare of the child is considered, formalising the responsibilities of a stepfather in a step-parent agreement might be helpful.

Peter Peacock: As Parliament dealt with step-parent agreements during consideration of the Family Law (Scotland) Bill, we do not intend to reopen the matter in the current bill.

Fiona Hyslop: Do you regard the bill as being primarily about the welfare of looked-after children, as opposed to the broader matters of step-parents and adoptions? Should the bill's scope be widened at stage 2? What is your policy intention, as opposed to what the Parliament might do with the bill? Is it broad or is it about widening the pool of adopters and making it easier for children who move from care into adoption?

Peter Peacock: Our policy intention is to improve the lot of looked-after children—that is, children who are away from their natural parents and natural homes and are currently in residential care, in foster care or living with friends or family. The bill is child focused and its purpose is to ensure that we give looked-after children better opportunities. For a variety of reasons, I would hesitate to encourage you to widen its scope but, ultimately, that choice is in your hands, not mine, as I understand it.

Fiona Hyslop: The long title is broad indeed.

The Convener: It is for me to determine whether an amendment is in the scope of the bill.

Peter Peacock: I appeal to you, convener, to be conservative in that.

Ms Byrne: I will make a brief point on kinship care. The Association of Directors of Social Work felt that an opportunity had been missed and that the bill should address kinship care to bring together the different dimensions of family placement. Children 1st also stressed the need for kinship care to be more fully considered in permanence planning. Can the bill do any more to promote kinship care?

Peter Peacock: We are alert to the issues that are being raised, particularly by grandparents, but not by grandparents alone. We are alert to the fact that the social circumstances of our society are changing and that extended families are taking responsibility for children in difficult situations. They can get support from local authorities, which are empowered to give appropriate support and pay allowances. We know that that does not happen universally and that there are different approaches. As part of our overall thinking on fostering and adoption, we are also thinking hard about what more we need to do on kinship care and to ensure that proper support is available. You can expect us to say more about what we can do to improve our thinking on and consideration of kinship care as the year goes on.

Also, the Social Work Inspection Agency is about to publish a report that considers kinship care. I am not entirely sure of the publication date—I cannot immediately remember whether it is pre or post recess—but the report is due to come into the public domain in the not-too-distant future. It will add a bit more to our knowledge and understanding of the situation and allow us to make some appropriate decisions about how to move it forward.

The Convener: Last, but by no means least, Lord James Douglas-Hamilton wants to ask a few questions about the Finance Committee's report.

Lord James Douglas-Hamilton: I will ask five brief questions about funding. I hope that the minister will look into the points that I make. The British Association for Adoption and Fostering voiced concern that the assumptions that are made in the bill's financial memorandum do not necessarily hold. It asserted that the assumption that increased levels of adoption will lead to a reduction in costs for supporting children who are currently in foster or residential care is fallacious. The BAAF suggests that not all children who are in care are suitable for adoption, as some are too old or have severe learning or behavioural difficulties. Could that be looked into?

Peter Peacock: As I said in my opening remarks, we have picked up many questions from the Finance Committee's scrutiny of the financial memorandum and from the committee's evidence taking. Our intention is to come back to the committee on those.

If the financial memorandum has given the wrong impression, I apologise, as there is no intention to make savings on the children's services budget. In fact, as the financial memorandum shows, we expect expenditure to rise. The financial memorandum is trying to set out the fact that we accept that there will be an increase in expenditure in post-adoption services. We are making some money available for that, but it is not a one-way street; other things are happening. We have touched on some of them, such as the involvement of the children's hearings system, which has implications for the number of reports that social workers have to write because of changes in the court procedure. As it happens, savings or efficiencies potentially become available. We do not propose to take those savings out of the system. We simply make the observation that we are not in a one-way street of growing costs and that there are compensating factors in the equation.

13:00

Lord James Douglas-Hamilton: The minister may have answered my second question, but I will continue. The Finance Committee argues that, although the bill will impose significant new duties and costs on local authorities, no commitment has been made on the level of funding that will be available to them to implement the bill. The Finance Committee fears that the bill, when passed, could be impossible to implement satisfactorily because of insufficient funding and inadequate infrastructure. The minister has given us an assurance that he is investigating that matter.

Peter Peacock: Particularly with post-adoption services, which we want to be improved, we acknowledge that costs will increase. If I recall correctly, we propose to put £2.35 million into that, which is quite a lot of money. There are about 200 adoptions a year in Scotland that are not step-parent adoptions. If we tripled that number to 600 a year, which would be an amazing outcome if we could achieve it, the money that we are making available would mean an extra £4,000 per process. That is quite a lot of money and it will enable local authorities to make progress. As always, we will discuss with local authorities the precise level of funding. I would be surprised if they conceded that we are providing sufficient money, but that is the nature of the discussions that we have. We acknowledge that there will be increased costs.

Lord James Douglas-Hamilton: The Finance Committee suggests that ministers should produce accurate financial projections for the costs of adoption allowances. I presume that that will be considered, too.

Peter Peacock: In the supplementary submission that we will make to the committee, we will try to answer as best we can every point that the Finance Committee made. In some respects, those costs are difficult to estimate, because the data that are available to us from local authorities do not necessarily disaggregate expenditure.

Lord James Douglas-Hamilton: Will the minister reassure us that discussions are under way between local authorities and fostering agencies on setting one allowance rate for foster carers?

Peter Peacock: As I sit here, I do not know whether COSLA is involved formally in dialogue with fostering agencies about that. However, I have a clear desire for proper dialogue between all the parties. I undertake to ensure that we have proper dialogue about the issues when we come close to making decisions on them.

Lord James Douglas-Hamilton: It would be most helpful if that could be done.

Can the minister clarify when the final decisions will be made once consultation and negotiations have been completed?

Peter Peacock: Do you mean on allowances?

Lord James Douglas-Hamilton: I mean on policy and spending plans.

Peter Peacock: We are in the midst of a pretty significant internal review about the priority that we attach to spending on the issues. I assure the member that we want to come to conclusions as quickly as is reasonably possible. However, as you know, we are about to enter a spending review and I have other factors to consider in my budget. We are clear that we need to make progress on the issue and that we need adequate resources to do that.

Robert Brown: I can add a point on that. There are a lot of complicated issues in the background about numbers, such as the number of people who will go for adoption, the new permanence order or fostering in some other respect. Bearing in mind that residential care is the most expensive option, foster care is the next most expensive and adoption is a bit less expensive than that, many of the figures will turn on the number of people in the different categories and the total number. That unpredictability feeds into the fostering strategy and various other matters on which we are working. There are significant difficulties in making forward projections, but we will need to take into account the savings and the extra spend.

Fiona Hyslop: It is a bit unsatisfactory that we cannot engage properly on the Finance Committee's concerns and criticisms. I appreciate that the Executive will respond in writing, but the committee should have the opportunity to test that response.

Peter Peacock: I am happy to answer any questions that you have on the matter. I have tried to be helpful by saying that we will make a supplementary submission to address all the points, but I am more than happy to deal with any points that you want to make today.

Fiona Hyslop: The convener might want to reflect on that.

The point that Jack McConnell made about the number of children who are in drug-misusing families who may need to be taken into care is a substantial development. He made that point in a statement after the bill and the financial memorandum had been published. I know that the financial memorandum is primarily about the bill as presented, but it is clear that the policy that Jack McConnell proposed would have a significant impact, should it come to pass. Given that major policy statement and its impact on fostering, I sincerely ask you to rework the financial memorandum to give an idea of what you expect should that policy be implemented. That would give us a more rounded view.

Peter Peacock: I understand your point. What the First Minister articulated in public recently was the culmination of many internal discussions about the shifts and emphases that we need in policy. We have been thinking a lot about those issues. We have not concluded all our thinking: a huge number of actions will flow from “Hidden Harm—Next Steps: Supporting Children—Working with Parents” and our response to that. We will widen what that encompasses to deal not only with drug issues, but with alcohol issues, because their characteristics and impact on children are similar, although not identical. Policy on those matters is undergoing significant movement because of the imperatives that act on us and because of our desire to do better than we have done for the group of young people who are affected.

Those are separate matters from the bill. I understand that under parliamentary rules our financial memorandum should relate to the impact of the bill. We tried to produce such a memorandum and not to widen its scope. Separately, I would be happy to send the committee a letter that picks up the points about kinship care, our foster caring strategy and the “Hidden Harm” issues that are emerging, which Cathy Jamieson, other colleagues and I are dealing with. That would give members a clearer picture of where all that is heading. However, those issues are separate from the financial implications that flow strictly from the bill.

Fiona Hyslop: The issues are separate but related.

Peter Peacock: Yes.

Fiona Hyslop: A judgment must be passed on whether kinship carers, for example, should receive a fostering allowance and, if so, on what basis.

Peter Peacock: I say with respect that I understand that, but that that issue does not flow directly from the bill. It is a common policy issue in the same territory, but it does not relate to a provision in the bill. We may want to cause things to happen irrespective of the bill, but we will have other means by which to do them. I am drawing a distinction with what the bill will do, which is broadly definable. You refer to a much bigger set of policy developments that is taking place.

Fiona Hyslop: The committee will need to reflect on that.

The Convener: Members have no more questions. It would help if the minister provided the supplementary information—particularly in response to the Finance Committee’s report—as soon as possible and preferably before we consider our draft stage 1 report. I thank the minister, the deputy minister and the officials for attending and giving oral evidence.

That concludes oral evidence on the bill. I thank everyone who has given oral and written evidence, which will inform our report. I thank in particular our adviser, Professor Kenneth Norrie, who has given us guidance that has made us sound intelligent in asking questions. He has been extremely helpful. That concludes the public part of the meeting.

13:08

Meeting continued in private until 13:17.

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