EDUCATION COMMITTEE

Wednesday 4 October 2006

Session 2

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EDUCATION COMMITTEE
20th 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) (Sol)
*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)
Mr Jamie McGrigor (Highlands and Islands) (Con)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
Mr Andrew Welsh (Angus) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Richard Baker (North East Scotland) (Lab)
Robert Brown (Deputy Minister for Education and Young People)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Education Committee

Wednesday 4 October 2006

[THE CONVENER *opened the meeting at 09:47*]

Subordinate Legislation

Social Work Inspections (Scotland) Regulations (Draft)

The Convener (Iain Smith): Good morning, colleagues, and welcome to the 20th meeting of the Education Committee in 2006. Before we commence, I should point out that there are major problems on the railways between Edinburgh and Glasgow. Apparently, there has been a power failure and all signals are out. Half of the committee are scattered at various points between Haymarket and Glasgow.

As we have a quorum, I intend to deal first with items 1 and 2, on subordinate legislation, and then review the situation before moving on to the Adoption and Fostering (Scotland) Bill. We may have to suspend for a bit if the trains are moving and there is a possibility that our colleagues will still arrive at a reasonable time. We will see how it goes, but at the least we can get the subordinate legislation out of the way.

I welcome the Deputy Minister for Education and Young People, Robert Brown, along with Bill Ellis from the social work services policy division of the Scottish Executive. As is our normal practice when dealing with affirmative resolutions, there will be an opportunity for the minister briefly to introduce the draft Social Work Inspections (Scotland) Regulations and for members to ask questions before we move on to the formal motion. I ask the minister to make a few opening remarks.

The Deputy Minister for Education and Young People (Robert Brown): By the sounds of things, it is just as well that I stayed in Edinburgh last night instead of trusting the trains.

Social work inspections will be familiar territory to the committee. The Social Work Inspection Agency has to be provided with the powers to deliver robust inspections of social work services. The powers are also required to enable it to report with confidence on whether social work services are working effectively. The objective is to ensure that the users of the services are safe and protected and that their needs are being met.

Under the Social Work (Scotland) Act 1968—the main legislation—SWIA's statutory powers were restricted to specific areas of social work, such as some residential establishments, and a broad power of inquiry. There were no formal inspection powers beyond that. To date, its inspection of the three main areas of social work services—children's services, community care and criminal justice—has been on the basis of consent.

The draft regulations set out the powers that SWIA will be able to use in the conduct of inspections. They also have the benefit of aligning the agency's powers of inspection with the powers for the joint inspection of children's services, in which SWIA plays a significant part.

In conclusion, the draft regulations provide the clarification and reassurance necessary to allow the robust inspection of social work services and empower SWIA to carry out such inspections.

Lord James Douglas-Hamilton (Lothians) (Con): I want to ask just one question. Would I be correct in thinking that the draft regulations are a commonsense provision to safeguard children and to allow for all eventualities so that the necessary action can be taken?

Robert Brown: We might say that everything that the Executive does is based on common sense, but the draft regulations are specifically so. As you will be aware from earlier debates on joint powers, there were some deficiencies in powers that had to be provided for to ensure that services could be properly and effectively inspected by all agencies—in this instance, by SWIA.

Mr Adam Ingram (South of Scotland) (SNP): The minister mentioned that we have joint inspections. Does he suggest that the draft regulations are necessary as a consequence of the introduction of joint inspections? Do they regularise that process, or are they stand-alone provisions?

Robert Brown: They are a bit of both. The joint inspection arrangements were introduced by consent, so there was not a technical problem, but it emerged during consideration of their beginning, if you like, that there were some deficiencies in the powers available, primarily from the point of view of joint inspections and particularly in the social work inspection provisions. The powers come from different acts, as the committee will appreciate. The problems have been dealt with in primary legislation, and the draft regulations are the subordinate legislation under that primary legislation. They are designed to flesh out the system, as we dealt with the principles in primary legislation.

Mr Ingram: My other question is about the outcomes of inspections and the information that is generated. There will shortly be a bill flowing from the Bichard report under which information sharing will be key. Am I right that inspection

outcomes will form part of the body of information that can be shared with other agencies?

Robert Brown: We are not talking about quite that context. The information concerned is really for the purposes of inspection, which is slightly different from information for the purposes of protection. Issues might arise or be discovered during an inspection. Certain duties in relation to that will be implied in professional duties, on which clarity will be given in the forthcoming legislation. The draft regulations are about the inspection end rather than about the sharing of information for more general duties.

The Convener: As there are no further questions, we move on to item 2. I ask the minister to speak to and move motion S2M-4886, in the name of Peter Peacock.

Robert Brown: I do not want to add anything to the substance of my comments on the draft regulations, which were explored in the questions.

I move,

That the Education Committee recommends that the draft Social Work Inspections (Scotland) Regulations 2006 be approved.

Motion agreed to.

The Convener: Thank you, minister.

I suggest that we suspend the meeting until 10.15, so that we can check the likely progress of trains from the west.

09:54

Meeting suspended.

10:17

On resuming—

Adoption and Children (Scotland) Bill: Stage 2

The Convener: There has been some progress on the railways, and I am pleased to see that Frank McAveety and Elaine Murray have been able to join us. Richard Baker is here as a substitute for Wendy Alexander. Others will, I hope, make it in as proceedings go on.

Agenda item 3 is day 1 of stage 2 of the Adoption and Children (Scotland) Bill. Members should have a copy of the bill, the marshalled list and the groupings. I ask the clerks to ensure that Richard Baker has copies of those documents. That would be helpful for him.

Although the officials can advise the minister on amendments, they are not allowed to speak at stage 2, as I am sure he is aware.

Section 1—Duty of local authority to provide adoption service

The Convener: Amendment 8, in the name of the minister, is grouped with—bear with me, as it is a long list—amendments 9, 10, 166, 11 to 15, 17 to 20, 23, 24, 169, 170, 25, 171, 149, 162, 27, 28, 31, 152, 56, 57, 59, 153, 67, 69, 72, 73, 92, 94 to 96, 99, 100, 102 to 104, 108, 111, 112, 115, 117, 119 to 123, 125, 126, 160 and 144.

Mr Frank McAveety (Glasgow Shettleston) (Lab): House.

The Convener: I should point out that, if amendment 13 is agreed to, amendment 14 will be pre-empted.

Robert Brown: I do not have total confidence that I have sufficient brain cells to see my way to the end of this lot today, but I will do my best.

In its stage 1 report, the committee asked why we had chosen to create a tripartite structure for adoption support services and suggested that those services should be provided in a holistic way. We indicated to the committee that we agreed with that, and the Executive amendments that are under consideration in the first group are a consequence of that change. The key amendment is amendment 11, which removes section 1(2). That subsection specified that an adoption service would consist of pre-adoption services, adoption support services and post-adoption services. We are removing that structure and replacing it with a single adoption support service, which more accurately reflects current practice.

People will, of course, still be able to get adoption support at different points in the adoption process, but the availability of support will not now depend on the point in the process at which they find themselves. People will be able to request a service when they feel that they need it, regardless of which stage in the adoption process they have reached. That change is right in principle and helps to clarify the structure of support. The other Executive amendments that will be considered in this group are connected to that change. For example, throughout the bill, we are changing references to "a service" to "services" and removing references to "pre-adoption services", "adoption support services" and "post-adoption services", replacing them with the phrase "adoption support services".

The general thrust of those amendments has won general approval. However, some disquiet has been expressed about using the phrase "adoption support services" for all services. Amendment 166 and the consequential amendments 169 to 171, lodged by Adam Ingram, pick up on that.

The essence of amendment 166 is to distinguish between arrangements for assessing and matching prospective adopters and the children whom they might adopt and other adoption support services, and to place them all under the collective banner "an adoption service". In most respects, the distinction is purely semantic. Amendment 166 would not alter the services that would be provided but would simply distinguish between services that are labelled adoption support services and other services.

Semantics can be important, and it is important to reflect the way in which practitioners in the field think about such issues. However, if we are to make such an amendment, we should ensure that it is properly reflected throughout the bill. Although Adam Ingram has included some consequential amendments, others would be required, and some duplication of section 6(1) would also be created. Therefore, if Adam Ingram and the rest of the committee are agreeable, I will reconsider the bill following stage 2, once we have put in the new structure, and will try to reflect at stage 3 the sense of what Adam Ingram intends to achieve, to ensure that the bill fits together in the way that we want. The matter is complex, but we are sympathetic to the spirit of what Adam Ingram wants to achieve. That will involve revisiting some of the material that is affected by Executive amendments, but it would be best to form a coherent package. Therefore, the committee should agree to the Executive amendments and then we can address at stage 3 the semantic, labelling issue that Adam Ingram has rightly raised. He will no doubt make his case shortly, but I hope that he will reconsider moving amendments 166 and 169 to 171.

I will say a few words about Executive amendment 125. By including the provision that the amendment proposes, we will make it possible for any regulations that are made under section 1 to apply differently to different parts of adoption support services. That is an important flexibility. The bill will rightly treat adoption support as a single service but, in practice, there may be differences that require different responses, and amendment 125 will allow regulations to be responsive to the particular circumstances of different parts of adoption support services.

Lord James Douglas-Hamilton's amendment 13 is intended to ensure that registered adoption services do not include local authorities. However, the amendment is unnecessary. Section 1(5) of the bill refers to

"an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001".

That provision is to be amended by section 4 of the bill, to which members may find it helpful to refer. New paragraph (b) that section 4 will insert into section 2(11) of the Regulation of Care (Scotland) Act 2001 explicitly refers only to

"a person other than a local authority".

In other words, section 4 already deals with what Lord James Douglas-Hamilton seeks to achieve.

Given the general restructuring of the provisions on adoption support services, Lord James Douglas-Hamilton's amendment 24 now seems superfluous. In any event, the amendment would have been superfluous given that the phrase "pre-adoption services" clearly implies a time prior to the making of an adoption order, as do the references in subsection 6(1) to

"children who may be adopted"

rather than children who have been adopted and

"parents who may adopt a child"

rather than parents who have adopted a child.

I hope that Lord James will be prepared not to move amendments 13 and 24. It was right to lodge them, but they have already been dealt with.

The aim of amendment 162, in the name of Tommy Sheridan, is to ensure that adoption agencies pay due regard to the views of the child when they make decisions about adoption. Although I am sympathetic to the idea behind the amendment, I believe that the bill already contains sufficient provision for that to be achieved. In particular, section 9 will require a court or adoption agency to have regard to the child's ascertainable views about adoption. In other words, before a court or adoption agency decides whether to seek

an adoption order, it must ask the child for his or her views about it. If the child is opposed to adoption and is of sufficient maturity to be able to express that view, adoption will not be considered and another permanence option will be pursued.

I invite the committee to agree to the Executive amendments in the group and in the light of the comments that I have made—particularly those on amendment 166—I hope that the members concerned will not move the non-Executive amendments in the group, either because they are unnecessary or because the issues with which they deal will be tackled at stage 3. Members will be tested on their understanding of the matters that I have discussed.

I move amendment 8.

The Convener: Thank you. Your remarks were commendably brief, given that you were introducing such a large group of amendments.

Mr Ingram: I thank the minister for recognising the issue with which amendment 166 deals. Amendments 166 and 169 are designed to address the confusion that might be caused by the Executive's amendments, which seek to make the bill refer to "adoption support services" rather than "an adoption service". Those terms have specific meanings in existing primary legislation, guidance and regulations. Adoption support services form just one part—albeit an important part—of the overarching adoption service. Other elements of that service include placement services, assessment of children who may be adopted and assessment of prospective adoptive parents.

Amendment 166, which was inspired by the British Association for Adoption and Fostering Scotland, would dispel the potential confusion and add clarity to the bill by setting out the duties and purposes of an adoption service and referring to each of its elements in a way that should be readily understood by practitioners and lay people alike. I thank the minister for saying that he will examine and tackle the issue prior to stage 3. On that understanding, I will not move amendment 166.

Amendments 170 and 171, which were also suggested by BAAF Scotland, are consequential on amendments 166 and 172. Given that amendment 172 is in a later grouping, I do not know whether the convener will allow consideration of amendments 170 and 171 to be held back; perhaps he would prefer me to speak to them now.

The Convener: I am not clear what you mean.

Mr Ingram: Amendments 170 and 171 are consequential on amendment 172, which is in a later grouping.

The Convener: I am afraid that we must consider the amendments as they have been grouped.

Mr Ingram: In that case, I will explain the purpose of amendments 170 and 171. Amendment 172 seeks to ensure that everyone covered by section 6(1) will have a right to counselling services. Executive amendment 151 will mean that the duty on local authorities under the Adoption (Scotland) Act 1978 to provide counselling for other persons who have problems relating to an adoption will be watered down to a power to provide such counselling if the local authority thinks that that is appropriate. As the minister has not mentioned those points, I invite him to do so in his summing up.

Lord James Douglas-Hamilton: I thank the minister for the reassurance that he provided in relation to amendment 13. There was confusion about what was being defined in section 1(5) because of the use of the word "service" in the phrases "adoption service" and "registered adoption service". Amendment 13 sought to clarify the definition, but the minister has now said that no such clarification is necessary because the issue has been dealt with. I am grateful to him for that clarification and will not move amendment 13.

The purpose of amendment 24, which the minister said was superfluous, was to clarify that pre-adoption services would be provided before the making of an adoption order. I would be grateful if he would confirm that the intention behind the legislation is that pre-adoption services should be provided before the adoption order is made. I am sure that he will also confirm that, when it comes to issues of interpretation, what he says in the committee can be relied on in court as being indicative of the intention of the Administration.

Amendment 166, in the name of Adam Ingram, involves a complex drafting matter. I hope that the minister will be able to give some reassurance that, even if he cannot resolve the matter now, he will look seriously at the issue, as it seems to me that Adam Ingram may have a point.

10:30

The Convener: Tommy Sheridan is not here to speak to amendment 162, but other members are free to address it.

Dr Elaine Murray (Dumfries) (Lab): Fairly late yesterday, we received a briefing from BAAF Scotland, which indicated that

"BAAF Scotland is opposed to the Executive amendments 8-10, 12, 14, 15, 17, 18, 19, 20, 122 and 160",

on the grounds that

"Adoption support services are important, but they are only part of the adoption service as a whole and calling all

services 'adoption support services' would be a complete change of terminology for no particular reason. The change would lead to confusion for practitioners, families and children."

Can you give us some reassurance on the point that BAAF Scotland has made?

Robert Brown: We have discussed amendment 166, in the name of Adam Ingram, which is a reasonably straightforward matter.

The desire to have a seamless adoption support service at all different levels lies behind most of the amendments. There is an issue of phraseology. We have undertaken to look at that again at stage 3, when we will be able to see clearly the new structure that emerges at stage 2. That will deal, at least in part, with BAAF Scotland's point, to which Elaine Murray referred.

I am not sure that I follow the whole of BAAF Scotland's argument. Any legislation changes phraseology and practice to some degree; the issue is, does it make them better or worse? We are prepared to reflect the reality of practice in the legislation and in guidance, but I would not be happy about rowing back to where we began. After taking evidence, the committee recommended to us that we should look at adoption support services as a whole. I am convinced that that is the proper approach to take.

I would be more than happy to look at the substance of BAAF Scotland's concerns, either directly or with members. I have not seen the document to which Elaine Murray refers. Perhaps she could share it with me later, as I would be more than happy to look at it and to discuss it further. For our present purposes, I am not convinced that we should move back from a generalist approach to a more fragmented, compartmentalised structure of services. That is not the right approach, and we would lose out by adopting it. However, I am happy to examine the concerns that exist.

The separate point of whether there is any rolling back of people's entitlements to support under the new arrangement will be addressed in the context of amendment 172, as Adam Ingram said. My understanding is that there will be no such rolling back. However, a very differently phrased arrangement has been put in place, and I would like to examine it more precisely. I have had discussions with officials about issues relating to how the long list of people who are entitled to services is phrased. Most of the phraseology reflects the advice that we received from the adoption policy review group, which wanted the rights of certain categories of people to be reinforced. It specifically mentioned siblings. Some people were a bit neglected under the previous arrangements. The importance of providing them with reassurance and counselling is increasingly recognised.

The matter does not affect only adoptive parents and adopted children. A much wider range of people are affected by or have an interest in an adoption arrangement, and appropriate provision of services may need to be made for them. It may be sensible to look at the issue once we have dealt with all the changes to later sections of the bill. I am more than happy to talk to Adam Ingram about the matter in detail, once we have seen the revised structure of the bill. In general terms, the Executive's objective is to ensure that a comprehensive system of support is in place and that support is available in appropriate form to people affected by the adoption service who most need support. That is why there will be a new arrangement for assessment and identifying services that are additional to the more general arrangements for the provision of counselling and advice. I hope that Adam Ingram will be prepared to have that conversation and, in the meantime, not to move his amendments, so that we can look at the issues comprehensively in the run-up to stage 3.

The Convener: I apologise to colleagues but, as a consequence of the transport disruption this morning, we need to examine a technical issue relating to standing orders. I will need to suspend the meeting for five minutes before we move to votes.

10:36

Meeting suspended.

10:44

On resuming—

The Convener: I apologise for the suspension. We were trying to resolve from standing orders an issue relating to substitutions. The rules are that a member whose train has been delayed can be represented by a substitute only if the delay is caused by adverse weather conditions, rather than for any other reason. Unfortunately, therefore, Richard Baker will not be able to participate in any vote. In any event, we believe that Wendy Alexander will arrive shortly. I hope that she will be able to join the meeting and participate fully.

Amendment 8 agreed to.

Amendments 9 and 10 moved—[Robert Brown]—and agreed to.

Amendment 166 not moved.

Amendments 11 and 12 moved—[Robert Brown]—and agreed to.

The Convener: I am sorry—there will be a lot of procedure today.

Amendment 13 not moved.

Amendment 14 moved—[Robert Brown]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Local authority plans

Amendment 15 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 16, in the name of Lord James Douglas-Hamilton, is in a group on its own.

Lord James Douglas-Hamilton: The purpose of amendment 16 is to require local authorities to review regularly their plans for the provision of adoption services. The bill does not specify a period after which a local authority should review its plans for providing such services. It is important to review such plans regularly, to take into account developments in good practice.

I accept that section 2(7) contains a power for the Scottish ministers to give local authorities directions, but the Law Society of Scotland's view is that local authorities should be under an obligation to review their plans regularly, rather than simply "from time to time". A review from time to time might mean only once in a period of years and a clearer definition would be helpful.

I move amendment 16.

Dr Murray: I am not sure whether the word "regularly" would resolve the issue that the Law Society has raised, because a regular review could be once every 10 years. The phrase "from time to time" creates an onus to review plans if developments occur in legislation or guidance.

Robert Brown: I recognise Lord James Douglas-Hamilton's intention, which is to ensure that local authority plans do not go out of date, but we do not think that amendment 16 is desirable. The bill draws heavily on provisions with which Lord James is reasonably familiar from a previous life—I refer to section 19 of the Children (Scotland) Act 1995, which is entitled "Local authority plans for services for children". Members will see that section 2(4) of the bill makes explicit provision to allow a local authority to incorporate its plan on adoption support services into a wider children's services plan. Because of that link, it is desirable to have the same legislative provisions on the timing of the review of plans in the bill and the 1995 act.

As Lord James Douglas-Hamilton said, members will see that section 2(7) of the bill states:

"The Scottish Ministers may give a local authority directions as to the carrying out of its functions under subsection (2)."

We envisage requiring local authorities to review their plans under the bill, as we require them to review children's services plans under the 1995 act. Local authorities are on a three-year cycle, with less full updating every year. A balance must be struck to ensure proper arrangements for planning while avoiding planning for planning's sake. The 1995 act provision—so wisely introduced by Lord James—strikes the right note.

Given that explanation, which I am sure Lord James Douglas-Hamilton will accept, I invite him to withdraw amendment 16.

The Convener: Flattery will get you everywhere.

Lord James Douglas-Hamilton: Some politicians have a future—others have a past. I thank the minister for his reply. In view of his assurance about the three-year cycle, I seek to withdraw amendment 16.

Amendment 16, by agreement, withdrawn.

Amendments 17 and 18 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 146, in the name of Ken Macintosh, is grouped with amendments 161, 167 and 158. I invite a member to speak to and move amendment 146 in Ken's absence.

Mr Ingram: I express my support for amendment 146, in which Ken Macintosh suggests that there should be a reference in the bill to the need to address

"a child's educational and health needs."

My amendments 161 and 167 were inspired by Adoption UK in Scotland and Dr Helen Minnis, senior lecturer in child and adolescent psychiatry at the University of Glasgow, who contacted committee members last week. We know from the evidence that was presented to the committee at stage 1 that most children who are currently adopted have been physically and mentally damaged through early experience of abuse and neglect.

Recent research in the United States has shown that, by adolescence, two thirds of such children have severe behavioural, emotional and relationship difficulties, leading to up to half of adoptive placements being disrupted. Adoption per se does not solve a child's problems. In such cases, psychological therapy is required. As Dr Minnis points out, that is not provided for in Scotland. The bill provides us with an opportunity to address that problem by requiring such interventions to be made where they are needed. Clearly, the amendments in my name have resource implications, but arguably not addressing

the need to treat attachment disorders and the like has a greater cost, because of those cases in which placements break down.

Amendment 167 is an attempt to impose a legal time limit on the assessment processes prior to agreeing a permanent placement plan for the child. Research evidence suggests that very positive outcomes can be achieved for children when therapeutic work is coupled with structured assessments within the timeframe.

I recognise that the minister was given short notice of these proposals, but I hope that he will acknowledge that they deserve serious consideration.

I move amendment 146.

Dr Murray: Everyone will have sympathy with the need to take all such factors into consideration in preparing a placement plan. However, I am not convinced by the proposals. Perhaps the minister could elucidate. Would the plans be more appropriately dealt with in guidance or in subordinate legislation, rather than in the bill itself?

Robert Brown: Like other members, I have enormous sympathy with what Adam Ingram and Ken Macintosh are trying to do through their amendments. The information that Adam Ingram gave us about the breakdown of adoption placements is important background to the changed climate in which adoption operates these days.

Better support for adoptive families from social work, health and other relevant professionals is vital to make placements work successfully. It is important that we increase awareness among providers of health, education and social services of the needs of looked-after children and of the impact of early trauma on their development and behaviour. The amendments in the group seek to place a requirement on local authorities to include details of the psychological therapeutic services that they will make available for children who are adopted or who might be adopted in their plans for providing adoption services, and to consider the health and educational needs of a child when considering adoption.

As I said, I am sympathetic to the general proposition that appropriate counselling and psychotherapy can be important in making adoptions work. I am also conscious that adoptive families might not always have found it easy to access help, partly through a simple lack of knowledge of the help that might be used, but also because of a lack of available services. Provisions elsewhere in the bill to allow local authorities to provide payments in lieu of services that they cannot provide will help in such situations.

The proper assessment of needs that is a key part of our proposals should ensure that needs for such services are properly identified and will give us a better handle on some of the issues. We recognise the importance of the subject and we are taking action to establish a framework for it.

I recognise the importance of local authorities providing a joined-up service for looked-after children and an important part of that is considering a child's health and educational needs. Section 2(3) requires a local authority to consult health boards and relevant voluntary organisations when preparing a plan for the provision of the adoption service in its area and provides sufficient coverage for local authority planning of specialist therapeutic services. Again, we are talking about creating a framework. As Elaine Murray rightly said, we will want to think about guidance on a number of aspects including the availability of provision.

Other provisions in the bill place a duty on adoption agencies to consider a range of factors, such as religion and cultural background, when considering whether adoption is the best option. Adoption agencies must also consider whether adoption is likely to best meet the needs of the child. One of the most important issues is the process by which children are matched with prospective adopters. I mention that training is touched on in another amendment.

Adoption agencies seek to ensure that prospective adopters can meet the needs of a child, including particular health and educational needs. As a matter of course, the educational and health needs of the child will be taken into consideration in the matching process as well as when a local authority assesses an adopted child's need for support. Educational and health needs will also be taken into account in wider ways, not least under the Education (Additional Support for Learning) (Scotland) Act 2004, with which the committee is familiar. Such needs are catered for in a variety of ways and we will issue guidance under the bill to consider them further.

We are discussing important functions and we want to ensure that children are given all the support that they require. The details can best be included in guidance that can move with the advancement of knowledge and information over time.

Adam Ingram spoke about therapeutic psychological services and I know of his long interest in the field. If he wishes to bring particular concerns to my attention, I would be more than happy for him to write to me about them in more detail and to have a discussion with him. However, the issue does not relate directly to the bill and I hope that against the background of my assurances he will allow such matters to be dealt with in the way that I have suggested.

Mr Ingram: I am reassured by the minister's remarks that the bill can cover areas of concern. I will take him up on his offer to discuss psychological interventions and the use of guidance. On that basis, I will not press amendment 146.

Amendment 146, by agreement, withdrawn.

Amendments 147, 161 and 167 not moved.

The Convener: Amendment 168, in the name of Lord James Douglas-Hamilton, is grouped with amendments 173 to 177, 4 and 178.

11:00

Lord James Douglas-Hamilton: I am principally concerned with the principle of independent advocacy. Amendment 168 would introduce the right for a child, his or her birth parents and other people involved in the child's upbringing up to the point of the adoption process to access independent advocacy services. That would apply before, during and after adoption. I submit the amendment on behalf of the Scottish Independent Advocacy Alliance.

The principle of independent advocacy is to enable the child and his or her birth parents to receive support and representation from someone independent of the adoption agencies to make certain that their feelings are taken into account. That, I submit, is reasonable. Furthermore, the independent advocate has more time and means to get to know the child and their situation on the ground than the curator ad litem or reporting officer might have.

There is explicit provision in the bill to allow the same person to be appointed as reporting officer and curator ad litem. The former position of reporting officer requires him to work with the birth parents to ensure that they understand the proposed adoption agreement. The latter role of curator ad litem requires the appointed person to represent the child in court and make decisions in their best interests. When the same person holds both roles, a conflict of interest could arise, so there is a clear need for another professional to seek out and put forward clearly and incisively the child's wishes as well as their best interests. In order to safeguard the best interests of the child, the necessary safeguard is to appoint an independent person competent to exercise independent advocacy.

My request to the minister is this: will he consider carefully a potential conflict of interest in the circumstances that I have mentioned? I hope that he will consider sympathetically the principle behind the amendments with a view to deciding whether it can be incorporated in guidance. Will he also examine how the matter is dealt with in the rest of Britain? I believe that it is a live issue outside Scotland as well.

On the other amendments in the group, which are all in my name, the same principle applies to a number of different, self-explanatory situations outlined by the Scottish Independent Advocacy Alliance. I would be most grateful if the minister would undertake to consider the amendments at least with a view to formulating appropriate guidance in due course.

I move amendment 168.

Mr Ingram: I support the use of independent advocacy, particularly with children. I know that the SIAA is concerned about everyone involved in the adoption process having access to independent advocates, but I believe that it is extremely important that the voice of the child concerned is heard. We know that independent advocates are available for children in the children's hearings system, for example, and the Executive is concerned to improve the services provided in that context. It is an omission in the bill not to have reference to independent advocacy for the child at the centre of the adoption process, so I support Lord James Douglas-Hamilton's amendments.

Dr Murray: I agree with some of what Adam Ingram said about the importance of advocacy for the child. Section 9(3) refers to

"the welfare of the child throughout the child's life as the paramount consideration."

The way in which the child gets the opportunity to express its views is important—that is also covered in section 9—but I am not certain that it needs to be in the bill. Independent advocacy is desirable, but it could be part of guidance on how adoption processes should be organised. I am not convinced that it is necessary to say in the bill that the list of people in amendment 177 should have the right to independent advocacy.

Mr Ingram: Could I add one point in response to Elaine Murray?

The Convener: Technically, you cannot, but I will let you do so as I am feeling generous this morning.

Mr Ingram: We have had the same debate in relation to previous legislation that has come before the committee, such as the Education (Additional Support for Learning) (Scotland) Act 2004, and we had a similar debate on the Mental Health (Care and Treatment) (Scotland) Act 2003. On both occasions, we came to the conclusion that advocacy should be mentioned in the legislation and I suggest that, for consistency, it should be mentioned in the Adoption and Children (Scotland) Bill too.

Robert Brown: This group of amendments raises an important issue. I am considerably supportive of allowing the child's voice to be heard. I am sure that we have all talked to children who have been in care, through adoption or fostering, who feel that, at various points in the procedure or afterwards, their voice was not heard. The central point of the amendments in the group is undoubtedly correct and, as Elaine Murray has mentioned, is provided for in the provisions in section 9 on the way in which the court or adoption agency is to exercise its powers.

We recognise that independent advocacy is a valuable service that can be important for children and adults. Where appropriate, it can be a way to help children and adults to make their voice stronger and to have as much control as possible over their life. We do not dispute that general principle, but amendment 168 seeks to add an additional consideration that a local authority must include in its plan for the provision of the adoption service, namely the steps that it will take to ensure the availability of independent advocacy services for children, parents, guardians and relatives, and to ensure that they have the opportunity to make use of those services.

I am aware that the Education (Additional Support for Learning) (Scotland) Act 2004 and the Mental Health (Care and Treatment) (Scotland) Act 2003 contained specific provisions on access to independent advocacy services. However, amendment 168 is not quite the same. A general duty on local authorities with regard to the provision of independent advocacy services is not appropriate in the bill because adoptions occur in a wide variety of circumstances, many of which do not really raise the issue that we are discussing. As Lord James Douglas-Hamilton has mentioned, the bill contains provisions for the appointment of curators ad litem and reporting officers and provision for safeguarders. There is quite a lot in the adoption regime that requires people to consider the child's interests.

Lord James Douglas-Hamilton mentioned a potential conflict of interest. I understand that the adoption policy review group considered that issue and concluded that there was no conflict or that, if there was, it could be accommodated. In any event, the rules in section 101 contain provisions that enable the curator ad litem to be a different person from the reporting officer or to be the same person if appropriate. The rules are flexible enough to cope with the emergence of problems of the kind that Lord James Douglas-Hamilton envisages.

Unlike in the Education (Additional Support for Learning) (Scotland) Act 2004 and the Mental Health (Care and Treatment) (Scotland) Act 2003, advocacy is not as central as it might be in some circumstances partly for the reasons on which I have touched. There may be circumstances during the adoption process in which children and adults would benefit from advocacy, and the bill does nothing to prevent that; it is perfectly possible for such arrangements to be made. The 2004 act and the 2003 act deal with clear categories of people who consistently require advocacy. Under the Education (Additional Support for Learning) (Scotland) Act 2004 education authorities do not have a duty to provide or pay for an independent advocate. Although Lord James Douglas-Hamilton is right to say that advocacy was included in the legislation, the reference was limited. Within adoption, circumstances are extremely varied and a blanket provision in the bill is not appropriate.

Amendment 173 would specify that when a court or adoption agency considers a child's ascertainable wishes and feelings in order to come to a decision about adoption, wishes and feelings expressed via an independent advocate must be considered. Amendments 174, 175 and 176 address similar points.

An explicit statement that the child's views can be expressed via an independent advocate is not necessary in primary legislation, because there is no bar on that happening. Of course, children can also be represented in legal proceedings by a solicitor—or an advocate of Lord James Douglas-Hamilton's kind. Elsewhere in the bill, we make provision for the appointment of curators ad litem and reporting officers who are independent of the court and can convey the child's views and protect the child's interests, so the bill contains much provision to allow such representation. The curator ad litem cannot be an employee of the local authority, which provides an important Chinese wall. As we said, the inclusion in the bill of a general duty on the provision of independent advocacy services would not be appropriate, given the diversity of adoption cases.

Amendment 4 would ensure that in the case of an application for a relevant order for a child, the child would have the right of access to independent advocacy services if the same person had been appointed curator ad litem and reporting officer. I think that I dealt with that matter in the context of the provision in section 101. Again, such a level of detail would not be appropriate in primary legislation; it is more a matter for court rules. However, I assure Lord James Douglas-Hamilton that I am more than happy to ask officials to consider the issue in the context of the guidance, which seems to be the proper place for such matters—I hope that my assurance satisfies him.

Nothing that I have said is intended to downplay the importance of advocacy in a number of situations. Advocacy is important for people, but

the appropriate way of dealing with it is through guidance, rather than in the bill. Therefore, I ask the committee to reject the amendments in Lord James Douglas-Hamilton's name.

Lord James Douglas-Hamilton: I thank the minister for his assurance that he will consider the matter with a view to issuing guidance in due course. I also thank him for his comments on conflicts of interest, which are dealt with in section 101. I reserve the right to return to the matter at stage 3 if necessary, given precedents in other legislation. If other Administrations were correct to include in bills the matters that we are considering, there might be a case for us to act in the same way. I will not press amendment 168 or move the other amendments in my name in the group.

Amendment 168, by agreement, withdrawn.

Section 2, as amended, agreed to.

Section 3 agreed to.

Section 4—Meaning of "adoption service" in Regulation of Care (Scotland) Act 2001

Amendments 19 and 20 moved—[Robert Brown]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Adoption agencies: regulations about carrying out of functions

The Convener: Amendment 21, in the name of Lord James Douglas-Hamilton, is grouped with amendment 22. If amendment 21 is agreed to, I cannot call amendment 22.

Lord James Douglas-Hamilton: It is not clear why it is necessary for a local authority to apply for a permanence order before making arrangements for adoption. The provision in section 5(3) reflects section 9(3A) of the Adoption (Scotland) Act 1978, which, arguably, has caused local authorities to bring proceedings that were not wanted and did not advance matters for the child. Therefore, I lodged amendment 21 as a probing amendment to explore why the Executive thinks that the provision is necessary.

I move amendment 21.

11:15

Robert Brown: This is a complicated issue. I am grateful to Lord James Douglas-Hamilton for lodging amendment 21, which deals with an important point. Lord James will be familiar with the history of the provision, the origins of which lie in an amendment that was made to the 1978 act by the 1995 act. That provided for a power to make regulations about circumstances in which a local authority that is intending that a child should be adopted should apply for a freeing order. The bill reproduces that power although, as amendment 22 makes clear, we absolutely accept that it should apply only to a permanence order with authority to adopt. The underlying concern was to guard against a situation in which a child is removed from the parental home but, as Lord James explained, an adoption order is not sought for many months or years. By that time, the child has been away from the parents for so long that any prospect of successful reunion has vanished, so that adoption is not a deliberate act of policy that is genuinely in the interests of the child—as might have been the case if a court had considered the matter at an earlier stage—but is drifted into by default. We all agree that that is something to be avoided.

We appreciate that there is concern that regulations that are drafted under the equivalent section of the 1978 act sometimes had the effect of obliging a local authority to pursue a freeing order when that might not have been the best way forward, and officials have discussed the matter with a number of interested parties. For example, there may be a prospect of birth parents agreeing to adoption if they have a sense of who the prospective adopters may be, but not to an open-ended freeing order.

The provision is simply an enabling power; the key is how it is used in practice. We believe that it is best for the committee to retain the provision and to agree to amendment 22, which limits the local authority's application for a permanence order to an order with authority to adopt. However, we give the undertaking that regulations under the provision will be subject to careful consultation with local authorities, appropriate legal experts and other groups with an interest in the matter. I reassure members that our intention is to consult such groups, to involve them in our thinking when drafting regulations and to ensure that the sort of unintended consequence that emerged from the previous arrangements is not replicated. Against that background, and very much in the spirit of Lord James Douglas-Hamilton's amendment, I ask Lord James to accept our reassurances and ask the committee to reject amendment 21 and to agree to Executive amendment 22.

Lord James Douglas-Hamilton: I thank the minister for his response. I will not press amendment 21.

Amendment 21, by agreement, withdrawn.

Amendment 22 moved—[Robert Brown]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Pre-adoption services

Amendment 23 moved—[Robert Brown]—and agreed to.

Amendment 24 not moved.

The Convener: Amendment 148, in the name of the minister, is grouped with amendments 148A, 30, 32 to 34, 150, 151, 172, 49 to 54, 60, 61, 66, 68, 70, 97, 113, 116, 118 and 137. The question on the amendment to amendment 148 will be put before the question on amendment 148. Amendments 151 and 172 are direct alternatives. That means that if amendment 172 is subsequently agreed to, it supersedes any agreement to amendment 151. I hope that that is clear.

Robert Brown: This follows on from our earlier debate on section 1. All the Executive amendments in the group are a consequence of creating a single adoption support regime and providing what were previously post-adoption services from the point of placement rather than the point of adoption, because of the fact that pressures that may require support are incurred at the point of placing the child. They are predominantly a reaction to the restructuring and renaming of sections and are consequential to the change of language that is used to refer to adoption support services.

Amendment 148A, in the name of Tommy Sheridan, would create a further category of people who have the automatic right to an assessment of their needs for adoption support services. The category would contain the uncles and aunts of placed children or adopted persons.

Under the bill, uncles and aunts—and anyone else who is not listed in new paragraphs (a) to (q) of section 6(1) in amendment 148—will be able to request an assessment of needs from a local authority, although the local authority will have discretion as to whether to conduct an assessment, which will depend on the circumstances of the case. The rationale behind amendment 148 was to give an automatic right of assessment to categories of people who most typically have a close association with a child. That means that people who have treated a child as their own child, whether or not they have any such legal relationship, a child's siblings, who are often forgotten in such circumstances, and a child's grandparents will have an automatic right to an assessment. Those are the people who are most commonly directly affected by a child being adopted or considered for adoption.

We acknowledge that family relationships can be diverse and complex—where any list stops is in a sense arbitrary—but we feel that it is sensible to limit the automatic right of assessment appropriately on the basis of the likely needs and rights of the various parties that are involved. Amendment 148A could escalate into a lengthy list that entitled every possible permutation of extended family members to an automatic assessment, which would not be the right way to proceed. The amendment would increase the possibility of vexatious assessment applications in cases of conflict when birth-family members contested an adoption placement. As such, our opinion is that the current discretionary right to an assessment of need is appropriate for uncles, aunts and people who are further removed.

Under the power that amendment 150 provides, we intend to issue regulations that specify how local authorities should conduct assessments. That will provide sufficient safeguards for people who have no automatic right to an assessment to ensure that their request has been dealt with appropriately. People whose request has been refused will be able to follow a standard local authority complaints procedure if they are dissatisfied with how their request was handled.

Amendment 30, in the name of Lord James Douglas-Hamilton, is unnecessary, particularly in the light of the redrafting of section 6. Revised section 6 will include no less than 20 categories of people with varying entitlements to services. New section 6(1)(r) will be a further catch-all category of people who are affected by proposed placing for adoption, who will be able to apply for an assessment of a need for services. That is enough. Amendment 32 has been overtaken by the fact that section 7 will be left out. Given the terms of new paragraph (r), the amendment is no longer necessary.

Amendment 33 is similar to amendment 30 and has also been overtaken by the proposed removal of section 7. Section 6 will include a wide variety of categories of person who will be entitled to services.

Amendment 172 was lodged by Adam Ingram and we think that it was a response to amendment 151. However, it may be based on a misconception of what amendment 151 tries to achieve. We are not trying to reduce the categories of people who are entitled to support or to reduce the support to which they are entitled. Amendment 151 will insert a new section to set out a local authority's responsibilities for the provision of adoption support services. Subsection (1) in that new section will place a duty on a local authority to provide some adoption support services when requested by people who will be listed in new paragraphs (a) to (e) of section 6(1). Those services will be required to meet some circumstances rather than a particular need that may be assessed. The support services will meet particular needs that will require to be assessed in accordance with amendment 150.

Paragraph (b) of subsection (1) of the section that amendment 151 introduces will allow the local authority, when providing services such as those that are mentioned in paragraphs (a) to (c) of

section 6(2), to provide to a person any of the services that are mentioned in paragraphs (d) to (f) of section 6(2) without performing an assessment of needs. Without that power, such services could be provided only if required urgently under section 50.

New section 6(1)(b) will not reduce the availability of services. We will extend the categories of people who are mentioned in section 6(1) to include reference to placed children, their parents and new carers, but we will not give those people a right simply to demand the full range of services. We will allow the local authority to provide support services to the children and persons who are mentioned and will preserve their right to require an assessment of needs by a local authority, which may result in an authority having an obligation to provide them with the services that are required. That is complicated, as members can tell.

Amendment 151 simply preserves the position whereby most support is usually provided after an assessment of needs, as the adoption policy review group recommended. The people concerned will have an entitlement to have their needs assessed and to have those needs, as assessed, met. Section 50 allows services that are required urgently to be provided without assessment.

Amendment 172 is undesirable because it would establish a right to full services without any prior assessment. Members probably appreciate the logic of the distinction that I have made. It seems to us that one of the adoption policy review group's key recommendations was that we should set up a system whereby people's needs would be properly assessed and plans would be developed to meet those needs.

We also think that there is a problem with subsection (2) of the new section that amendment 172 proposes. By including people who fall into the category that is defined in new section 6(1)(r), it would place local authorities under a duty to provide counselling to almost anyone who asked for it. No one will lose a service to which they were previously entitled. I should make it clear that the 1978 act simply placed a general duty on local authorities to make broad categories of services available to broad categories of people. Our bill will give specific people specific rights to have their needs for support services assessed and met, as the review group recommended.

The need for amendment 49, in the name of Lord James Douglas-Hamilton, is overtaken by the removal of section 47. In any event, amendment 49 is undesirable in that it appears to provide for counselling in circumstances in which someone might have difficulties with the concept of adoption in general rather than with a specific adoption. In other words, it would go beyond what we are trying to do.

The need for amendment 50, which is also in the name of Lord James Douglas-Hamilton, should be overtaken by the removal of section 47. It goes back to Tommy Sheridan's proposal on aunts and uncles, which we think is undesirable for the reasons that I have explained. Experience suggests that grandparents are affected by adoption to an extent and with a frequency that natural aunts and uncles are not. That said, I accept that many of the categories are somewhat arbitrary. It would, of course, be open to a local authority to provide services under the catch-all category in new section 6(1)(r). However, we do not believe that it is desirable to make specific provision for aunts and uncles and that was not among the recommendations of the review group, which examined such matters in some detail.

The remaining Executive amendments are technical and I do not want to go through them in detail; they simply seek to move sections around to make the layout of the bill more logical. I invite the committee to support amendment 148 and the other Executive amendments in the group and ask the members concerned not to move the non-Executive amendments. If those amendments are moved, I urge the committee to reject them.

I have one further point. As members will gather from my narration of the proposed changes, we are discussing a highly complex issue. I admit that I am not entirely certain that I follow what all the effects and implications of the restructuring will be. I want to re-examine the matter. Going back to what Adam Ingram said about the provision of advice and counselling services, I want to be sure that people will not lose any rights that they had; that the new structure will work in practice, given the length of the list in amendment 148; and that any changes from present practice are being made for a good policy reason that can be justified to the committee. I give that assurance.

Once we have the new composite structure of the bill, it should help us to understand whether there have been any unintended consequences of what—as members will appreciate from the large number of amendments that it has been necessary to lodge—has been quite a complex operation.

I move amendment 148. [*Interruption.*]

The Convener: I am not entirely sure what that noise was—perhaps it was the trains arriving.

Robert Brown: It was a roll of drums to mark my reaching the end of such lengthy remarks.

Amendment 148A not moved.

The Convener: I invite Adam Ingram to speak to amendment 169 and the other amendments in the group.

Mr Ingram: I sympathise with the minister for having to come to terms with the complexity of the group and the changes to the bill that the amendments in it propose.

The Convener: I meant to ask you to speak to amendment 172 rather than to amendment 169.

Mr Ingram: My grey cells, too, are having a few problems in following proceedings.

Amendment 172 is a revised version of Executive amendment 151, which seeks to replace section 8 with a new section. Amendment 172 was drafted by BAAF Scotland, which has two main concerns about amendment 151. The first is that it will mean that "adopted persons" and "adoptive parents", as defined in section 6(1), as amended by Executive amendment 148, will not be included among those people who will be entitled to all the adoption supports. Perhaps the minister can explain why those categories of people have been excluded. It might seem that differentiation between pre-adoption and post-adoption services is being maintained in that amendment, with the group of people who are most concerned with post-adoption services being excluded from the fullest range of support.

11:30

Robert Brown: I am sorry to interrupt, but could you specify again the group of people that you think has been missed out?

Mr Ingram: I am referring to "adopted persons" and "adoptive parents", as in new paragraphs (f) and (g) of section 6(1).

Robert Brown: I am sorry, but what are you saying has been missed out?

Mr Ingram: Reference to them in the first new subsection in amendment 151. Could you explain why those groups of people have been missed out? The interpretation could be made that those people will not have the full range of support that others have.

Secondly, paragraph (b) of subsection (1) of the new section that is introduced by amendment 151 confers a power on local authorities to provide counselling and other services to a narrower group of people than before. That appears to be a watering down of the current duty on local authorities under the Children (Scotland) Act 1995 to provide

"counselling for other persons if they have problems relating to adoption."

Amendment 172 would reinstate the duty and extend it to cover all persons affected by adoption, as listed in new section 6(1). BAAF Scotland believes that that Executive amendment is too narrow overall and that it will lead to fewer rights for individuals rather than more.

I take on board what the minister said in his opening remarks on this group. I would of course like to take him up on his offer to discuss the ramifications. The matter is not entirely clear, and I am struggling with this—I think that everyone is struggling with these proposed changes.

The Convener: My apologies again for naming the wrong amendment at the beginning of that. I also apologise to Lord James, as I should have called him to speak before Adam Ingram.

Lord James Douglas-Hamilton: Amendment 30 would allow ministers to specify further categories of person. The minister says that that is not necessary, but can he confirm that that can and will, where necessary, be done?

The minister said that amendment 32, relating to the definition of "relevant person", has been overtaken. He said that amendment 33, also relating to the definition of "relevant person", is unnecessary.

Amendment 49 relates to counselling services. I would press the minister for a little more information on that. Under section 47(2)(b)(ii), the counselling services that are to be made available include services for any person

"who has difficulties relating to adoption".

Can the minister say a little bit about the nature of those "difficulties"? Are they general in nature? Would they relate to specific adoptions?

Amendment 50 relates to relevant persons and to the issue of natural uncles and aunts of adopted children. "Relative" seems to be defined in section 111(1) as including "uncle or aunt". The amendment therefore seems appropriate for the harmonisation of provisions on persons in relationship to the adopted person. I do not follow the minister's reasoning as to why the amendment is not necessary in order to harmonise the bill in line with section 111(1).

Robert Brown: I ask members to allow me a moment to come to grips with this. As has been said already, the points are complex.

Adam Ingram referred to the effect of amendment 151, which refers only to new paragraphs (a) to (e) of section 6(1). I accept that the distinction is not immediately apparent, but amendment 151 relates to the provision of support services in the pre-adoption placement situation, and children who have been adopted and parents who have adopted children will obviously not be involved in that. The distinction is between the pre and post-adoption situations.

As I indicated earlier, I want to review the situation once we have seen the result of the amendments and ensure that there is nothing indeterminate in the bill. I am more than happy to talk to Adam Ingram or other committee members if they have points to make about that.

I think that I have already dealt with Lord James Douglas-Hamilton's comment about counselling. The counselling involved is not for difficulties with adoption generally but for difficulties with the specific adoption that the people are involved in. I hope that I have dealt with the point.

I must confess that, at first glance, this last point stumps me. I accept that the definition of relative in section 111 includes uncles and aunts, but it must be seen in the context of what it relates back to and where the word "relative" is used elsewhere in the bill. For example, there is one reference in section 10(2) on general considerations when placing a child for adoption, which refers to

"the wishes and feelings of any relative of the child regarding the child."

I say again that the feelings of any relative, or the interests of other people affected by the adoption, can be dealt with under new section 6(1)(r). Paragraph (r) refers to a person, other than a person specifically mentioned elsewhere in subsection (1),

"who is … affected by the placing, or proposed placing, of a child for adoption, or … affected by an adoption."

That is a wide definition that includes anyone who is involved. They will not have a right to adoption services in that context, but they will certainly be able to apply and have information made available to them. I anticipate that the situation will be spelled out more in guidance and that a generous view of definitions will be taken.

I will look again at the question of including uncles and aunts in the definitions in light of the point made about section 111, because I want to be able to give the committee a more comprehensive explanation of how the definition fits in with the advice services. As the committee will see, the point is related not to definitions in section 111 but to broader considerations of who can have their views known in the legal arrangements under the bill. That is not quite the same thing, although I accept that they are connected.

Against that reassurance, it might be sensible for us to write formally to the committee on that aspect, which raises a technical matter that I need to give a more satisfactory explanation for.

The Convener: That would be extremely useful to the committee. Given the complex nature of the amendments, perhaps the Minister for Parliamentary Business will consider the timetabling carefully to ensure that there is adequate time between the completion of stage 2 and stage 3 for the committee and ministers to reflect fully on the final structure of the bill. It is important that we have enough time.

Robert Brown: I am happy to assure the committee that we will do our best to ensure that the reconsideration of the sections is done quickly. We have the parliamentary recess in October before the committee resumes consideration and we arrive at stage 3, so there is some time. We will try to get back to you as quickly as we can.

The Convener: Thank you for that assurance, minister.

Amendment 148 agreed to.

Amendments 169 and 170 not moved.

Amendment 25 moved—[Robert Brown]—and agreed to.

Amendment 171 not moved.

Amendment 149 moved—[Robert Brown]—and agreed to.

Amendment 162 not moved.

The Convener: Amendment 26, in the name of Lord James Douglas-Hamilton, is grouped with amendments 29, 155 to 157 and 127 to 129.

Lord James Douglas-Hamilton: I can address amendment 26 briefly. Section 6 details the types of pre-adoption services that a local authority can offer and section 6(2) includes the services regarding the assessment of children and adopters, counselling, the provision of information and advice and other assistance. I suggest to the minister that it would be useful if those pre-adoption services could include the provision of financial assistance.

Amendment 26 is a probing amendment and amendment 29 is consequential.

I move amendment 26.

Robert Brown: I am grateful to Lord James Douglas-Hamilton for raising the point, but I hope to be able to satisfy him on it.

There are really two groups of amendments within this group. Amendments 26 and 29 from Lord James Douglas-Hamilton seek to make specific reference to financial assistance in section 6. Those amendments are not necessary. Section 77 makes provision for the payment of adoption allowances, including—to cover a point that is addressed in amendment 29—to persons who may adopt as well as those who have already adopted. Section 79 provides a power for local authorities to make payments in the specific circumstances in which someone is eligible for an adoption service that the local authority cannot

provide first-hand. Those provisions should suffice.

The Executive amendments that follow in the group—amendments 155 to 157 and 127 to 129—amend section 79. Some of them are fairly technical, but I will say something about one or two of them. In amendment 127, by replacing the word "would" with the word "might", we aim to reflect the wider discretion that amendment 155 gives to local authorities. Under section 79(3)(b) as drafted, only those people to whom the local authority would have provided a service had it been able to do so are eligible for a payment. Under amendment 127, people to whom the service might have been provided can be considered for financial assistance even if the local authority would be able to provide the service. That provision still allows local authorities to exercise discretion in the provision of payment but permits a wider range of people to be considered.

Along with amendment 128—which extends the factors that must be taken into consideration when deciding whether to provide a payment to a person—amendment 127 clarifies the procedure under which a person may receive a payment instead of a service. That is particularly important to ensuring that adoptive families are able to access the full range of services for which they have a need, and amendments 127 and 128 provide valuable clarity on that. They hark back to some of the points about which we talked with Adam Ingram earlier.

I invite the committee to reject amendments 26 and 29 if Lord James Douglas-Hamilton presses them and to agree to the other amendments in the grouping. However, I hope that Lord James Douglas-Hamilton will be satisfied that the bill makes provision for financial assistance as well as other forms of assistance to prospective adopters.

Lord James Douglas-Hamilton: I thank the minister for his response, particularly on the point about financial assistance, which is of considerable reassurance. I will not press amendments 26 and 29.

Amendment 26, by agreement, withdrawn.

Amendments 27 and 28 moved—[Robert Brown]—and agreed to.

Amendments 29 and 30 not moved.

Amendment 31 moved—[Robert Brown]—and agreed to.

Section 6, as amended, agreed to.

11:45

Section 7—Adoption support services

Amendments 32 and 33 not moved.

Amendment 34 moved—[Robert Brown]—and agreed to.

After section 7

Amendment 150 moved—[Robert Brown]—and agreed to.

Section 8—Provision of adoption support services

Amendment 151 moved—[Robert Brown]—and agreed to.

Amendment 172 not moved.

Section 47—Post-adoption services

Amendment 49 not moved.

The Convener: Amendment 50, in the name of Lord James Douglas-Hamilton has already been debated with amendment 148.

Lord James Douglas-Hamilton: I would have moved amendment 50, had it not been for the minister's reassurance.

The Convener: I am sure that the minister has noted that.

Amendment 50 not moved.

Amendment 51 moved—[Robert Brown]—and agreed to.

Section 48—Assessment of needs

Amendment 52 moved—[Robert Brown]—and agreed to.

Section 49—Provision of services

Amendment 53 moved—[Robert Brown]—and agreed to.

Section 50—Urgent provision

Amendments 152, 54, 56 and 57 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 58, in the name of the minister, is grouped with amendments 141, 142, 42, 130, 132 and 134.

Robert Brown: Amendments 58, 141, 142, 42, 132 and 134 will introduce text to ensure that the phrase "as soon as is reasonably practicable" is used consistently throughout the bill. Amendment 130 will insert the word "is" to complete the expression "as is reasonably practicable" and is an entirely technical amendment.

I move amendment 58.

Amendment 58 agreed to.

Amendment 59 moved—[Robert Brown]—and agreed to.

Section 50, as amended, agreed to.

Amendment 60 moved—[Robert Brown]—and agreed to.

Section 51—Care plans

Amendments 61 and 153 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 62 is grouped with amendments 63 to 65, 71, 74 to 84, 154, 88 to 91, 93, 98, 101, 105, 107, 109, 110, 114, 124, 139 and 140.

I welcome Fiona Hyslop to the meeting. I am glad that she finally made it.

Fiona Hyslop (Lothians) (SNP): The quarter past 8 train from Linlithgow has just arrived.

Robert Brown: This is one of the largest groups, but many of the individual amendments are technical and consequential to the two main amendments, the first of which is amendment 62. The bill as introduced provides for adoption support plans—introduced as care plans—to come into force at the point at which an adoption order is made. That would mean that a local authority's responsibility to provide certain support services would begin only when an adoption order was made. However, when the prospective adopters are not relatives of the child, section 15 requires that the child live with the prospective adopters for at least 13 weeks before the application is made for an adoption order.

As several witnesses pointed out at stage 1, the placement period could be challenging and demanding, particularly against the background of the more challenging nature of adoption these days. The success of the placement and any future adoption will depend on the provision of the correct support in this period, therefore the making of an adoption order seems like an artificial and unrealistic threshold on which to start providing services and support.

We have lodged amendments that will provide for adoption support plans to come into effect when the child is placed with the prospective adopters. Amendment 62 and several subsequent technical amendments will replace references to "adoptive family" with references to "relevant family" for that purpose. Those are amendments 64, 74, 76, 79 to 81 and 89 to 91. Several consequential amendments provide a definition of "relevant family"—amendments 83, 84, 139 and 140. Amendment 93 will ensure that the members of the family with whom a child is placed for adoption are eligible to receive support through such a plan.

Amendment 63, which is the second of the main amendments, will replace the term "care plan" with "adoption support plan". Evidence that was given at stage 1 suggested that the term "care plan" was confusing because it was already used in planning for the needs of looked-after children. In addition, some witnesses considered that the phrase implied that adoptive families would be reliant on local authorities for help well beyond the making of an adoption order. We agree that "care plan" is not the best phrase for the purpose, so we have lodged amendments to substitute the phrase "care plan" with the phrase "adoption support plan". Amendments 65, 75, 77, 78, 154, 88, 101, 105 and 107 are consequential to that.

Amendment 71 is a technical amendment, which will amend the language that is used in section 51 without altering its effect: adoption support plans will end when an adopted child reaches 18 years of age. Further technical amendments in the group relate to guidance and regulations. Amendments 114 and 109 relate to guidance on the preparing and reviewing of adoption support plans, while amendments 124 and 110 relate to regulations about adoption support plans. In both cases, the reference will be moved from one part of the bill to another, which we hope will provide greater clarity without having any impact on the legal effect of the provisions.

Many of the amendments in the group are technical and are consequential to amendments that are themselves technical, but their effect will nonetheless be important in providing support at the point at which it is most needed. I invite the committee to accept this group of amendments.

I move amendment 62.

Amendment 62 agreed to.

Amendments 63 to 84 moved—[Robert Brown]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Duration of care plan

Amendment 154 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 85 is grouped with amendments 86 and 87.

Robert Brown: As I said, we have lodged amendments that seek to substitute the phrase "care plan" with "adoption support plan". We have also changed the point from which those plans are required. Section 52 concerns the duration of adoption support plans, and that is what this group of amendments primarily relates to.

The bill as introduced provides for an adoption support plan to come into force when an adoption order is made. We are changing that provision so that the plan should begin when the child is placed with the prospective adopters. That is reflected in the new definition of "appropriate child", which will be inserted by amendment 87. Section 52, as amended, will provide that adoption support plans will last until the child reaches the age of 18, whereas the provision as drafted appeared to limit the plans to last for three years from the date of the adoption order. That was never our intention, so we have redrafted the provision to ensure that there is absolutely no doubt about the duration of an adoption support plan: it lasts until it is replaced by another adoption support plan or until the child reaches the age of 18. Amendments 86 and 87 are technical amendments that are consequential to amendment 85. I hope that the committee will accept the three amendments.

I move amendment 85.

Amendment 85 agreed to.

Amendments 86 and 87 moved—[Robert Brown]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Family member's right to require review of care plan

Amendments 88 to 97 moved—[Robert Brown]—and agreed to.

Section 53, as amended, agreed to.

Section 54—Other cases where authority under duty to review care plan

Amendments 98 to 100 moved—[Robert Brown]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Reassessment of needs for post-adoption services

Amendments 101 to 105 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 106, in the name of the minister, is in a group on its own.

Robert Brown: We lodged amendment 106 to ensure that a child who has been placed or adopted can request a reassessment of his or her care plan and need for post-adoption services. That will apply so long as the child is able to understand the need for such services. If they are 12 years or over, there will be a presumption that they are able to understand that. A further effect of the amendment will be to allow other children in the relevant family to request a reassessment of the plan, if they are able to understand the need for services.

I move amendment 106.

Lord James Douglas-Hamilton: Will the minister explain the amendment a little bit more? If there is a strong case for reassessment but the person concerned does not understand, what are the regular procedures that ought to be adopted? I am sure that there is a process to be put in place, but I am not sure what it is.

Robert Brown: I think that I am right in saying that the provision relates to children. I believe that a request can be made for reassessment of the adoption support plan by the adoptive parent; there is a procedure for that, in any event. There is an illogicality otherwise: if a child is able to understand, to express views and so on—perhaps with the support of advocacy, to return to an earlier point—they can give instructions and proceed accordingly. However, if they cannot understand, there is nothing to kick things off, if you follow my point.

I imagine that, for the most part, we are talking about older children, in cases in which an issue has arisen that is different and distinct from the interests of the adoptive parents. It is right that there should be an appropriate provision under which young people can trigger the reassessment arrangements.

12:00

Lord James Douglas-Hamilton: Can you assure me that the amendment will not prevent a reassessment from taking place where there is a need for it?

Robert Brown: It will not. In addition, under section 54, there is a duty on the local authority to review the plan from time to time and if it becomes aware

"of a change in the circumstances of a relevant member."

I can reassure Lord James Douglas-Hamilton on that point.

Amendment 106 agreed to.

Section 55, as amended, agreed to.

Section 56—Care plans: directions

Amendments 107 and 108 moved—[Robert Brown]—and agreed to.

Section 56, as amended, agreed to.

After section 56

Amendments 109 and 110 moved—[Robert Brown]—and agreed to.

Section 57—Guidance

Amendments 111 to 115 moved—[Robert Brown]—and agreed to.

Section 57, as amended, agreed to.

Amendment 116 moved—[Robert Brown]—and agreed to.

Section 58—Regulations about adoption services and care plans

Amendments 117 to 125 moved—[Robert Brown]—and agreed to.

Section 58, as amended, agreed to.

Amendment 126 moved—[Robert Brown]—and agreed to.

Section 59 agreed to.

Schedule 1

REGISTRATION OF ADOPTIONS

Amendments 141 and 142 moved—[Robert Brown]—and agreed to.

Schedule 1, as amended, agreed to.

Section 79—Power to provide payment to person entitled to adoption service

Amendments 155 to 157, 127 and 128 moved—[Robert Brown]—and agreed to.

Section 79, as amended, agreed to.

Amendment 129 moved—[Robert Brown]—and agreed to.

The Convener: That concludes our consideration of amendments for today. I thank members and the minister for their contributions. We will consider further amendments on Wednesday 1 November.

I remind members that at the committee's next meeting, which will be on 24 October—the first Tuesday after the recess—we will consider the budget and the draft report on the national plan for Gaelic. Despite our best efforts, we have not yet been able to reschedule the debate on our early years report, so that is still scheduled for 9 am on Wednesday 25 October, although I am trying hard to get it changed to the 11 o'clock slot. Let us hope that the trains are running on time that day. I appreciate that members who have childcare responsibilities will find it difficult to be here by 9 am; I have made that point forcibly to the office of the Minister for Parliamentary Business more than once and I shall continue to do so in the vague hope that some common sense will come into play.

On our second day of considering amendments at stage 2 of the Adoption and Children (Scotland) Bill, our intention is to deal with sections 9 to 46, 64 to 78 and 80 to 83. Because of the recess, the deadline for lodging amendments is 12 o'clock on Friday 27 October. We hope to complete stage 2 on 8 November. I thank colleagues for getting through a complex set of amendments this morning. I look forward to having a simpler set of amendments when we continue our stage 2 consideration of the bill.

Meeting closed at 12:05.

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