EDUCATION COMMITTEE

Wednesday 8 November 2006

Session 2

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EDUCATION COMMITTEE
23rd 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:

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 1

Scottish Parliament

Education Committee

Wednesday 8 November 2006

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

Item in Private

The Convener (Iain Smith): Good morning, colleagues, and welcome to the 23rd meeting in 2006 of the Education Committee. We have a lot to get through this morning. I hope that we will today be able to complete stage 2 of the Adoption and Children (Scotland) Bill. I warn members that if we do not manage to get through the amendments, we will have a special committee meeting tomorrow at lunch time because we have to complete stage 2 consideration by the end of this week to meet Parliament's timetable. That might encourage you all to be brief.

Item 1 is to ask the committee whether to consider in private item 3, which is on our draft report to the Finance Committee. It is our normal practice to do that, so do members agree?

Fiona Hyslop (Lothians) (SNP): I agree to consider item 3 in private, but I disagree that it should be normal practice always to consider draft reports in private.

The Convener: That has been our committee's normal practice.

Fiona Hyslop: I do not agree that it should be.

The Convener: It is a matter for each committee to determine on each occasion and it has been our practice to consider such reports in private. Do members agree to take item 3 in private?

Members *indicated agreement*.

The Convener: Before we move to item 2, I draw members' attention to two additional papers that have been circulated—they came in late yesterday afternoon. One letter from the Minister for Education and Young People responds to committee members' questions about the budget process, and another—which is also relevant to stage 2 of the Adoption and Children (Scotland) Bill—contains an update about the national fostering strategy. That information will be useful when we reach the appropriate section of the bill.

Adoption and Children (Scotland) Bill: Stage 2

09:49

The Convener: Item 2 is day 3 of consideration of the Adoption and Children (Scotland) Bill at stage 2. I welcome again the Deputy Minister for Education and Young People and his team, who are Peter Willman and Rona Carson. I remind the minister that his officials may advise him, but they are not permitted to speak during stage 2 proceedings.

Section 37—Effect of order on existing rights etc

The Convener: Amendment 265, in the name of the minister, is grouped with amendments 266 and 46.

The Deputy Minister for Education and Young People (Robert Brown): There will be two surreal moments in relation to section 37. Before we begin to discuss amendments, however, I say that an administrative error resulted in my speaking inadvertently to amendment 265 at day 2, when amendment 253 was being debated. During preparation of my speaking notes, the text of one amendment was replaced by the text of the other, but it was noticed only when official report staff brought it to the attention of officials. That demonstrates the technical challenges in some parts of the bill, but it had no substantive effect because amendment 253, on which the committee voted on day 2, was simply a small technical amendment to make a stylistic change.

Amendment 46 seeks to clarify a perceived ambiguity in section 37. The section provides that any person who has lost their parental responsibilities and rights as a result of the making of an adoption order should no longer have a duty to pay or provide aliment to the child in respect of any period after the making of the order, or to make any payment arising out of parental responsibilities and rights in any such period. The amendment seeks to clarify further that that does not apply to the adoptive parents—in other words, the adoptive parents have a duty to pay or provide aliment or to make any other payment to the child.

Amendment 46 would not have the intended effect. The law in relation to aliment is set out in section 1 of the Family Law (Scotland) Act 1985 and extends to people who have treated a child as a child of their family, whether or not they have parental responsibilities and rights in respect of the child. Amendment 46's effect would be to extinguish the duty to pay aliment of people who had parental responsibilities and rights in respect of a child, but not of people such as those whom I

just mentioned. The policy intention is that any person's duty to pay aliment should be extinguished—not just the duty of those who have parental responsibilities and rights. I intend to resist amendment 46 for that reason.

The Executive has lodged an amendment that ought to provide the clarity that Lord James seeks. Together, amendments 265 and 266 will achieve that by distinguishing the duties that are owed by natural parents, who had parental responsibilities and rights immediately before the adoption, from those of adoptive parents who are given parental responsibilities and rights by the making of the order. I hope that that is reassuring.

I confess that I had difficulty with amendment 266, which is one of the surreal moments that I mentioned before. I thought that the text of the amendment did not make a sentence, but according to officials' advice, sections 37(2) and 37(3) will read together and say first that the making of an adoption order extinguishes any parental responsibilities and parental rights and then, subject to subsection (4), extinguishes any duty to pay or provide aliment in respect of any period after the making of the order. That technical amendment will be sorted out at the printing stage. I thought that there had been a mistake and that I was clever for finding it, but I am told that there has not been a mistake.

I move amendment 265.

Lord James Douglas-Hamilton (Lothians) (Con): Amendment 46 seeks to limit the extinguishing of the duty of aliment. The purpose was to clarify the position so that there would be no confusion about whose duties will be extinguished. The minister did not say that my amendment 46 gave rise to his amendments, which I expect was the case. In any case, I am grateful to the minister for his response.

I make the general point that it would be helpful to have more time between the deadline for lodging amendments and their consideration in committee. Some amendments are highly technical and extensive: if such matters are rushed, there is a danger that we might miss a significant point, which is obviously undesirable. However, that is more a matter for the Procedures Committee.

I will be glad, in the light of the minister's explanation, not to move amendment 46.

Robert Brown: I echo Lord James's latter comments. The timescale for lodging technical amendments was tight, which has resulted in officials working late at night. I have raised the issue before, but as Lord James said, it is a matter for the Procedures Committee.

The Convener: Indeed. It is my experience that no matter when one sets a deadline, everyone will work right up to it often very late into the night.

Amendment 265 agreed to.

Amendment 266 moved—[Robert Brown]—and agreed to.

Amendment 46 not moved.

Section 37, as amended, agreed to.

Section 38—Automatic revocation of supervision requirement

The Convener: Amendment 47, in the name of Lord James Douglas-Hamilton, is grouped with amendments 48 and 267. If amendment 48 is agreed to, amendment 267 will be pre-empted.

Lord James Douglas-Hamilton: Amendments 47 and 48 would delete the substance of section 38 and insert what we believe to be better wording. Section 38 may be difficult to operate in practice: for a supervision requirement to terminate, a finding from the sheriff that compulsory measures are no longer necessary is required. There should be a duty on the court to consider whether to terminate the supervision requirement. Such a duty would be simpler to operate than the provision in the bill. The amendments are simplifying amendments.

I move amendment 47.

Robert Brown: I want to make one or two stylistic points. Lord James Douglas-Hamilton's amendments are substantially stylistic, although they raise an issue that goes a bit beyond style.

Amendments 47 and 48 seek to redraft section 38 of the bill as Lord James described. The section provides that a supervision requirement will cease to have effect where the court is satisfied that compulsory measures of supervision in respect of the child are longer necessary. Under the amendments, the court would have to consider whether the compulsory supervision requirement was necessary and, if it was not, to order that it cease to have effect. Arguably, the difference is that the court would be under a clear duty to consider whether compulsory measures of supervision need to remain in place.

The bill will, once it has been amended by Executive amendment 267, have the effect that Lord James seeks, while retaining consistency in drafting style throughout the bill. As members may recall, at the committee's previous meeting I said that although we all have our preferences with regard to drafting, it is preferable to stick with the style that the draftspeople have chosen.

By requiring that the court must be satisfied that supervision measures are no longer necessary,

the section will, in effect, place a duty on the court to consider the requirement, because there is no other way in which such a decision could be made. Amendment 267 will strengthen that by placing a duty on the court specifically to make an order, which will ensure that revocation of the supervision requirement is clear from the decision of the court. I hope that satisfies Lord James. I invite him to seek to withdraw amendment 47 and not to move amendment 48.

Lord James Douglas-Hamilton: In view of the minister's assurance, I will not press amendment 47 or move amendment 48.

Amendment 47, by agreement, withdrawn.

Amendment 48 not moved.

Amendment 267 moved—[Robert Brown]—and agreed to.

Section 38, as amended, agreed to.

Section 39 agreed to.

Section 40—Disclosure of information kept under section 39

The Convener: Amendment 268, in the name of the minister, is grouped with amendments 269, 270, 304 and 384.

Robert Brown: Amendments 268 to 270 and 304 will affect the power to make regulations in connection with the disclosure by adoption agencies of information pertaining to adoptions. The amendments provide for a wider range of factors to be included in the regulations, including provisions about the review of decisions of adoption agencies in connection with the disclosure of information and the conditions that are applicable to such disclosure. The amendments will also alter the extent of enactments that can be affected by regulations made under section 40. That will ensure that regulations can require the disclosure by adoption agencies of information in relation to adoption, even if it is held under requirements other than section 39 of the bill.

Amendment 268 provides that regulations that are made in relation to the disclosure of information under section 40, and medical information under section 78, are subject to the affirmative procedure. That change reflects comments by the Subordinate Legislation Committee.

Amendment 384, in the name of Adam Ingram, seeks to address a difficulty that has arisen because of section 44 of the Children (Scotland) Act 1995. That section prevents publication of material that is likely to identify a child or the child's address or school, when that child's case has been referred to a reporter, when he or she is the subject of a children's hearing or when his or her case is before a sheriff in relation to child protection orders, exclusion orders, referrals from a children's hearing, rehearing of evidence or an appeal. Section 44 has been routinely interpreted as preventing adoption agencies from publishing photographs of children who are seeking adoptive parents, although the section does not refer to that expressly.

Publications such as the British Association for Adoption and Fostering's "Be My Parent" provide details of children who are waiting to be adopted. The interpretation of section 44 of the 1995 act has limited publication of photographs of Scottish children. Amendment 384 seeks to clarify that section 44 of the 1995 act does not apply to information that is used in this context. We do not believe that the intention of section 44 was to place a limitation in that way, so amendment 384 is helpful in that it will put the matter beyond doubt. I invite the committee to support Adam Ingram's amendment 384.

I move amendment 268.

10:00

The Convener: Follow that, Adam.

Mr Adam Ingram (South of Scotland) (SNP): I do not think I can. That was excellent—thank you very much, minister.

I will explain a little. Publication of photographs of children who are subject to supervision requirements is necessary because it helps adoption agencies in Scotland that are seeking adopters. We are at a disadvantage here compared with England and Wales. Photographs help in the process of finding permanent carers. There is currently a grey area in the law, which amendment 384 will tidy up. At the moment, agencies do not wish to risk breaking the law; the amendment will clarify the situation.

Lord James Douglas-Hamilton: I welcome the amendments in the name of the Minister for Education and Young People, and I welcome especially Adam Ingram's amendment 384. As a precaution, some Scottish local authorities do not currently allow photographs to be shown, but that impedes the adoption process. The adoption policy review group suggested that it ought to be clarified that photograph distribution is allowed for the purposes of securing permanence for a child. Amendment 384 is an important and sensible provision that will bring the law in Scotland into line with the law south of the border.

Fiona Hyslop: I am pleased by the progress that is being made through acceptance of Adam Ingram's amendment 384. Concern was expressed to us about the information that could

be made available to adoptive parents about the children that they have adopted, particularly medical information or other information related to bringing up the children that they might require in the future.

Section 40(1) says that regulations can be made in relation to

"other persons of a description or descriptions specified in the regulations of information kept".

The amendments in the group refer to how the process of disclosing information can be managed, but will not change whether adoptive parents can or cannot have access to medical information about the children whom they have adopted. I assume that that will be covered by regulations that will come before the committee and which will be subject to the affirmative procedure. Will the amendments change that provision in any way? Is the issue that is addressed in the amendments more a technical matter of process?

Mr Kenneth Macintosh (Eastwood) (Lab): First, I welcome the minister's acceptance of Adam Ingram's amendment 384. Secondly, I have a concern about what Fiona Hyslop has just said about information. At stage 1, concerns were expressed about information in respect of different groups of adopted children and adoptive parents. That is clearly a sensitive matter, which we can perhaps pursue in the stage 3 debate. The regulations will clearly be important.

Robert Brown: There are one or two points to respond to. I draw the committee's attention to section 78, which is entitled "Disclosure of medical information about parents of child". That covers a bit of what we are talking about now, and it is worth mentioning it.

The amendments in the group will widen the scope of the regulation-making power under section 40, which begins:

"The Scottish Ministers may by regulations make provision for or in connection with".

We will need to follow that when the act is implemented. There will, if I am right, be consultation. There should be enough scope, aside from the committee's involvement, for input and to ensure that we draw out all the delicate issues. I hope that satisfies members.

Amendment 268 agreed to.

Amendments 269 and 270 moved—[Robert Brown]—and agreed to.

Section 40, as amended, agreed to.

Sections 41 to 45 agreed to.

Section 46—Succession and *inter vivos* deeds

The Convener: Amendment 271, in the name of the minister, is in a group on its own.

Robert Brown: Amendment 271 addresses an error in section 46 that flowed from the section's restatement of section 44 of the Adoption (Scotland) Act 1978. The original text referred to a person succeeding to a deceased person. Of course, one does not succeed to a deceased person but to the deceased person's estate. Amendment 271 is a technical amendment that will simplify clarify that.

I move amendment 271.

Amendment 271 agreed to.

Section 46, as amended, agreed to.

Section 64—Restriction on bringing children into the United Kingdom

The Convener: Amendment 309, in the name of Adam Ingram, is grouped with amendments 310 to 312.

Mr Ingram: Amendments 309 to 312 have been lodged in order to probe the robustness of the legal framework that covers intercountry adoptions. The issue has received much media attention lately when Madonna adopted a child from Malawi. The impression that has been given, rightly or wrongly, is that her wealth and celebrity allowed her to bypass the normal assessment and approval process in both the United Kingdom and Malawi.

Sections 68 to 71 of the bill make special provision allowing the Executive to place restrictions on adoptions from a country when it is felt that the country's internal system is not well operated. For example, I understand that adoption from Cambodia is currently not permitted because of corruption among officials in that country.

The Madonna case seems to highlight a loophole whereby UK residents can jump on a plane to a poor country and, in effect, buy a baby. The British Association for Adoption and Fostering is concerned that the widespread publicity that has been generated by the case has distorted public perceptions about adoption. According to recent opinion polls, most people apparently now believe that it is easier to adopt a child from overseas than from the UK and that more children are adopted from abroad than from this country. The reality is very different, given that there are just 400 intercountry adoptions in the UK each year—I do not have separate figures for Scotland—and that, by comparison, some 4,000 vulnerable children in the UK every year need adoption. The point is that, if people think that it is harder to adopt a child from this country than from abroad, they might not consider domestic adoption, for which there is

such a crying need. I hope that the minister can provide reassurances on those concerns.

Amendments 310 and 312 would move the offences for breaches of the overseas adoptions system into section 64. That would serve the purpose of emphasising the severe penalties that flow from flouting the system.

Amendments 309 and 311 address the Intercountry Adoption Centre's concerns on matters that have arisen in different cases under the Adoption and Children Act 2002, which covers England and Wales.

I move amendment 309.

Mr Macintosh: I have some concerns about this issue. Given the number of provisions that are included in this chapter of the bill, we did not devote to it as much time at stage 1 as we might have. I am not sure what any reader of our stage 1 report would make of the committee's views on the matter, but I think that we have raised concerns about the danger of intercountry adoptions veering towards child trafficking. I am sure that we made clear our view on that. However, I am very concerned to make it clear—I do not know whether I speak for all committee members—that I am not against intercountry adoptions, no matter the attention that has been given to one recent particular case.

From issues that constituents have brought to me, I know that quite long delays are involved in adopting a child from another country. It is clearly in the best interests of the child for intercountry adoptions to happen; it is not purely about parental wishes. The interests of children who are living in poverty around the world can best be served by parents who are looking to give them a secure home in this country.

I do not think that we should be implying that the committee is trying to put further barriers in the way of intercountry adoption; rather, we should make it clear that we are simply trying to ensure that that legal status and framework under which such adoptions take place is clear and gives confidence to all involved.

Ms Wendy Alexander (Paisley North) (Lab): Clearly, the purpose of legislation is to deal with reality rather than perceptions. Whatever the public perception is—erroneous or otherwise—our job is to create a legal framework that will ensure that the best interests of the child are respected, regardless of whether that involves a domestic adoption or an intercountry adoption.

I have two constituents who have been trying for a long time—first under the Home Office and now under the Scottish Executive—to adopt from a sub-Saharan African country. Frankly, the changes of Government and laws and the confusion in that country make it incredibly difficult for that adoption to be expedited when there is no question about the home assessment that would be carried out here. The frustration of the Scottish Executive in that regard is real.

Given the danger of trying to legislate for circumstances in countries in which there could be frequent changes of Governments and laws, this is an area in which we have to rely on the judgment of professionals about what is happening overseas. We might end up sending the wrong signal. The safeguards to avoid child trafficking are in place. Our responsibilities in terms of making the home assessment and assessing the fitness of the family are clear. Attempts to second-guess every situation that might occur in another country will not assist us in trying to ensure that the welfare of children, wherever they are, is at the forefront of the legislation.

Lord James Douglas-Hamilton: In principle, amendments 309 to 312 are worthy of support—they will tighten up the drafting. Obviously, protection of children is extremely important, so it is essential that we ensure that correct procedures are followed. I am, in principle, against dispensing with correct procedures; once we start down that track, we are on a slippery slope to disaster.

Fiona Hyslop: It might be helpful if Adam Ingram could clarify what would be the technical results of agreement to amendments 309 to 312. It appears that they would move sections. Moving sections will not change the content of the bill; it will merely change the order of the provisions in the bill. It would be helpful, therefore, if Adam Ingram could tell us what the end result would be. At issue appears to be the question whether the change is to do with sending a signal or changing the content.

Robert Brown: The caveats that Ken Macintosh, Wendy Alexander and Fiona Hyslop have made with regard to interfering too much are valid. There is a difficult and complex interrelation between our legislation and private international—and, indeed, public international—legal arrangements elsewhere. The primary responsibility for adoption arrangements with regard to children who are resident or domiciled in other countries lies with the legal system of those countries. As Wendy Alexander said, there are provisions in place to deal with criminal aspects that might arise. It is always a bad thing to try to respond to publicised stories that might not be accurate and which might not contain all the relevant information.

10:15

I take Fiona Hyslop's point that amendments 309 to 312 appear to be designed to relocate the

provisions rather than to make substantive changes to the bill. Adam Ingram is entirely right to raise the issue—it is important—but we do not believe that there is a pressing need to amend the sections that broadly restate existing provisions of the Adoption (Scotland) Act 1978, which were inserted by the Adoption (Intercountry Aspects) Act 1999. I believe that those provide a sufficient deterrent and that further amendment is unwarranted. They provide a consistent and coherent cross-border approach to matters of intercountry adoption, and they match provision that was made for England and Wales by the Adoption and Children Act 2002. That is not unimportant, given the nature of the island.

Specifically on amendment 311, I think that the phrase

"for the purpose of adoption",

which is used in section 64(1) of the bill, is already sufficiently wide to encompass what the amendment proposes. It does not require definition, so the amendment is unnecessary.

I am more than happy to examine the effects of any of the provisions that Adam Ingram or other members are concerned about. However, I hope that my assurances are adequate to ensure that Mr Ingram feels able not to press his amendments.

Mr Ingram: I thank the minister for his assurances. I should say that I am not trying to make adoption from abroad harder. I know a number of individuals who have gone through a long process to adopt children from abroad. I was trying to signal that the rules must be followed, as Lord James Douglas-Hamilton also said. The impression had been given that some people might be able to get around the rules because they are celebrities or whatever. That concern has been widely expressed in the media.

As has been said, amendments 309 to 312 were not designed to change the content of the bill; they are merely probing amendments. I am, therefore, quite happy not to press them. I am glad to hear what the minister had to say about re-examining amendment 311 later.

I seek leave to withdraw amendment 309.

Amendment 309, by agreement, withdrawn.

Amendments 310 and 311 not moved.

Section 64 agreed to.

After section 64

Amendment 301 not moved.

Section 65 agreed to.

Section 66—Restriction on removal of children for adoption outwith Great Britain

Amendments 272 to 275 moved—[Robert Brown]—and agreed to.

Section 66, as amended, agreed to.

Section 67—Regulations under section 64: offences

Amendment 312 not moved.

Section 67 agreed to.

Sections 68 to 75 agreed to.

Section 76—Effect of determinations and orders made outwith Scotland

The Convener: Amendment 276, in the name of the minister, is grouped with amendments 277 and 278.

Robert Brown: The three amendments relate to the effect of orders and determinations that are made in countries other than Scotland. They update the language that is used in the bill, as it is no longer appropriate to refer to a "colony". Amendment 276 removes that reference and refers instead to "a relevant territory".

Amendment 277 defines relevant territory as

"(a) any of the Channel Islands,

(b) the Isle of Man, or

(c) any British overseas territory (within the meaning of the British Nationality Act 1981 (c.61))."

Amendment 278 ensures that section 37, on the effect of an adoption order on existing rights and so on, applies to an order that is made to free a child for adoption with or without parental agreement under the Adoption (Northern Ireland) Order 1987 as though it were an adoption order.

I move amendment 276.

Amendment 276 agreed to.

Amendments 277 and 278 moved—[Robert Brown]—and agreed to.

Section 76, as amended, agreed to.

Section 77—Adoption allowances schemes

The Convener: Does Kenneth Macintosh wish to move amendment 159?

Mr Macintosh: No. I think that the minister agreed to consider the matter further.

Amendment 159 not moved.

Amendment 279 moved—[Robert Brown]—and agreed to.

Amendment 302 not moved.

Section 77, as amended, agreed to.

Section 78 agreed to.

Section 80—Admissibility of certain documents as evidence

Amendment 280 moved—[Robert Brown]—and agreed to.

Section 80, as amended, agreed to.

Sections 81 to 83 agreed to.

After section 83

Amendment 177 not moved

Section 84—Permanence orders

The Convener: Amendment 192, in the name of Lord James Douglas-Hamilton, is grouped with amendments 196, 198 to 204, 347 and 205.

Lord James Douglas-Hamilton: I support amendment 347, in the name of Peter Peacock—I remove any possibility of doubt on that point.

My amendments 192, 196 and 198 to 205 seek to remove unnecessary words. All local authorities are adoption agencies. One has only to look up section 111 to confirm that. The unnecessary words could lead to confusion, because permanence orders are not necessarily connected with adoption.

As I support Executive amendment 347, I wonder whether the minister will feel able to support mine.

I move amendment 192.

The Convener: We will now find out.

Robert Brown: In a spirit of enormous generosity, I am happy to support the amendments in the name of Lord James, which will improve the bill by making simple changes to the drafting. Amendment 347 makes the one change that was missed out, as it were, and completes the pack.

Lord James Douglas-Hamilton: I thank the minister for accepting the amendments.

Amendment 192 agreed to.

The Convener: Amendment 366, in the name of Adam Ingram, is grouped with amendments 328, 367, 334, 375 and 341. If amendment 375 is agreed to, I will be unable to call amendment 201, because it will have been pre-empted.

Mr Ingram: The problem with section 86 is that it is not clear what "representations" means in the context of applications to court and rules of court. In Scots law, the normal practice for court applications is that people and agencies either have a right to be heard or they do not. Amendment 366 defines the parties who have the right to be heard in court in relation to applications for permanence orders, and amendment 375 provides that those parties can apply for variations to a permanence order and are entitled to be heard if a local authority seeks an adoption order. In other words, the terminology of making representations is unnecessarily confusing. Although it might be appropriate for tribunal proceedings, it is not appropriate for Scottish courts. Amendments 366, 367 and 375 would rectify that situation.

I move amendment 366.

Robert Brown: I thank Adam Ingram for lodging amendments 366 and 367, in which we see merit—his points have a degree of substance—but we want to consider the issues further and come back to them at stage 3. Issues arise about parties and rights to make representations. Providing that certain people may be parties could have unintended ramifications because, for example, an award of expenses can be made against a party to proceedings. We want to consider carefully all the implications—direct and indirect—of an amendment to that effect. We need to consider whether certain persons should or should not be parties and who otherwise should have the right simply to be heard. That distinction may have to be made in some instances. We would like to come back to the issue once we have considered the ramifications. I hope that, on that basis, Adam Ingram will withdraw amendment 366 and not move amendment 367. Obviously, he will have the right to come back to the issue if he does not like what we say at stage 3.

Amendment 375, which is also in the name of Adam Ingram, relates to the same issue as is raised by amendments 366 and 367, namely, whether persons should be parties to the proceedings. We want to consider amendment 375 further and come back to the issue at stage 3 if necessary.

In any proceedings that relate to an application for a permanence order, the local authority, the child or his or her representative, and any person with parental responsibilities or rights in relation to the child will have the right to make representations to the court. Amendment 328 addresses the concerns of those who at stage 1 asked how a person other than those whom I mentioned could demonstrate an interest in an application, by ensuring that there is harmonisation between the requirements for an order under section 11 of the Children (Scotland) Act 1995 and the requirements for a permanence order. A person who claims an interest will be able to make representations, just as happens with applications under section 11 of the 1995 act. The court will then take those representations into

account in its deliberations, if it considers that they are valid.

Amendment 334 will extend the list of those who may apply to a court to vary the ancillary provisions in a permanence order. We have lodged the amendment because section 96 will prevent an application for most types of section 11 order being granted while a permanence order is in force. That is correct, because we want to protect the children who are subject to permanence orders and the orders themselves from unnecessary disruption. There is a balance to be struck. We also want all orders that relate to a child, as far as is possible, to be contained in the provisions of the permanence order. However, that might, for example, prevent grandparents who have no formal contact order from obtaining one by virtue of a section 11 order. We therefore propose to add the phrase

"any other person who claims an interest"

to the list of those who may apply to vary a permanence order, so that the court can consider such an application even though the person does not fall into the categories that are listed at section 89(3).

Amendment 341 is designed to include in the list of people who will be permitted to make representations to the court in any proceedings for variation of a permanence order persons who have retained parental responsibilities and rights following a permanence order. Anyone who has such rights will be able to make representations. That reflects section 86(2)(c), which deals with proceedings for an application for a permanence order.

I am afraid that the amendments are fairly technical, but they are not unimportant.

Mr Ingram: I thank the minister for acknowledging the points of substance in amendments 366, 367 and 375. I am happy to withdraw amendment 366, so that the Executive can consider the issues for future amendments.

Amendment 366, by agreement, withdrawn.

The Convener: Amendment 193, in the name of Lord James Douglas-Hamilton, is grouped with amendments 313 to 316, 324, 329, 368, 330, 335 and 343. If amendment 193 is agreed to, I cannot call amendments 313 to 316 because of pre-emption.

10:30

Lord James Douglas-Hamilton: Amendment 193 is intended as a simple clear statement of a recommendation of the adoption policy review group. The Law Society of Scotland believes that the existing drafting does not encapsulate the policy intent that was supported by ministers in response to the adoption policy review group's report. It is vital that the effect of a permanence order is clearly stated and that orders are made flexible to meet the needs of the child. There also needs to be scope for interim measures.

Amendment 193 sets out the legal context of permanence orders, delineates their practical usefulness and builds in the option of using them on an interim basis. Arguably, the court can deprive and confer rights in terms of the existing wording, but amendment 193 seeks to alter the bill in such a way that it states explicitly that a permanence order has the automatic effect of depriving any person other than the local authority of any parental rights and responsibilities and that the court may instead confer them on the local authority in the first instance or on any person whom it deems fit. That was the principal reasoning for the orders when they were recommended by the review group.

Important policy issues lie behind the approach that I have taken to the drafting of amendment 193. Some children are badly scarred by their experiences in their natural family—for example, in cases of serious sexual abuse—and they need to know that their parents will have no more power over them. Furthermore, the review group was clear that the court should be able to confer parental responsibilities and rights on persons such as foster carers in order that, in appropriate cases, their duty of care would be underpinned by responsibilities and rights. In terms of the relationship with the local authority, it may also be important that a voice is given to a suitable natural person. In tightening the definition and introducing flexibility, amendment 193 is an important amendment.

Amendment 368 is associated with restricting the scope of competing applications, orders and requirements in respect of a child, which is essential. The existing law, which allows competing applications and orders, is unsatisfactory. It results in confusion and uncertainty, is wasteful of resources and effort, and is unhelpful to children. The review group endorsed the need for unified decision making in so far as that is possible. Ministers accepted the group's recommendation, at least in relation to the position when an application is pending. It was understood that measures of that nature would be included in the bill.

Amendment 368 is necessary to prevent multiple court proceedings. I make the distinction between that need and the need to prevent further applications, which is not intended. Any application should be made in the context of the permanence order and should not spill over into separate section 11 court proceedings. The court

will have the power to make a contact order by way of a variation after the permanence order is granted. I would be grateful if the minister would consider those matters.

I move amendment 193.

Robert Brown: I am grateful to Lord James Douglas-Hamilton for his amendments. Amendment 193 has the merit of being clear and straightforward. However, I ask him to accept that we have to preserve the consistency of drafting throughout the bill. In responding to amendment 193, I will focus substantially on its drafting.

In policy terms, I am not convinced that proposed new section 84(2A) would add anything to what we have at present. It would mean that some rights that, under the bill, would be granted at the court's discretion would automatically go to the local authority, including the right to safeguard the child's welfare, to provide the child with direction and to act as their legal representative. In many cases, the court may make such provision in favour of the local authority, but that decision is best left to the court's discretion.

Lord James touched on the issue of foster parents. Where a stable foster placement is being built and the stability is confirmed by a permanence order, it may be appropriate for the carers to assume rights and responsibilities that should not be given to the local authority as of automatic right.

The proposed new section 84(2B) is a clear list approach to what may be included in a permanence order, and is based on section 11 of the 1995 act. As drafted, the bill allows a permanence order to deal with all aspects of parental responsibilities and rights in relation to the child. It is clear in that regard. In addition, should the court consider it necessary, it may already make a section 11 order to cover those things that are mentioned in the list. The list, therefore, does not add to what is already possible under the bill. Following section 11 of the 1995 act so closely could lead to a degree of confusion between the section 11 provisions and the permanence order provisions. It might lead some to think that the permanence order is a variation of a section 11 order, which is not the intention.

Amendment 193 has greater merit in relation to permanence orders referring directly to the parental responsibilities and rights that are set out in the Children (Scotland) Act 1995, making provision in relation to the central question of residence and guidance, and allowing the court to determine matters beyond those. That preserves the integrity of legislation relating to parental responsibilities and rights and avoids any possible confusion about the purpose of permanence orders.

Amendment 193 also refers to interim orders, for which provision should be made. Executive amendment 345, which is to be discussed later, will do so. Given those considerations, I hope that Lord James will be prepared to withdraw amendment 193.

Amendment 368, which has also been lodged by Lord James, is not dissimilar in effect from section 96, and indeed might have been cast as an amendment to that section. There are, however, some differences. First, the amendment would restrict the making of section 11 orders when there is a live application for a permanence order, rather than just when an order has been made. It is right that section 96 should cover only the period once an order has been granted. Although we are providing through amendment 344 the power to restrict the making of supervision requirements when there is a permanence order application, the two cases are not comparable. The problem is the potential to have two different systems—the courts and the children's hearings system—looking at the same issues in relation to the same child at the same time and coming to different conclusions. Lord James is absolutely right to be concerned about that, but with a section 11 order everything is considered by the court.

Amendment 368 would be slightly more restrictive than section 96 in preventing the court from making section 11 orders to interdict certain uses of parental responsibilities and rights. Such orders might be used, for example, to deal with difficult questions about consent to medical procedures or to stop someone misusing or dissipating the child's property. Amendment 368 would also prevent the court from appointing someone as a guardian or removing them from that position. Those provisions will not be used often, but there is merit in allowing the court to have recourse to them where that is appropriate.

Amendments 316 and 343 are stylistic amendments to harmonise the provisions in sections 84 and 91 with similar provisions elsewhere in the bill, which refer to

"the welfare of the child"

rather than

"the care and welfare of the child."

Those are just tidying-up amendments.

Amendment 313 redrafts section 84 to make it clear that what is vested in a local authority on the making of a permanence order is the right to regulate the child's residence, which is part of the right in section 2(1)(a) of the Children (Scotland) Act 1995. The other aspect of that right is the right of the parent to have the child living with them, which it would not be appropriate to vest in a local authority. Both aspects of the right are

automatically extinguished as regards parents and guardians by virtue of the section on the effect of a permanence order on parental responsibilities and rights that is to be inserted by amendment 329.

I turn to amendment 314. The parental responsibility to provide guidance will vest in the local authority as a result of the mandatory provision in section 84(3). A child who is subject to a permanence order will often be in the day-to-day care of foster carers, therefore it seems right to amend section 84(4)(b)(i) to allow for that parental responsibility to be shared with

"a person other than the applicant",

such as a foster carer. That is in line with the way in which other responsibilities and rights can already be shared, other than the right to regulate residence.

Amendment 315 makes it clear that such parental responsibilities and rights as are vested in a local authority or another person by a permanence order may be extinguished in the parent or guardian. That makes the legal position for the child clear and unequivocal—Lord James touched on that. Amendment 324 completes the picture in that it requires the court to ensure that each parental responsibility and right is vested in some person, and so ensures that all aspects of the child's care will covered.

Amendment 329 makes it clear that the making of a permanence order will always extinguish a parent or guardian's right to have the child living with him or otherwise to regulate the child's residence. All other parental responsibilities and rights have the potential to remain vested in a parent or guardian or to be shared between them and other persons.

Amendment 330 was lodged in response to concerns expressed at stage 1 that making a permanence order should not automatically revoke a pre-existing adoption order. On further reflection, we recognise that adoptive parents need to be treated in the same way as natural parents in permanence order proceedings. A permanence order does not extinguish the parent-child relationship for natural parents, although it may remove all parental responsibilities and rights. The adoptive relationship should be treated in the same way, therefore I ask the committee to support amendment 330.

Amendment 335 follows on from amendment 315, which amends section 84 to enable a court to extinguish parental responsibilities and rights when making a permanence order. Amendment 335 gives the court similar powers when varying a permanence order. That makes the legal position clear and ties up any loose ends.

Fiona Hyslop: One of the things that the committee said at stage 1 was that it congratulated the Executive on bringing about the homologation of legislation. We need clarity about what we have, and amendment 193, in the name of Lord James Douglas-Hamilton, attempts to provide it.

I have serious concerns about the part of the bill that deals with permanence orders, which will have the most important effect on children. It is a matter of some concern that a whole range of amendments is being presented at this stage, not just on technical issues but on issues of substance.

Section 84 is about the powers for people who are subject to permanence orders or are given permanence orders. What is attractive about amendment 193 is that it is the only statement of the range of what a permanence order may do—I emphasise the word "may". If permanence orders are to be a linchpin of the legislation, it is essential that there is clarity for those who use them. Proposed new section 84(2B) is attractive in that sense. Sections 11 and 86 of the 1995 act are all about what can be done with a permanence order, as opposed to what a permanence order is for. In a bill that brings together other pieces of legislation under one comprehensive roof, it is important that there is clarity about permanence orders. Amendment 193 is attractive. If it can be improved upon, that is fine, but it merits strong support.

Lord James Douglas-Hamilton said in his opening remarks that amendment 193 could help to underpin the parental responsibilities and rights of foster carers who have a permanence order for children who are under their care. If there is a shortfall in that provision under existing legislation, it is essential that we have clarity about who has legal responsibility for parental rights under a permanence order for children who are placed with foster carers.

Robert Brown: This is a difficult area; there are no two ways about it. A whole series of issues has emerged, and we need to be clear about the central purpose of what we are trying to do.

I have to confess that I was attracted to amendment 193. I have had considerable discussions with officials about the implications of amending the bill in different ways. In substantial measure, the issues are stylistic. The draft bill refers to the 1995 act for definitions, which is in many ways a principal act. I do not think that the bill will be read by parents and children to any great extent, but it will be used by practitioners, and if it causes confusion for them that must be addressed. My advice is that practitioners are well used to dealing with the 1995 act and that they regard it as the principal act, so they will readily

understand the framework that is proposed in section 84.

I do not agree with Fiona Hyslop that amendment 193 is the only place where the things that she mentions are laid out. Section 84 lays out those things, but it does so by reference to the 1995 act. I accept that there is a distinction to be made in that regard.

At the end of the day, it is largely a stylistic issue. There are advantages and disadvantages, and there are several ways of tackling the issues. As I have said a number of times about the style adopted by the bill's drafters, there is merit in consistency. Sometimes, changing the style of a bill halfway through its passage can have unintended consequences. There is an element of that with amendment 193.

As I have said, I see attractions in amendment 193, but suggest that the existing approach is in accordance with precedent and means that the bill's style is consistent. If that approach is departed from, there will be a risk of creating unintended consequences. Therefore, I ask the committee to stick with the Executive's proposals. We are not talking about an issue of principle; rather, we are largely talking about stylistic practice.

10:45

Lord James Douglas-Hamilton: Is the minister prepared to reconsider the matter? Amendment 193 has the virtue of clarity and is very much in line with what the adoption policy review group asked for and with what the Law Society of Scotland recommended. Furthermore, the minister is sympathetic to it. His initial reaction may have been right.

Robert Brown: You will appreciate that there is a distinction in the existing arrangements between mandatory provision and ancillary provisions. That takes us back to the adoption policy review group's proposals. Other issues are therefore involved in progressing the matter.

I would be more than happy to reconsider the details of what has been proposed, but it seems to me that the only way of accommodating what Lord James Douglas-Hamilton wants would be to take the phraseology of the 1995 act into expanded areas under the ancillary and mandatory provisions. That seems to be the direction of travel. There are difficulties with the phrasing of amendment 193.

Lord James Douglas-Hamilton: We are talking about matters of considerable complexity, which is a problem if there is a relatively early deadline to meet. It is hard to do justice to such matters in the available time. If the minister is genuinely prepared to reconsider the issue, I would be grateful to him for doing so.

Robert Brown: I will go one step further. I would be happy for Lord James Douglas-Hamilton to discuss matters with me and my officials. We could explore the issues that he has articulated and is concerned about and find out whether we can reach a mutual understanding.

Lord James Douglas-Hamilton: On the basis of the minister's generous offer, which I hope will be extended to colleagues who wish to be associated with the principle that we are discussing, I will not press amendment 193.

On amendment 368, my understanding is that the minister recognises the problems that are involved in having a multiplicity of court proceedings at the same time. Such an approach is undesirable and is not the best way of handling matters, but it was not made clear whether he would do anything about it. I ask him to reconsider that matter, too.

Amendment 193, by agreement, withdrawn.

Amendments 313 to 316 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 317, in the name of Peter Peacock, is grouped with amendments 318 to 322, 322A, 323, 337 and 339. I will put the question on amendment 322A before I put the question on amendment 322.

Robert Brown: Amendment 317 was lodged to make it clear that a local authority must specifically apply for a permanence order with authority to adopt before the court can include such authority in the order. As the bill currently stands, the court could theoretically decide that adoption is the best way forward for a child and grant authority for the child to be adopted without the local authority seeking such authority or parents preparing themselves to find out about the context if they wanted to do so.

Amendments 318 to 322 will ensure that the provisions for dispensing with parental consent in a permanence order with authority to adopt mirror the provisions relating to an adoption order that we discussed last week. Ordinarily, a parent or guardian must consent to the making of a permanence order with authority to adopt. In some instances it becomes clear that such consent will not or cannot be given and the court must decide whether it can dispense with the need for it. The bill as introduced allows the court to do that when the parent or guardian cannot be found or is incapable of giving consent, or if the welfare of the child requires consent to be dispensed with.

Amendment 318 relates to a drafting matter and is simply technical. Amendment 319 permits the consent of the parent or guardian to be dispensed

with where that parent or guardian has died. It may be considered that a dead person would be incapable of giving consent, but that relies on the provision being interpreted generally rather than in relation only to the capacity of a living person to consent. That may seem to be a technical point, but there have been cases where courts have not interpreted similar provisions in that way. Adding the further category removes any doubt.

Amendment 321 inserts references to new sections 84(6A) and 84(6B) that are inserted by amendment 322 and which add two new grounds for the court to consider. The first relates to a parent or guardian who has parental responsibilities and rights but is not discharging those responsibilities or exercising those rights and, in the opinion of the court, is likely to continue to be unable satisfactorily to do so. In practice, the type of case that is likely to be covered by the provision is one in which a parent technically still has parental responsibilities and rights but has not discharged or exercised them satisfactorily. In such cases the responsibilities and rights will usually have been suspended by a supervision requirement, so the issue for the court will be whether there is a probability that the suspension will be lifted following a review of the supervision requirement.

The second ground relates to a parent or guardian who, because of the making of a permanence order without authority to adopt, does not have parental responsibilities and rights and is unlikely to regain them. Where either of the grounds exists and the welfare of the child requires consent to be dispensed with, the court may dispense with the need for the parent's or guardian's consent. The court will not be free to dispense with consent simply when it considers that the child's welfare requires that—the amendments have a double-barrelled effect. Consent should always be sought in the first instance, but the provision allows the court to dispense with it when it is being withheld to the detriment of the child.

We have considered amendment 322A, in the name of Adam Ingram, which would amend Executive amendment 322. Whereas amendment 322 looks to the present and the future, Adam's amendment looks to the past and the present. As we indicated previously, we think that the current and predicted situation should inform a court's thinking as far as possible, although what has happened in the past is obviously relevant. We will, therefore, resist amendment 322A.

Amendment 322A removes the requirement on the court to consider whether in the future the parent or guardian is likely to be able to discharge parental responsibilities or to exercise rights satisfactorily. Under the right to private and family life, for which article 8 of the European convention on human rights provides, the ultimate aim of any measures should be to reunite the child with his or her natural parents, save in exceptional circumstances. Not taking account of the future fails to recognise the aim of reuniting the family.

In addition, the amendment requires the court to consider whether a parent or guardian "was or is" unable to discharge parental responsibilities or to exercise parental rights. Although it may be intended to be cumulative, the amendment would allow consent to be dispensed with solely on the basis of past conduct, subject to the welfare of the child also requiring consent to be dispensed with. The test in amendment 322 allows consent to be dispensed with on the basis of present and future capability, which would be evidenced by past conduct.

As we discussed last week with regard to an adoption order, the bill does not contain a general definition of parent. However, in section 84(5)(b) "parent" should mean only a parent with any parental responsibility or right. Amendment 323 provides for that definition. That is consistent with the approach that we took last week in connection with adoption orders. As I mentioned then, we will look at the definition carefully before stage 3, so that we can be satisfied that we have got the nuances of it absolutely right.

Amendment 337 follows on from amendments 319, 321 and 322, and harmonises section 84, which deals with the making of a permanence order, and section 90, which deals with the amendment of such an order. It ensures that, when a court is considering amending an existing permanence order without authority to adopt to an order with authority to adopt, it uses the same grounds for deciding whether to dispense with a parent's or guardian's consent. Those grounds reflect the general grounds for consent that were amended last week by amendment 296. I accept that there was a vote on the amendment, but I hope that in respect of permanence orders the committee will follow through on the logic of the decision that it took at its previous meeting.

The purpose of amendment 339 is to define the terms "parent" and "guardian" for the purposes of defining whose consent must be obtained or dispensed with when a court is considering amending a permanence order without authority to adopt to one granting such authority. Without the amendment, the consent of a parent or guardian who had lost all parental responsibilities and rights through a permanence order that did not include authority to adopt would not be required and such consent would not have to be dispensed with before authority could be given. That is not right. However, as the section stands, the consent of anyone with any parental responsibilities and

rights—perhaps a grandmother with a contact order—would have to be obtained or dispensed with, which goes too far. That is out of line with the provisions on consent for adoption in section 33, and it conflicts with the adoption policy review group's recommendation that the range of people whose consent is required should not be extended. However, such a person could nevertheless still claim an interest in the case and make representations about the application.

Thank you for allowing such a lengthy exposition.

I move amendment 317.

Mr Ingram: My amendment 322A seeks to amend the Executive's amendment 322, which spells out the grounds for dispensing with the consent of birth parents in an application for a permanence order with authority for adoption. Lawyers with experience in this area fear that fewer children who need secure and stable placements away from home will be adopted if the bill's provisions are amended in the way suggested by amendment 322. The lawyers argue that too little weight is given to the past behaviour of birth parents and to children's case histories.

We have previously discussed the possibility that a rehabilitating drug user could be deemed capable of looking after a child in future. However, that child might have had no meaningful relationship at all with that person and might be happily settled in a new family.

As the minister said, under article 8 of the European convention on human rights we must protect birth parents' rights to respect for their family life. He said that it is important that we achieve a reasonable balance. However, children also have rights under article 8, and those rights have to be protected too. A child's family life might be with their new family rather than with their birth family. As has often been reiterated during our consideration of the bill, the child's rights and well-being are paramount. Amendment 322A maintains the appropriate balance.

Mr Macintosh: I have a lot of sympathy for Adam Ingram's amendment; in some ways, it is more in tune with Executive policy on this matter than the minister's. In families in which children have been abused and neglected, too often the parents are given a second, third, fourth or fifth chance. Parents who are going to lose their children often use every legal recourse possible, and if they have grounds for objecting to the granting of consent, they will object.

The difference between Adam Ingram's amendment 322A and the minister's amendment 322 is that, with Adam Ingram's amendment, the grounds on which the court can base a decision will be clearer as the court will take account of the parents' past behaviour. If we just look forward to the parents' possible future behaviour, we would yet again be saying that they should be given another chance. Instead, we should be considering their past behaviour and the welfare of the child.

Having said all that, last week we rejected ideas along the lines that Adam is arguing, and we must be consistent. However, I ask the minister to consider the issue again before stage 3. The minister's intention is clearly to reduce litigation and Adam's amendment 322A would probably achieve that.

Lord James Douglas-Hamilton: Adam Ingram's amendment 322A would allow the court to put more emphasis on the past behaviour of parents, which might have had severe consequences, rather than on future promises, which are easy for anyone to make.

Robert Brown: I will make just two points in reply, because we had the substantive debate earlier. There remains an ECHR consideration and we have to deal with that—although I completely agree with Adam Ingram that the child's welfare is central.

It is appropriate in principle to stress the present and the future, although we have to ask whether doing so could have the unintended consequence that we disregard the past. I do not think that that will happen. Assessing the parents' current ability to look after a child or to exercise parental responsibilities will depend very much on evidence of what has happened in the past. A slightly artificial distinction is creeping in. As we discussed last time, we do not want inadvertently to make it easier for parents to be able to come back in on these matters by a means that would not normally be open to them and without having any meritorious basis for doing so. As a result, I am more than happy to speak to my officials and to ask whether any loopholes have been left that should be tackled at stage 3. I hope that that satisfies the committee.

Amendment 317 agreed to.

Amendments 318 to 321 moved—[Robert Brown]—and agreed to.

Amendment 322 moved—[Robert Brown].

Amendment 322A moved—[Mr Adam Ingram].

11:00

The Convener: The question is, that amendment 322A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (Sol)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 322A disagreed to.

Amendment 322 agreed to.

Amendments 323 and 324 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 194, in the name of Lord James Douglas-Hamilton, is grouped with amendments 333, 186, 350, 352, 187 and 188.

Lord James Douglas-Hamilton: Amendment 194 seeks to set out a straightforward statement of when a permanence order ceases to have effect. Its terms are consistent with those of a previous amendment; in fact, it follows on from amendment 193 and clarifies the position. The ambiguity in the drafting was remarked on not only by the Law Society of Scotland but by Scotland's commissioner for children and young people.

Amendment 186 seeks to introduce the welfare test into provisions on the revocation of permanence orders. The general welfare provisions in section 9(3) apply only to adoption, and section 85 does not relate to revocation. However, the welfare test is a vital consideration with regard to the revocation of a permanence order.

Amendments 187 and 188 seek to allow the court to make orders that are appropriate to the child's individual circumstances if a permanence order is revoked. The revocation order should deal with the orders made in the context of a permanence order and should impose any new orders that are necessary to safeguard the child's welfare. Unfortunately, the existing drafting does not cover all the possibilities. In some cases, children could be returned home if the safeguard of a supervision requirement were in place. The amendment seeks to provide for that by allowing the court to make a referral to the principal reporter, which may be made prior to revocation to allow the court to see whether there is a supervision requirement before the permanence order is revoked. Without amendment 188, children might remain subject to permanence orders when they could be restored home if a supervision requirement were in place.

I move amendment 194.

Robert Brown: With amendment 194, Lord James Douglas-Hamilton has lodged essentially a drafting amendment. In policy terms, it does not add to the bill. The one difference is that, under amendment 194, a permanence order

"ceases to have effect when … an adoption order is granted in respect of the child".

However, that is already covered in section 37(2), under which the making of an adoption order extinguishes any parental responsibilities and rights that are vested in any person immediately before the order is made. As that includes all responsibilities and rights conferred under a permanence order, express reference to such an order is unnecessary.

Amendment 333 reflects the fact that some contributors have commented that the existing section 88—whereby a permanence order in respect of a child who marries or enters a civil partnership ceases to have effect—adds little to the effectiveness of the permanence order. Having considered the issue, we feel that it is appropriate that the permanence order should not cease to have effect in those circumstances, but should remain in place. Although legal, marriage at 16 is unusual, even for looked-after children, but it could be argued that young people who marry or enter a civil partnership at such a young age, perhaps out of a need for security, are those most in need of support. Once a child is 16, only the responsibility and right to provide guidance remains in the permanence order, but it is appropriate that that should still be available. The permanence order continuing to have effect will mean that such children will remain looked after and therefore remain entitled to the throughcare and aftercare provisions made by the local authority. That is important.

We support the principle of amendment 186 and we have lodged amendment 351, which will be debated in a later group. I will speak to amendment 351 in more detail then, but it will ensure that when revoking a permanence order a court should regard the need to safeguard and promote the welfare of the child as the paramount consideration. The court should also, having taken account of the child's age and maturity and noting the presumption in relation to a child aged 12 or over, give the child an opportunity to express his or her views and have regard to any such views and to the child's religious persuasion, racial origin and linguistic background. Finally, the court should consider the likely effect on the child of making or varying the order. On that basis, I ask Lord James not to move amendment 186.

Amendment 350 is simply a technical amendment for the sake of drafting consistency. Amendment 352 deals with the allocation of parental responsibilities and rights. It is important that, following the revocation of a permanence order, no parental responsibilities and rights in respect of a child remain unallocated. However, apart from when a child is adopted, the revocation of a permanence order will be a fairly unusual occurrence, as most situations will be dealt with by varying the order. The exception will be when the courts are satisfied that the birth parents are able to resume all parental responsibilities and rights. Revoking a permanence order will restore the situation to what it was before the order was made. In those circumstances, a section 11 order would not normally be needed. Amendment 352 will remove from the court the obligation to make a section 11 order, but makes it clear that the court may still make one if it considers that it is needed.

Amendment 187 seeks to set out the effect of a revocation of a permanence order. However, as a matter of law, on revocation of a permanence order the position immediately prior to the making of the order will be restored. That is the same as the current position with parental responsibilities orders. Amendment 187 does not add anything in terms of law or policy, and I hope that Lord James will accept that the amendment is unnecessary.

Amendment 188 raises an important point. It allows a court to refer a child to the principal reporter when considering whether to revoke a permanence order or actually doing so. We think that that is right, and that a wider power of referral in any type of permanence order proceedings is desirable. Amendment 357 achieves that aim by amending the Children (Scotland) Act 1995. As we have accepted the principle of amendment 188, I hope that Lord James will be prepared not to move it.

Lord James Douglas-Hamilton: It sounds as though amendment 351 was lodged to meet the point in amendment 186, and that amendment 357 was lodged to meet the point in amendment 188. The minister has met the principle of amendments 186 and 188 so I shall not move them. I will meet the minister in due course to consider the proposals in amendment 193.

Amendment 194, by agreement, withdrawn.

Section 84, as amended, agreed to.

Section 85—Conditions and considerations applicable to making of order

The Convener: Amendment 195, in the name of Lord James Douglas-Hamilton, is grouped with amendments 325 to 327.

Lord James Douglas-Hamilton: Amendment 195 also follows on from the definition of permanence orders set out principally in amendment 193, which we have discussed. Amendment 195 sets out the overarching criteria for the court to use in deciding whether a permanence order can be issued. Explicit reference is made to the circumstance in which the child has no one who is able or willing to exercise parental responsibilities and rights over them.

I move amendment 195.

Robert Brown: Amendment 195 is an amended version of the grounds for granting a permanence order set out in the adoption policy review group report, and it is similar to Executive amendment 327, which I will come to shortly. Our amendment 327 is marginally better—we always think that—at linking the two grounds in that it provides for either there being no one with residence rights, or there being such a person, residence with whom would be seriously detrimental to the child's welfare. It is a stylistic point, really.

Executive amendments 325 and 326 are simply technical amendments for clarity and consistency of drafting.

The purpose of amendment 327 is to ensure that, before making a permanence order, the court is satisfied that no one has the right to have the child reside with them or, if there is such a person, that residing with them is likely to be detrimental to the child's welfare.

The adoption policy review group recommended that the grounds for why the child cannot reside with a person who has parental responsibilities and rights should be either that there is no one with such rights or that residence with any of the persons with parental responsibilities and rights is likely to be seriously detrimental to the child's health and development.

Our amendment reflects the sense of that recommendation. On the first ground, that there is no one with parental responsibilities and rights, it was decided to restrict the right mentioned to that in section 2(1)(a) of the 1995 act, which is the right of the parent to have the child living with them or otherwise to regulate the child's residence. Otherwise, it might have included a situation in which someone had parental rights—a grandparent with a contact order, for example—but was not willing or able to exercise the right of residence. Such a situation would have prevented the court from making a permanence order.

Likewise, the second ground needed to be restricted to the rights in relation to residence being likely to be seriously detrimental to the child's welfare. The reference to welfare, rather than anything else such as health or development, is designed to tie in with similar provisions in sections 84 and 91.

Given that amendment 327 is similar to amendment 195, I ask Lord James to withdraw amendment 195 and the committee to support the other amendments in the group.

Lord James Douglas-Hamilton: In view of the minister's assurance, I seek to withdraw amendment 195.

The Convener: Are members content?

Fiona Hyslop: I am content that the amendment is withdrawn. However, it is important that our concern is expressed to the Presiding Officer that the sections on permanence orders will be subject to considerable amendment and discussion between stages 2 and 3. I hope that we can communicate to the Presiding Officer our concern that, if necessary, there is plenty of opportunity to revisit the issues at stage 3.

The Convener: I am sure that the Presiding Officer looks carefully at the committee's proceedings and will take note of that comment.

Amendment 195, by agreement, withdrawn.

Amendments 325, 281, 326, 130, 327 and 282 moved—[Robert Brown]—and agreed to.

Section 85, as amended, agreed to.

Section 86—Representations

The Convener: Amendment 196 has been debated already.

Lord James Douglas-Hamilton: The minister accepted the amendment; I hope that he has not forgotten that.

Amendment 196 moved—[Lord James Douglas-Hamilton]—and agreed to.

Amendment 328 moved—[Robert Brown]—and agreed to.

Amendment 367 not moved.

Section 86, as amended, agreed to.

After section 86

Amendment 329 moved—[Robert Brown]—and agreed to.

11:15

The Convener: Amendment 368 is in the name of Lord James Douglas-Hamilton. The minister indicated earlier that he would be willing to reconsider that amendment and discuss it further with Lord James.

Robert Brown: Is that the linked amendment?

Lord James Douglas-Hamilton: It is about the problem of having a multiplicity of court actions at the same time.

The Convener: It is linked to amendment 193—it was discussed when we considered that amendment.

Mr Macintosh: Lord James Douglas-Hamilton asked the deputy minister to think about it.

Lord James Douglas-Hamilton: During the discussion on the relevant group of amendments, the minister was about to respond to the point that amendment 368 seeks to address, but he did not. It was suggested that we could come back to it. It is about the problem of having a multiplicity of court actions on the same subject.

Robert Brown: I do not think that amendment 368 is linked to amendment 193 in the way that has been suggested. It is not an amendment that we are attracted to. I would be happy to discuss any implications of it with Lord James Douglas-Hamilton if he thinks that I have missed any of the issues. I was not proposing to add it to our multiplepointing discussion.

Amendment 368 moved—[Lord James Douglas-Hamilton].

The Convener: The question is, that amendment 368 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (Sol)
Douglas-Hamilton, Lord James (Lothians) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

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

I have the casting vote. My general position is that I will not support an amendment unless it has a majority, so I vote to maintain the status quo.

Amendment 368 disagreed to.

The Convener: Amendment 369, in the name of Adam Ingram, is grouped with amendments 370 to 373, 331, 332, 344, 345, 386 and 387.

Mr Ingram: Amendment 369 is about the interaction of permanence orders, court orders and orders under the children's hearings system, which is a complex area. I have tried to simplify matters—comprehensibly, I hope—not least to aid my understanding, so I ask the minister and members to bear with me.

The key argument is that the bill does not establish a framework to regulate the

interrelationship of permanence orders and the children's hearings system. Currently, decisions of children's hearings take precedence over decisions of the courts on matters that are within the jurisdiction of the hearings system. Such matters include issues of contact and residence, which permanence orders are intended to cover. If the hearings system retains its powers, the purpose and operation of permanence orders could well be compromised.

As a consequence, many agencies in the adoption field are fearful that permanence orders will not be taken up and used by local authorities. That fear is compounded by an apparent volte-face by the Executive, which reversed its initial acceptance of the recommendations of the adoption policy review group. Amendments 369, 372 and 373, which are designed to implement those recommendations, were drafted by BAAF Scotland. I understand that the same intention lies behind amendments 370 and 371, in the name of Lord James Douglas-Hamilton, although they are perhaps not as comprehensive.

Amendment 369 lays down a framework for the legal relationship between, on the one hand, permanence orders and, on the other, child protection orders and secure accommodation decisions. The amendment stipulates that in cases in which a child is subject to a permanence order or an application for such an order, the local authority should apply for a court hearing when it wants to apply for a CPO or to place the child in secure accommodation. That is in contrast to the usual process, whereby a children's hearing is held urgently. The court may remit matters to a hearing, but the point is that initial control of the permanence order and the arrangements that it makes for the child stays with the court that made, or is considering, the order.

Amendment 372 amends the regulation of what a children's hearing can and cannot do regarding the imposition of conditions in a supervision requirement in situations where a permanent order has been granted or is under consideration.

Amendment 373 provides that the court should deal with all supervision requirements pending the final determination of the permanence order. Executive amendment 344 appears to attempt the same thing, but it does not provide enough of a framework. Subsection (2) of the new section that it proposes to insert simply says:

"No supervision requirement … may be made or varied"

while there is a permanence order application or variation application. The structure of the hearings system and of supervision requirements means that, at any time, a hearing review could be requested, including an annual review. If no annual review is held, a supervision requirement will lapse, which could leave the child without legal protection.

Executive amendment 345 seeks to introduce interim orders, but local authorities would not generally welcome the termination of a supervision requirement unless and until a full order was granted.

Amendment 387 is important because its purpose is to ensure that, once an application for a permanence order has been made or granted, a local authority is treated as a relevant person for the purposes of the hearings system. A local authority would apply for or be granted certain parental responsibilities and rights. The current definition would not include local authorities; including them does not take rights away from other relevant persons.

I acknowledge that this is a complex area of the bill, but I move amendment 369.

The Convener: I congratulate Lord James Douglas-Hamilton, who not only managed to lodge the first amendment for stage 2 but also has the last one: amendment 387. I invite him to speak to amendments 370, 371 and 387.

Lord James Douglas-Hamilton: I thank the convener for those kind comments.

The convener mentioned amendment 387. I hope that Adam Ingram will press his amendment 369, which is important. If the local authority seeks or has parental responsibilities and rights, it requires to assume the role of parent for a child who is referred to a children's hearing. Unless the authority is treated as the relevant person, there will be cases in which a child who is subject to a permanence order will not have a parent with responsibility to assist them at the hearing.

Treatment as a relevant person is consistent with an authority having the responsibility of offering the child guidance. Furthermore, the decision of the hearing could impact on the responsibilities and rights that are held by the authority, which should be able to appear in the capacity of a person with responsibilities and the right to appeal. Amendment 387 is necessary to give the child and the local authority respectively their consistent rights.

The purpose of amendment 370 is to avoid duplication between a children's hearing and proceedings in court. Where such duplication might arise in relation to a permanence action, the logical place to deal with the issues is the court. The court must be able to respond to emergencies and to substitute its own orders for the provisions that would generally take place under a children's hearing.

Amendment 371 intends to avoid conflict or duplication between a permanence order that has

been decided in court and the results of a children's hearing. Precedence is given to the court as a general rule, but there are two cases in which a hearing can make decisions to be put into practice unhindered. First, there is the provision for the hearing to add value to the overall arrangements for the child by making a recommendation that would not be open to the sheriff. For example, a court cannot order social work supervision. If it is thought that the child might benefit from attending a particular social work facility or project, it could be remitted to the hearing to decide that. Secondly, issues could be remitted to the children's hearing if the court felt that they would be better handled by the hearing. Such a provision might be used to benefit only a small number of children but, nonetheless, it is important to leave the door open for the court to use its discretion.

I am very sympathetic to the amendments in the name of Adam Ingram.

Robert Brown: I am grateful to Lord James Douglas-Hamilton and Adam Ingram for raising an important discussion. However, as Lord James's latter comments indicated, the amendments run the risk of getting us into quite a cumbersome position with an overelaborate involvement between the courts and the children's hearings system. We need to be careful of that.

I do not believe that the bill as it stands interferes in the processes either for child protection or for placing a child in secure accommodation. The adoption policy review group agreed that normal emergency procedures should apply for children who are the subject of a permanence order. For that reason, we did not include provisions in the bill on those issues and we do not think that such provisions should be added. Also, it is very unlikely that a child protection order would be required for a child who is subject to a permanence order. Such measures might be necessary prior to the order being made—indeed, a permanence order may have been obtained because of such matters—but, once the order is granted, the local authority will be able to determine the child's residence and will be in a much stronger position to protect the welfare of the child. Different situations come into play in those two cases.

Amendment 371, in the name of Lord James, and amendment 372, in the name of Adam Ingram, are nearly identical. That shows—my notes say—that great minds think alike. Both amendments aim to restrict the jurisdiction of the children's hearings system when a permanence order or an application for such an order has been made. Executive amendment 344 aims to make similar provision for the period in which there is a live application. Although little separates us on what should be done when an application is pending, we prefer amendment 344, as members might expect, because it will achieve the same effect in shorter compass. We note that amendments 371 and 372 would give an explicit power to the principal reporter to apply to the court. We think that such a power might already be implicit, but we will reconsider the issue and consider whether a stage 3 amendment is necessary.

However, the real question is whether to make similar provision for the period after the permanence order has already been granted. A lot of thought was given to the matter by both the Executive and the adoption policy review group, but the matter is one of the relatively few issues on which the group did not come to a fully agreed view. The Executive's response to the group's report stated that we were minded to accept the majority view that, as Lord James and Adam Ingram have argued, such provision should also apply for the period after a permanence order has been granted. However, on further reflection, we have concluded—this is my personal view as well—that that is not the best way forward. Let me explain why.

Restricting access to the children's hearings system would put the child concerned on a different footing from all other children. Other things being equal, we think that that would be unfortunate because children's hearings provide a valuable service for children. Nevertheless, we accept the case for placing such children in a different position while an application for a permanence order is in train as, within a finite period of time, a decision will be taken on the application. If the permanence order application could run in parallel with a children's hearing, there would be a real risk that the decisions taken in the two fora would send the child in two different directions. We accept that argument for the period during which an application is pending.

However, different arguments apply once a permanence order has been granted. After the decision has been taken, we are no longer in a position in which two different tribunals could consider essentially the same issue at the same time and come to different conclusions. Once a permanence order has been made, it will ordinarily last until the child reaches the age of 18. Restricting access to the children's hearings for the months before a permanence order application is finally resolved is one thing; to allow such a restriction for the rest of the child's protected period of youth is another.

For example, a permanence order might be made for a boy of eight who, some years later during puberty, gets into difficulties through truancy or petty offending. Such things are

precisely the sort of issues that the children's hearing is better placed to handle than the court. I suggest that there would be little advantage in going via the court to end up back at the children's hearing in the first place. I accept that the amendments in the name of Lord James and Adam Ingram would not wholly prevent such a child from being dealt with by the hearings system, but they would certainly provide a more cumbersome procedure involving a court process in which legal aid considerations might need to be taken into account. I am not a believer in unnecessary processes that do not achieve anything at the end of the day. I do not think that such a procedure is desirable or in the best interests of the child, which is what we must remain focused on.

Where birth parents retain some parental responsibilities and rights under the permanence order, they would still be relevant persons for the children's hearing, with a right to trigger a review every three months. I accept that it is conceivable that a birth parent in such a situation might use such a right to seek a review of, say, contact arrangements and that, in principle, the hearing in such a situation might come to a decision that was arguably undesirable, but there are ways of remedying that.

The local authority will have parental responsibilities and rights under the permanence order and will be able to appeal to the sheriff if something goes wrong or if the decision is clearly unreasonable. Remedies will be available in the normal way, without the court having to be involved. Perhaps even involving the court would not prevent the situation. If a local authority believes that birth parents are abusing the parental responsibilities and rights that have been left with them by the court—for example by making vexatious applications to the children's hearing—the local authority will be able to seek to have the permanence order varied to remove those residual responsibilities and rights. Again, a way forward will be available in dealing with such situations.

11:30

Difficulties arise in the interpretation of amendments 371 and 372, both of which would provide that any requirement must not conflict with the permanence order. However, when there is only an application, there will be no order and therefore no restriction, so that is not an issue. I ask the committee to reject those amendments, if they are moved, and to support amendment 344.

Amendment 373 picks up from amendment 372. Its broad effect would not be dissimilar to that of Executive amendment 344, but there are important distinctions. Under amendment 373, the sheriff or perhaps even a Court of Session judge would assume functions that are otherwise carried out by a children's hearing. That raises issues about the impact on judicial resources. Is that the best way in which to deal with the issue? Should we have a potential for such matters to go to the Court of Session and is the sheriff best placed to handle such matters? Those issues arise against the background that the children's hearings and the principal reporter have a particular expertise that the judiciary does not necessarily have. That is why cases are sent to children's hearings for advice in many situations.

Under Executive amendment 344, the children's hearing would continue to review the case and could revoke or continue the requirement. An existing supervision requirement will be able to remain in place and could be continued by the children's hearing unchanged. I think that Adam Ingram suggested that that could not happen, but it will be possible. There will be provision for continued protection of the child in that event. However, if the children's hearing wished to vary the supervision requirement, the principal reporter would have to refer the matter back to the court, which could then, if it saw fit, under subsection (3) of the section that amendment 344 would insert, remit the matter back to the children's hearing, which could then vary the supervision requirement. We believe that that is a better approach. In that light, I hope that Adam Ingram will not move amendment 373.

Amendment 331 will allow the court to revoke a supervision requirement when it makes a permanence order. That reflects a recommendation from the adoption policy review group and parallels the court's ability under section 38 when making an adoption order. Amendment 332 will establish that a supervision requirement or other court order that is made after a permanence order will take precedence over the local authority's powers to exercise parental responsibilities or rights under the permanence order. Existing case law has reached that conclusion in relation to supervision requirements and other orders, but it is helpful to put beyond doubt the position of local authorities in relation to permanence orders. The provision is similar to section 3(4) of the 1995 act, which will continue to apply in relation to persons other than a local authority who have parental responsibilities or rights, even if those have been given under a permanence order.

Amendment 345, which follows on from amendment 344, will restrict the ability of the children's hearing to make supervision requirements. It will enable the court to make interim orders that cover matters such as contact and residence when such an order is in the best interests of the child. The court will also be able to order that a pre-existing supervision requirement

that would otherwise conflict with the terms of the interim order shall cease to have effect. Amendment 386 is technical.

Amendment 387, which was lodged by Lord James, would make a local authority a relevant person for a children's hearing when it has applied for a permanence order or when such an order has been granted. As such, the authority would automatically have a clear right to participate in children's hearings and to appeal to the sheriff on any decision of the hearing. That is an interesting proposition but, in practice, a local authority should always be represented at a hearing anyway, so that part of the amendment would not be a change, although the right to appeal would be. The amendment would give the local authority title to appeal by giving it the right and obligation to attend a children's hearing and to dispute the grounds of referral.

It seems to us unnecessary to make a local authority a relevant person when a permanence order has simply been applied for. That prejudges the outcome of the application and assumes that a permanence order will always be made, when it might not be. Once a permanence order has been made, some parental responsibilities and rights will be vested in the local authority. Under the 1995 act, that is one of the criteria for being a relevant person. Accordingly, only a small amendment is needed to provide that parental responsibilities and rights are assigned under the bill. We intend to produce an amendment at stage 3 to ensure that that happens.

Lord James has introduced a relevant consideration, which has in part been dealt with and which in part requires a small amendment. I hope that, in view of that assurance, he will be prepared not to move amendment 387 and will allow us to deal with the residual little bit at stage 3.

Mr Macintosh: The committee flagged up the overlap between the responsibilities of the children's hearings system and the adoption system as an area of concern at stage 1. I echo the comment that Lord James made at the outset, and Fiona Hyslop's comments. We understand the section on permanence orders as well as we can, but because there have been many changes, we would welcome a chance to discuss it with the minister after stage 2, when we have absorbed all the changes.

There are three competing sets of amendments, which all aim to separate the children's hearings system and the adoption process. The amendments in the name of Lord James and those in the name of Adam Ingram seek to put in place a framework. I was attracted to that idea, but the minister argued convincingly that the bill should not be too complex or overlegalistic. However, I am concerned that we still run the risk that the adoption process will be derailed by a referral to the children's hearings system. That is what happens at present, and it is not in anybody's interest.

I do not think that that is the minister's intention and I accept that he made a good argument that we should not overinvolve the courts in the matter. However, I would welcome an assurance that we will be able to discuss the matter with the minister before stage 3.

Robert Brown: Ken Macintosh's observations about the possibility of the adoption process being derailed are not valid. As I said, we are trying to separate the pending situation from the situation in which permanence orders or whatever are in place. That is a valid and proper distinction and an important distinction of principle in that regard. Assuming that we have got it right, that should not cause us any problems.

Ken Macintosh accepted, I think, my point that we should not involve the court unnecessarily in the later procedures. I am more than happy to talk to him or to any member of the committee if they continue to have concerns about the matter. However, when we see the bill as amended at stage 2, it will be easier to see the framework within which the thing will operate and to decide whether there are any concerns about that.

Mr Ingram: I agree with everything that Ken Macintosh said, and I welcome what the minister said in response. It would be useful to have a session with the minister when we have the bill as amended at stage 2. I find it difficult to follow the effect on the bill of the Executive's amendments and our own representations.

I accept the minister's point that the adoption process will not be derailed by a referral to the children's hearings system. I am pleased that he is considering lodging an amendment at stage 3 to deal with the issue that is raised in amendment 387. I accept that Executive amendment 344 deals with the points that I raised in amendment 373, but I would still like the opportunity to reflect on what the minister said. There are a lot of points for us to assimilate with a view, perhaps, to examining the matter again at stage 3. On that basis, I seek to withdraw amendment 369 and I will not move my other amendments in the group.

Amendment 369, by agreement, withdrawn.

Amendments 370 to 373 not moved.

Section 87—Effect of order on existing orders

Amendment 330 moved—[Robert Brown]—and agreed to.

Section 87, as amended, agreed to.

After section 87

Amendments 331 and 332 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 197, in the name of Lord James Douglas-Hamilton, is grouped with amendment 374.

Lord James Douglas-Hamilton: Amendment 197 is necessary to deal with the eventuality that, when making a permanence order, the court has seen fit to leave some parental rights or responsibilities with someone who already has them or to give such responsibilities and rights to someone new. As the bill stands, the permanence order would transfer most of those responsibilities and rights to the applicant local authority. In general, that will be appropriate for any child, but the amendment allows for a degree of flexibility when the circumstances justify that.

I move amendment 197.

Robert Brown: I am grateful to Lord James Douglas-Hamilton for lodging amendment 197. He has explained that it is designed to ensure that the local authority does not act by itself with regard to a child when there are other people with an interest. Although we agree with that in principle, we think that the matter should be the subject of guidance and good practice, rather than primary legislation.

The amendment fails to provide for what the authority must do once it has ascertained the views of the person or persons concerned. There could be a tick-box element to that. It is not clear how an "important decision", to which the amendment refers, would be defined. Those are small quibbles, but allowing birth parents with remaining parental responsibilities and rights to exercise them only with the consent of the local authority—which is what the amendment says—might allow the local authority to subvert the court's intention by refusing to allow contact, for example. The remedy is to ask the court to vary the terms of the permanence order, if it is not working properly in practice. In view of the points that I have made and the prospect of dealing with the underlying concern in guidance, I hope that Lord James will withdraw amendment 197. However, I accept the point that he makes.

The purpose and effect of Executive amendment 374 is to mirror section 2 of the 1995 act and to provide that, where two or more persons have a parental right in relation to a relevant child, one of them may exercise that right without the consent of the other or others, unless the order vesting the right provides otherwise. That aligns the permanence order with situations in which a child's natural parents are generally able to act independently of each other in the best interests of the child. Obviously, there is an assumption that those exercising the powers will act responsibly and consult as necessary. If the court considers that there should be consultation in relation to the exercise of responsibilities and rights, under subsection (3) of the proposed new section it can provide for that when making the permanence order. If it does not believe that a parental right will be exercised properly, it should not grant it in the first place.

Lord James Douglas-Hamilton: If the point is valid for guidance, why is it not valid for the face of the bill? I accept that this is a matter of balance and judgment. However, given that the minister accepts the point, I think that including it in the bill would be better than including it in guidance.

Robert Brown: The aim is to avoid unnecessarily complex formal arrangements. What the member seeks should happen in the context of the on-going contacts that the local authority and others will have. That is easier if the provision is included in guidance rather than in the bill. No one would argue that it could not be made on the face of the bill but, in the context of what we seek to do, it is unnecessary for us to head in that direction. Amendment 197 would formalise the issue unnecessarily, although I readily accept that there are different views on the matter. There is also the issue of consistency with the 1995 act, which does not include formal arrangements of this sort. As Lord James Douglas-Hamilton knows, the 1995 act is the primary act that sets out the structures for relations with children and parents.

11:45

Lord James Douglas-Hamilton: In view of the minister's assurance, I will not press the amendment at this stage. I note what he has said, but I may return to the issue at stage 3.

Amendment 197, by agreement, withdrawn.

Section 88—Effect of marriage or civil partnership on order

Amendment 333 moved—[Robert Brown]—and agreed to.

After section 88

Amendment 374 moved—[Robert Brown]—and agreed to.

Section 89—Variation of ancillary provisions in order

Amendment 198 moved—[Lord James Douglas-Hamilton]—and agreed to.

Amendments 283, 284, 334 and 335 moved—[Robert Brown]—and agreed to.

The Convener: I suspend the meeting for five minutes.

11:46

Meeting suspended.

11:53

On resuming—

The Convener: We are making reasonable progress, but we have still quite a long way to go.

Amendment 336, in the name of the minister, is grouped with amendments 338 and 351.

Robert Brown: This group of amendments relates to considerations that a court must apply when making decisions about permanence orders. Amendment 336 sets out the factors that a court must consider when deciding whether and how to vary the ancillary provisions in a permanence order. Amendments 338 and 351 apply the same factors to, respectively, an application to amend a permanence order to include authority for adoption and an application for revocation of a permanence order. The considerations that a court should apply when making a permanence order are those that are set out in subsection (4), paragraphs (5)(a) and (5)(b) and subsection (6) of section 85. I read them out earlier, so I will not do that again.

It is important that considerations when varying, amending or revoking a permanence order tie in with those for making an order, so that the child is treated consistently by the process. I therefore ask the committee to support the amendments.

I move amendment 336.

Amendment 336 agreed to.

Section 89, as amended, agreed to.

Section 90—Amendment of order to grant authority for child to be adopted

Amendment 199 moved—[Lord James Douglas-Hamilton]—and agreed to.

Amendments 337 to 339 moved—[Robert Brown]—and agreed to.

Section 90, as amended, agreed to.

Section 91—Proceedings

Amendment 200 moved—[Lord James Douglas-Hamilton]—and agreed to.

Amendment 375 not moved.

Amendments 201 and 202 moved—[Lord James Douglas-Hamilton]—and agreed to.

The Convener: Amendment 340, in the name of the minister, is in a group on its own.

Robert Brown: Amendment 340 is a technical amendment that provides clarity and consistency of expression throughout the bill.

I move amendment 340.

Amendment 340 agreed to.

Amendments 285 and 341 moved—[Robert Brown]—and agreed to.

Amendment 203 moved—[Lord James Douglas-Hamilton]—and agreed to.

The Convener: Amendment 131, in the name of Lord James Douglas-Hamilton, is grouped with amendment 342. If amendment 131 is agreed to, I cannot call amendments 342 and 343, because they will be pre-empted.

Lord James Douglas-Hamilton: Amendment 131 would remove the necessity for a material change in circumstances before there can be a variation of a permanence order, and would substitute a test that the applicant must show cause. The substituted test is consistent with the recommendation of the adoption policy review group that an application should be possible when there is some good reason. A material change in circumstances may not be a good reason—for example, where there has been a death in the family and the child's security should not be further disrupted. There may be a reason in the absence of a material change—for instance, where the circumstances are the same but a promise has not been kept. I submit that the wording of amendment 131 is better than the existing wording.

I move amendment 131.

Robert Brown: We accept, in principle, the point that Lord James Douglas-Hamilton makes, but we have approached the matter differently. As he says, the test of showing cause was suggested by the adoption policy review group. I remind the committee that the object of requiring an applicant other than the local authority to obtain the leave of the court to apply for variation of a permanence order is to protect the order from repeated and vexatious interference from parties who may not have supported the granting of the permanence order in the first place. That is an important consideration.

If everything was done properly when the order was granted, usually the only relevant ground for varying the order would be that the circumstances had changed. That is what is provided for in the bill at present, and rightly so. In addition, that reflects the current test, under section 25 of the Adoption (Scotland) Act 1978, which also allows for applications for the revocation of freeing orders. However, we have taken account of the comments made at stage 1 and have lodged amendment 342, which broadens the

circumstances, to echo some of Lord James Douglas-Hamilton's comments. That will allow those who consider that they have some other valid reason for applying for variation to seek the leave of the court, even though there has not been a material change of circumstance. Although the phraseology is different, I think that amendment 342 will achieve the effect that Lord James seeks while maintaining the primacy of the material change of circumstances aspect.

I hope that that explanation will encourage Lord James Douglas-Hamilton to withdraw amendment 131.

Lord James Douglas-Hamilton: I am grateful to the minister for his response and for accepting in principle amendment 131. If I may say so, it appears that amendment 342 may have been lodged in response to amendment 131. Although he did not say that, I hope that that was the case. In any case, in light of the minister's assurances, I am delighted not to press amendment 131.

Amendment 131, by agreement, withdrawn.

Amendments 342 and 343 moved—[Robert Brown]—and agreed to.

Section 91, as amended, agreed to.

After section 91

Amendments 344 and 345 moved—[Robert Brown]—and agreed to.

Section 92—Duty of adoption agency to apply for variation or revocation

Amendment 204 moved—[Lord James Douglas-Hamilton] and agreed to.

12:00

The Convener: Amendment 346, in the name of the minister, is grouped with amendments 348 and 349.

Robert Brown: The purpose and effect of amendments 346, 348 and 349 are to make clear that the local authority is required to seek variation or revocation of the permanence order only if the

"material change in the circumstances"

referred to in section 92(1) indicates that the order ought to be varied or revoked. As the provision stands, a local authority would be required to apply for a variation even if the change in circumstances did not affect the provisions of the permanence order, which would be undesirable. The right of anyone other than a local authority to make an application in accordance with sections 89 and 91 is not affected.

I move amendment 346.

Amendment 346 agreed to.

Amendments 347, 132, 348 and 349 moved—[Robert Brown]—and agreed to.

Section 92, as amended, agreed to.

Section 93—Revocation

The Convener: I call amendment 186, in the name of Lord James Douglas-Hamilton.

Lord James Douglas-Hamilton: I cannot recall whether the minister said that he would accept the amendment.

Robert Brown: I think I said that we would not accept it, but I cannot remember why. [*Interruption.*] I am told that it is paralleled by an Executive amendment that effectively has the same intent and purpose.

Amendment 186 not moved.

Amendment 350 moved—[Robert Brown]—and agreed to.

Amendment 205 moved—[Lord James Douglas-Hamilton]—and agreed to.

Amendment 351 moved—[Robert Brown]—and agreed to.

Section 93, as amended, agreed to.

Section 94—Revocation: order to be made under section 11 of 1995 Act

Amendment 352 moved—[Robert Brown]—and agreed to.

Amendment 187 not moved.

Section 94, as amended, agreed to.

After section 94

Amendment 188 not moved.

The Convener: Amendment 376, in the name of the minister, is grouped with amendments 353, 377 and 379.

Robert Brown: Amendment 376 has been lodged to ensure that the relevant people in the life of a child who is the subject of a permanence order with authority to adopt are notified as soon as possible of significant changes in the child's life in relation to adoption. The relevant people are defined as those whose consent was originally required to be obtained or dispensed with when the permanence order was first made. The significant changes are that the child has been placed for adoption, has been adopted or has ceased to be placed for adoption. Individuals may give notice to the authority that, having given their consent to adoption, they do not want any further information. The amendment provides for that, too.

The purpose of amendment 353 is simply to clarify the requirements for notification of an application for a permanence order with which section 97(2) is concerned. Section 97(2) provides for notice to be given to persons mentioned in section 97(3), who are those persons whose consent would be required to be given or whose consent may be dispensed with in relation to the making of an order. Such consent is required only in the context of an application for a permanence order granting authority to adopt. Amendment 353 provides clarity in section 97(2) of the nature of the application that is referred to.

Provision for notice in relation to other applications for permanence orders will be made in rules of court, and I am happy to support Adam Ingram's amendments 377 and 379.

I move amendment 376.

The Convener: Consensus is breaking out all over. I invite Adam Ingram to speak to amendments 377 and 379.

Mr Ingram: Amendments 377 and 379 are about court rules for permanence orders and adoption and are in accordance with the Executive's acceptance of the adoption policy review group's recommendations to improve the system and reduce delays. I am pleased that the minister accepts the amendments.

Robert Brown: I like to bring joy to the world.

Amendment 376 agreed to.

Sections 95 and 96 agreed to.

Section 97—Permanence orders: rules of procedure

Amendment 353 moved—[Robert Brown]—and agreed to.

Amendment 377 moved—[Mr Adam Ingram]—and agreed to.

Section 97, as amended, agreed to.

Section 98—Notification of proposed application for order

The Convener: Amendment 133, in the name of Lord James Douglas-Hamilton, is grouped with amendment 189.

Lord James Douglas-Hamilton: Amendment 133 would clarify section 98(2)(b). The provision is ambiguous and could be interpreted as meaning that the local authority would have to provide the father with information relating to the processes for applying himself for the order in question. The amendment would clarify that the father could be given information on the whole permanence order process.

I am sympathetic to amendment 189. It would be desirable to give an unmarried father without parental responsibilities and rights stemming from the 1995 act the classification of a relative. That would allow the court to consider his rights on an equivalent basis to those of other relatives, should it wish to do so. I support amendment 189.

I move amendment 133.

Mr Ingram: Amendment 189 is an amendment to section 111, which lists the interpretation of terms that are used in the bill. The relevant term here is "relative". The bill states that a relative

"in relation to a child, means a grandparent, brother, sister, uncle or aunt".

Amendment 189 would include an unmarried father in that list. That is in line with previous discussions that the committee has had, especially at stage 1. We have suggested that unmarried fathers are a potential resource that has not been tapped into in the past and that we should consider doing so.

Ms Byrne: I speak in support of amendment 189. The issue that it deals with has been raised throughout stages 1 and 2. It is important to acknowledge the fact that the law was changed with the Family Law (Scotland) Act 2006 and that there are fathers who did not get retrospective parental rights and responsibilities. Because of issues relating to drug misuse, alcohol abuse and the breakdown of relationships, some of those fathers have perhaps never had the opportunity to have access to their children, not because of their wrongdoing but because—as we know happens quite often—children can be used as weapons in acrimonious situations. That is not to say that we do not acknowledge that the rights of the child are paramount. However, we think that the unmarried father should be recognised as a relative, along with the others in the list—aunts, uncles, grandparents and so on. The unmarried father should be given the opportunity to be involved if—I stress that this is often the case—he has not done anything wrong.

To be consistent with everything else that we have said about parental responsibilities and rights it is important that we acknowledge fathers who do not have those responsibilities and rights. As the bill stands, an unmarried father would be left having to go to court to gain parental responsibilities and rights if, for example, the mother died or was deemed by the local authority not to be capable of looking after the child. Amendment 189 would provide consistency.

Robert Brown: The words "for applying", which amendment 133 seeks to remove, indicate that the duty falling on the local authority is to ensure that the unmarried father without parental responsibilities and rights is properly informed of

how he can seek to be involved, should he wish to be, in the court's consideration of an application for a permanence or adoption order. The duty does not extend as far as, for example, providing information about the type of adoption support dealt with elsewhere in the bill.

The proposal in amendment 133 to remove the words "for applying" would leave the text referring to

"prescribed information relating to the processes for the order in question."

We think that that is too vague to capture what is intended.

Of course, an unmarried father without parental responsibilities and rights will never be able to apply for a permanence order—that rests with the local authority. It is also extremely unlikely that he will apply for an adoption order. Following the Family Law (Scotland) Act 2006, the natural course would be to seek to acquire parental responsibilities and rights through being registered as the father. Therefore, the information that ministers intend to prescribe is information concerning the application process, including the process of considering that application, to provide the unmarried father with an understanding of the process and to enable him to make decisions about his possible involvement in the proceedings.

Against that background, I hope that Lord James Douglas-Hamilton will withdraw amendment 133.

The effect of amendment 189 is to include unmarried fathers who do not have parental responsibilities and rights in the bill's definition of "relative". Currently, the definition of "relative" in the bill is as follows:

"a grandparent, brother, sister, uncle or aunt (in each case whether of the full blood or the half-blood or by affinity)."

The adoption policy review group gave particular consideration to the position of unmarried fathers without parental responsibilities and rights and recommended extending certain rights to them. The bill reflects that, and such fathers are given new rights to be notified when an application for an adoption order or permanence order is made. However, we do not believe that it is right that we should simply place unmarried fathers without parental responsibilities and rights in the same position as other relatives of a child. We are not altogether unsympathetic to the position of such fathers and we have made particular provision for them in the bill where we consider that to be appropriate, but we do not think that we want to go as far as is suggested by amendment 189. I hope that Adam Ingram will accept that the current balance is right and will therefore be prepared not to move amendment 189.

Lord James Douglas-Hamilton: In the light of the minister's comments, I will not press amendment 133.

Amendment 133, by agreement, withdrawn.

The Convener: I am sure that members all remember day 1 of stage 2 consideration of the bill, in the dim and distant past, when we debated amendment 134 with amendment 130.

Robert Brown: I am sure that it is a very sensible amendment, which I am happy to move formally.

Amendment 134 moved—[Robert Brown]—and agreed to.

Section 98, as amended, agreed to.

Section 99 agreed to.

Section 100—Making of adoption order no longer to be bar to making of contact order

The Convener: Amendment 135, in the name of Lord James Douglas-Hamilton, is grouped with amendment 136.

Lord James Douglas-Hamilton: Amendment 135 would widen the application of section 100. New section 11(3)(aa), which will be inserted into the 1995 act by section 100, limits the scope of the section to contact orders. Is it necessary to limit applications? In some cases, applications for other orders may be justified. For example, if an adoptive parent dies, a birth parent may seek to have the child returned to live with him or her. The law should be flexible in those cases, depending on the circumstances.

Amendment 136 would ensure that the leave of the court would be sought. That requirement would mean that applications would have to overcome an additional hurdle, which would ensure that the process would not be abused and would act as a safeguard.

I move amendment 135.

12:15

Fiona Hyslop: On a technical point, amendment 136 seeks to introduce into section 100 the term

"with the leave of the court",

which is used in other sections of the bill. The Faculty of Advocates has suggested that we should not pepper the proposed legislation with references to concepts that are alien to Scots law. In any case, given that we have accepted the term elsewhere in the bill, why should it be reproduced here?

Robert Brown: Amendments 135 and 136 address two different matters. On amendment 135, I am concerned that its terms might threaten

the stability of an adoptive family. Although it now overlaps with contact, adoption means quite a substantial change in legal status, and knowing that a birth parent was able to apply for parental responsibilities and rights could represent a threat looming over an adoptive family and reduce the child's feeling of stability and belonging. Of course, instilling that sense of stability and belonging is one of the themes that run through the bill.

Providing contact with a birth parent is a very different proposition from providing birth parents with responsibilities and rights that might undermine the adoption, and we are reluctant to go in that direction. If, for example, the adoptive parents have died or the adoption has irrevocably broken down, other options, such as applying for an adoption order, are open to a birth parent who wants to regain parental responsibilities and rights. I know that that sounds a bit odd, but given the substantial change in legal status conveyed in the adoption order, it is the appropriate method for dealing with what would be a relatively rare but, again, substantial change in position. It is right, therefore, that people who have lost parental responsibilities and rights should be able, through a application made under section 11 of the 1995 act, to apply for contact—and nothing else. Protecting the stability of the adoptive family is crucial and even the addition of a requirement to seek leave from the court would not achieve that if the terms of a section 11 application were made so wide. I hope that Lord James Douglas-Hamilton accepts those representations and ask him to withdraw amendment 135.

We are prepared to support amendment 136, which seeks to require that "leave of the court" be obtained before a person can apply for a contact order. Such a provision, which has been discussed before, would prevent a person from making repeated, unwarranted or vexatious applications and provide adoptive families with a measure of protection. If a person had genuine cause for seeking a contact order in the best interests of the child, the court would no doubt grant leave to apply. However, amendment 136 sets out an important safeguard that balances the security of the adoptive family and the rights of those who have lost parental responsibilities and rights.

I do not entirely agree with Fiona Hyslop's comment that amendment 136 refers to a concept that is alien to Scots law. It is becoming more common in different legal procedures and has certainly applied to a range of situations for many years.

Lord James Douglas-Hamilton: I am grateful to the minister for accepting amendment 136. I do not intend to press amendment 135.

Amendment 135, by agreement, withdrawn.

Amendment 136 moved—[Lord James Douglas-Hamilton]—and agreed to.

Section 100, as amended, agreed to.

Section 101—Rules: appointment of *curators ad litem* and reporting officers

The Convener: Amendment 182, in the name of Lord James Douglas-Hamilton, is in a group on its own.

Lord James Douglas-Hamilton: Amendment 182 seeks to provide for regulations that relate to curators ad litem and reporting officers, who perform extremely important roles in adoption proceedings and, prospectively, in proceedings on permanence orders, by carrying out independent inquiries on behalf of the court and by witnessing the necessary consents. Most appointees are solicitors—I point out that I do not, as a non-practising Queen's counsel, have to declare an interest—and many perform their roles conscientiously and effectively with almost no remuneration. As solicitors can no longer afford to work virtually pro bono, the system is at risk of breaking down and therefore needs to be put on a proper professional footing. I would be grateful if the minister could examine what I believe to be a major issue.

I move amendment 182.

Mr Macintosh: Although the committee chose not to pursue it, the issue was highlighted by witnesses at stage 1 as an on-going concern.

Robert Brown: Lord James raises an important issue, although it seems to sit slightly oddly with some of the other provisions in the bill. I will explain a little of the background. As Lord James rightly says, curators ad litem and reporting officers carry out important functions, without which the adoption system would be unable to work. Current arrangements for training, recruiting and paying them are carried out by individual local authorities—it is a localised system and the authorities are responsible for paying the fees through regulation 10 of the Curators ad litem and Reporting Officers (Panels) (Scotland) Regulations 2001. Lord James will be glad to know that. Those regulations were made under section 101 of the Children (Scotland) Act 1995.

As has been said, there is concern about the level of reimbursement of solicitors who act in those capacities. There is no standard rate of reimbursement in legislation: the Convention of Scottish Local Authorities publishes recommended rates, but they are not always considered to be a fair return for the work that is done, especially in complex cases.

Section 101(1) of the 1995 act relates to panels of persons from whom curators ad litem may be

appointed under section 58 of the 1978 act. Section 101 of the 1995 act will be amended, all being well, as part of amendment 360 in the final grouping of minor amendments, to relate to curators ad litem and reporting officers appointed in accordance with section 101 of the bill. There are several 101s to mention, which confuses matters.

The power in the 1995 act, once updated, will be sufficient to enable regulations to address matters of appointment and training and to make provision for payments of expenses. Although the word "expenses" is used, in practice it represents a fee—although some people regard it as a rather meagre fee—rather than a reimbursement of travel costs and the like.

We are sympathetic to the need to ensure that the people who perform this invaluable function are properly reimbursed. I give Lord James my assurance that we will consult fully on any new regulations so that we can ensure that we address problems in the system. We have to consider things in the round. Such officers appear in a number of different contexts—for example, as safeguarders in the children's hearing system. There will be wider implications that we might want to address, too. This is not a matter for further amendment to the bill, but we will have to consider the current powers. I undertake to do that in the context of new regulations.

Lord James Douglas-Hamilton: Is the minister saying that the matter will be covered in relevant regulations in due course?

Robert Brown: Yes.

Lord James Douglas-Hamilton: In that case, I am grateful to the minister for acknowledging the importance of the principle behind amendment 182 which, as Ken Macintosh said, has been mentioned by witnesses. I will not press amendment 182.

Amendment 182, by agreement, withdrawn.

Section 101 agreed to.

Section 102 agreed to.

After section 102

The Convener: Amendment 4, in the name of Lord James Douglas-Hamilton, was debated with amendment 177 on day 1.

Lord James Douglas-Hamilton: I think that I made it clear that I would, in the light of the assurances that have been given, support Adam Ingram's amendment but not move my own.

Amendment 4 not moved.

The Convener: Amendment 7, in the name of Lord James Douglas-Hamilton, is grouped with amendment 6.

Lord James Douglas-Hamilton: Amendment 7 relates to fostering. It was lodged as a result of representations from the Fostering Network and Barnardo's. Those organisations are naturally anxious about the matter, because there is evidence that a significant proportion of children who are fostered in Scotland go into overcrowded foster homes. It is a genuine problem: one in four foster children goes into a family that is already caring for four or more children. Six per cent go into a family with six or more existing foster children. Although I have no doubt that the people who are involved are extremely well intentioned and do their best, the care of the foster parents can be spread too thinly. When that happens, it can undermine the quality of the individual care that is required for children who are often vulnerable.

That cannot happen south of the border, where there is a limit of three foster children per family. The evidence from the Fostering Network and Barnardo's is that having a limit of three works very well. Of course, there may be exceptions. I have not been involved in fostering, but I have children. We had two sons within three years and then had twins, so we had four sons within four years. However, I am not sure that the Fostering Network or Barnardo's would have recommended what we did as best practice.

I think that we all agree that we must aim for the best overall outcomes. The fostering charities say that the legislation in England has had a positive effect and that they can see no good reason why Scotland should be denied the same safeguard. It has, of course, been contended that there are not enough foster carers, but if the Executive comes up with a good enough allowance and improves the attractiveness of fostering in other ways, that problem will, I hope, melt into insignificance.

Amendment 6, which was lodged as a result of representations from the Fostering Network, would introduce compulsory national registration of foster carers. Such a scheme would promote universal high standards for all foster carers by requiring continued professional development. A similar register is being implemented for residential social care workers, but foster carers have far more unsupervised contact with vulnerable children. A register for foster carers would bring them into line with other social care workers.

Agreement to amendment 6 seems to be reasonable because a safeguard would exist. Currently, if a foster carer is struck off in one region as a result of inadequate care, what has happened may not automatically be imparted to other authorities. A register would make it much easier for prospective employers to be reassured

about a carer's high quality of training and caring, and their integrity.

I move amendment 7.

Mr Macintosh: At stage 1, the committee heard powerful evidence on fostering from Bryan Ritchie of the Fostering Network Scotland and from others. Subsequently, there was a briefing outside the committee that most committee members, the minister, journalists, Tam Baillie, Bryan Ritchie and others attended and at which arguments were forcefully put. I am sure that those arguments made a big impact on all committee members. As a result, I have a lot of sympathy for Lord James Douglas-Hamilton's proposal to cap the number of placements in a foster home and for the idea that fostering is now more akin to professional care. Perhaps some people have a rather old-fashioned view of fostering or view it through rose-tinted glasses.

That said, we did not take evidence in depth on the matter at stage 1. I would like the minister to assure us that we will have a chance to listen to evidence and to debate, discuss and explore the issues that are involved—particularly putting a cap on placements—more fully when the regulations that govern fostering are introduced.

I welcome the letter from Peter Peacock that we received this morning, which outlines the progress that has been made in developing the national fostering strategy.

Fiona Hyslop: That letter says that a reference group has been established and that it met on 26 October this year, after our stage 1 debate. During that debate, the committee expressed serious concern about having to consider proposed legislation on adoption and fostering without having any indication of the content of the fostering strategy that had been promised. When the minister responded, no indication was given of the content of the fostering strategy; indeed, the meeting to scope the consultation had not even taken place. With all due respect, that is no way to make legislation. The minister said that progress had been made when we were considering legislative proposals on fostering, but that progress did not include setting up a reference group, let alone the formation of a strategy. We were not told about the content of that strategy and could not make a judgment on it.

12:30

It is difficult to proceed on a wing and a prayer and a promise of future regulations. We have taken the minister at his word—that provision for a fostering strategy will come in regulations and that we do not need primary legislation. However, my points have to be made. It was disingenuous of the minister to say at stage 1 that far more progress had been made on the fostering strategy than was the case, given that the meeting took place only on 26 October.

That said, I thank Lord James Douglas-Hamilton for his amendments, which try at least to put in place some sort of framework for fostering in an attempt to deal with some of the serious concerns. Lord James is right to identify the concerns about overcrowding in foster homes. However, I am concerned about amendment 7, which would insert after section 102 new subsections (3)(b)(i) and (3)(b)(ii). I would like to know the extent to which those provisions reflect the English legislation. I suspect that local authorities would not want to place a child with a family that already had three children if there were alternative accommodation or if to do so were not in the best interests of the child. My concern relates to whether Lord James Douglas-Hamilton's amendment would be strong enough, given the reasons for current practice. I support the idea behind amendment 7; I am simply concerned about how it would work in practice.

Amendment 6 relates to registration of foster carers, which is important—foster carers have told us that they need to be protected. A third of them are subject to complaints and so on. In developing the legislation and the strategy, we have to ensure that we protect the interests of foster carers. Amendment 6 would acknowledge their importance, but my concern is that it might cause unnecessary bureaucracy. Given that we are concerned about the best interests of children, it is surprising that there is not such a register at the moment.

Dr Elaine Murray (Dumfries) (Lab): On the number of children whom foster carers are permitted to look after, I have much sympathy with the representations that we have had from the various organisations that represent foster carers. The only problem with putting a figure in primary legislation is that the situation is arising in Scotland because there are insufficient foster carers. That problem is not going to go away simply because we pass a law that says that children cannot be placed in homes that already have more than three foster children. We have to tackle the cause and increase the pool of foster carers before we can insist that no child be placed in a house that has more than three foster children. Therefore, although I am sympathetic to the idea of a limit, to put a figure in primary legislation could cause difficulties until efforts are made to increase the number of foster parents who are available in Scotland.

Ms Byrne: I will support amendments 7 and 6. On amendment 7, it is crucial that we think about the quality of the placements in the lives of children who have been let down badly in the past.

The amendment contains space to deal with situations in which there is a shortage. Lord James is right to say that, once we have in place a proper arrangement for allowances and so on, and have established the register—which supports the foster carers and protects the children—there should be no problem with the provisions in amendments 7 and 6.

We have to think about the best interests of the young people. Given that many children who are fostered have social, emotional and behavioural difficulties and are very challenging to the families that are fostering them, it is important that we do not end up with a huge number of children in one household, because that makes things more difficult.

The Convener: I also welcome the letter that we received on the national fostering strategy, particularly the part that says that the Executive will consider ways of building more capacity in the system to ensure better choice of placement, including an examination of the issues of placement limits and how allowances should be determined. Would that include the question whether there should be formal limits on numbers that are being placed subject—obviously—to exceptions such as sibling relationships? Will there be a need for primary legislation on the requirement to have a register or could that be met through secondary legislation and regulations?

Robert Brown: There has never been any secret about the Executive's approach to the bill and the fostering strategy. From the beginning, we have said that it is a large bill—it has 113 sections and three schedules and, as we can see from today's proceedings, it is a complex bill that contains a lot of technical issues. In our view, there is no need for additional legislation on fostering, with the exception of the matter of widening the powers on fostering allowances, which we have already dealt with. That has always been our position; it was the way it was explained at the beginning and all the way through the bill process. My response to the convener's points underlines what I was about to say about amendments 6 and 7; there is no need for primary legislation to enable us to do whatever we require to do with those two important aspects.

By the same token, we have always said that fostering would be dealt with in the context of the fostering strategy and that it should be debated as a major issue in that context, but not against the background of its requiring further legislation. That said, I appreciate the intention behind Lord James's amendments and I do not want to be disparaging about them; they both raise important points.

On amendment 7 on placement limits, I am aware that several important stakeholders have advocated the approach that is proposed by Lord James, for which other members have also expressed sympathy. On the other hand, I also know that some important stakeholders do not support that approach. I am not against the principle of placement limits per se, nor are other Scottish ministers, but the adoption policy review group did not cover that option in its report, so it was not consulted on. Also, as Kenny Macintosh said, the committee did not go into the issue in great detail in its examination of the evidence. In our natural desire to respond to important issues, we have to be careful not to jump the gun and take forward ideas that have not been the subject of proper consultation.

We have already made a commitment to consulting on the issue in the consultation for the national fostering strategy, which will be launched in December. That will allow all those who are interested to comment and to submit evidence to support their positions. There might be arguments on the principle of the issue and on the proper limit, and on why a foster carer can foster three children and not two or four, for example. It is important to consider such issues carefully against the background of several issues that some members have said relate to the number of fosterers in the system and the way in which the proposed legislation might help or hinder the ability to bring in new people.

I also assure the committee that, should the outcome of the consultation and our consideration of the issues be that we want to impose a limit, we will be able to do that by means of amendment to the fostering regulations; it will not require primary legislation.

I acknowledge the intention behind Lord James's amendment 6 and I am sympathetic to what he is trying to achieve. We need to take support for foster carers seriously, which we are considering in the national fostering strategy. However, accepting amendment 6 would mean a radical shift from the current system whereby foster carers are approved and supervised by the local authority, which in turn has its fostering service registered with, and inspected by, the Scottish Commission for the Regulation of Care. We would not want to go down that route without having consulted on it with those who would be directly affected, such as carers themselves, local authorities, the care commission and the Scottish Social Services Council. If we decide to go down that route—I do not want to prejudge what may come out of the national fostering strategy—there is an existing power at section 3 of the Regulation of Care (Scotland) Act 2001, which enables Scottish ministers to add other services, such as foster care, to the list of care services that fall within the care commission's regulatory responsibilities.

If Lord James is seeking assurance that foster carers will be given education, training and support of various kinds, I think that that is an important subsidiary issue to amendment 6. I agree with him that the fostering regulations already make provision for that, but there is always scope for improvement and we will consult on that in the forthcoming consultation on the national fostering strategy.

If Lord James is seeking assurance that foster carers are safe carers for children, then we argue that the local authority already carries the responsibility for that. They are required by regulations to review, at intervals of not more than a year, whether a foster carer continues to be a suitable person with whom to have placed children.

Broadly, my proposition is that the existing framework is adequate. Given that the fostering strategy will be consulted on soon, I hope that Lord James Douglas-Hamilton will accept that the best way to deal with those issues is not as a by-blow of a bill that is primarily about other matters, but in the context of consideration of that strategy, which will be much more focused and to the development of which I hope that he and others will contribute. Against that background and the assurances that I have given about the existence of appropriate legislative provision, I hope that Lord James Douglas-Hamilton will be prepared to withdraw amendment 7 and to not move amendment 6.

Lord James Douglas-Hamilton: My understanding of what the minister has said is that he is not against placement limits, but feels that the proposal must be consulted on. I am content with his assurance that he will consult on and examine the issues seriously. However, I am slightly surprised that he should stress the importance of consultation, given that there has been no consultation on the sharing of information in relation to the Protection of Vulnerable Groups (Scotland) Bill, which he is to introduce shortly. That suggests an absence of joined-up government, but that is by the way.

On amendment 6, the minister said that consultation was possible. I put down a marker that I consider the registration of foster carers to be extremely important. He said that we need to take seriously the support of foster carers. The implications of that should be investigated. Given that he has committed to consulting on the first issue, it makes sense that he should consult on registration, too.

Robert Brown: I think I specifically said that we would consult on that as part of the consultation on the national fostering strategy but, obviously, I can make no commitment on the outcome of the consultation.

Amendment 7, by agreement, withdrawn.

Amendment 6 not moved.

Section 103—Regulations about fostering allowances

The Convener: Amendment 354, in the name of the minister, is grouped with amendments 355 and 365.

Robert Brown: I emphasise what Peter Peacock set out in his letter to the committee. People might infer from the fact that section 103, which contains the provisions on allowances, is the only section in the bill that mentions fostering that fostering is being treated as a poor relation. In Peter Peacock's letter and on earlier occasions, we have made it clear that that is not the case. Although fostering is central to what we want to do, it does not necessarily follow that legislative change is required.

I will not go over the letter again, but I want to remind the committee of the context in which our discussions are taking place. Yesterday, I answered a parliamentary question on when the national fostering strategy will be launched. I said that the consultation on the strategy will begin in December. Along with key stakeholders, we want to take a radical look at what the foster care of the future might look like.

Section 103 seeks to give ministers the power to make regulations about allowances. It does not set out what the regulations will contain—that will need to be the subject of a separate consultation in due course. We lodged amendment 354 because ministers need to ensure that they have sufficiently wide powers to make the regulations. It will ensure that, when the time comes, carers who have a child placed with them by the local authority or following a decision by a children's hearing will be covered by the regulations and able to benefit from the provision of allowances, regardless of whether they are registered foster carers.

Amendment 355 is designed to ensure that it will be possible for regulations governing the payment of allowances to carers to extend to foster carers who are given parental responsibilities and rights under a permanence order. As the 1995 act stands, the giving of those responsibilities and rights to a family would mean that it was no longer a family providing care under section 26(1)(a) of the 1995 act and so would not be eligible for allowances. We want to avoid that. Amendment 355 would ensure that allowances can be paid to such persons in accordance with regulations made under section 103 of the bill.

I am sympathetic to the situation that Rosemary Byrne seeks to address in amendment 365, which is complex and would have a number of

ramifications. There are a large number of carers in Scotland who have stepped into the breach in difficult family circumstances and who are caring for children at a time in their lives when they did not expect to be doing so. It goes without saying that we all recognise the emotional, physical and financial challenges that such situations present to carers. Every carer's situation will be different and they will cope with it in different ways and to different degrees.

Kinship carers provide an important service and I place on record my belief that they should be entitled to appropriate support. The Executive is determined to improve the range of support that is provided to children who live with such carers and to the carers themselves, but there are a number of policy issues to be taken into consideration. Local authorities already have powers under a variety of legislation to make payments to support children.

12:45

Section 103 enables ministers to make regulations with regard to allowances for those who care for children who have been subject to the intervention of the state in their lives and have become looked-after children. That is a key distinction. Any financial support must be for the support and maintenance of the child. That is what fostering allowances do at the moment. They are not for maintaining the income of the carer, however worthy a cause that is. Income maintenance is the responsibility of the tax and benefits system, which is a matter for Westminster.

There is no doubt that the financial systems in place to support kinship carers are complex and can inadvertently penalise kinship carers who want to provide a home for the child or young person. As part of the development of the national fostering strategy, we have commissioned an independent survey of the tax and benefits system and how it supports kinship carers in Scotland. One of the aims of that survey will be to ensure that kinship carers receive clear, helpful information about how they can receive financial support for the child or young person in their care. The survey will also inform our proposals in the national fostering strategy for any further financial support that might need to be provided to fill any gaps that we identify. We are trying to take a comprehensive, evidence-based look at the whole matter.

On policy direction, getting it right for every child means that the needs of the individual child should be the trigger for support. Given that our starting point is the needs of the child, we must recognise that, with the exception of permanence orders, we are not creating any new legal status for any child. I see permanence orders playing an important part in kinship care, enabling the legal relationship between child and carer to be clarified. The legislation that exists at the moment will continue to exist and local authorities' existing powers will not be changed by the bill as drafted, but I have instructed my officials to look at the issue further before stage 3, to ensure that ministers take appropriately wide powers for the future and that we have the opportunity to ensure that nothing we might want to do is missed out at that stage.

There are some technical problems with amendment 365. First, the use of "must" is unusual, perhaps even unprecedented, in regulations, and it prejudges what might come out of the national fostering strategy. It also suggests that providing for kinship carers is more important than providing for adoption allowances and allowances for looked-after children, including foster children, because it gives a higher status to children in kinship care. I do not think that that is really what Rosemary Byrne is trying to suggest.

The amendment's use of "cared for" could mean that day care arrangements, where granny looks after her grandchildren to enable her son or daughter to go out to work, would be included. Again, I do not think that that is what we are looking towards. The fact that the provision is limited to relatives would create a hierarchy whereby friends, godparents and cousins would not be covered. That issue has been debated in different contexts.

By being cast as additional to section 103 rather than as an amendment to it, amendment 365 would enable the Scottish ministers to make regulations under section 103 in relation to children who are placed under subsection 26(1)(a) and, with Executive amendment 355, subsection 70(3)(a) of the Children (Scotland) Act 1995, but then oblige ministers to make regulations to cover the subset of people covered by the section 103 regulations—the kinship carers. The potential for confusion is quite high.

My major objection to amendment 365 is not so much about the details of it, which I have no doubt could be put right if necessary, as about the principle of the direction of travel, the insertion of "must", and our desire to create an evidence-based way of addressing the need for support arrangements in a complex area.

I therefore ask the committee to reject amendment 365.

I move amendment 354.

Ms Byrne: I lodged amendment 365 because there has been huge disappointment about the review and the lack of input on kinship care. There is confusion in local authorities about who should receive kinship care allowances and who should

not, and there are differences between one local authority and another. I have worked closely with the you are not alone group in Stranraer and with grandparents groups across Scotland. I have also had a huge amount of case work on the issue. It seems to me that we never actually get to the bottom of it.

I will quote Hugh Henry's summing up speech in the debate on "Hidden Harm—Next Steps: Supporting Children—Working with Parents".

"Given that councils have that responsibility and the necessary budgets, and that they know we believe it is a matter on which they should act, Cathy Jamieson will take up the issue with the Convention of Scottish Local Authorities if they fail to do so. She will ask COSLA to introduce a national scheme to ensure that there is consistency throughout Scotland. If that does not happen and councils continue not to fulfil their responsibilities, the Parliament will need to revisit the issue."—[*Official Report*, 11 May 2006; c 25616.]

Members have lodged several written questions on the issue. In response to John Swinburne's recent question, which asked

"what impact the additional £12 million in funding will have on kinship carers who do not currently receive any payment in areas such as Glasgow",

Robert Brown stated:

"It is for local authorities to decide how best to use this additional funding. However, when Euan Robson wrote to local authorities announcing the funding in April, he suggested that authorities may wish to consider further support to kinship carers."—[*Official Report*, *Written Answers*, 18 October 2006; S2W-19566.]

The Executive seems to be aware that the issue is a grey area and that a gap in support has existed for some time.

I appreciate that the minister has said that the issues will be considered in the fostering strategy, but I will quote the main points on the resourcing of kinship care that are given in Professor Aldgate's report. She concludes:

"• supporting kinship carers financially is a major issue for local authorities

• there is considerable variation in the rates kinship carers are paid

• kinship carers are often paid a lower rate than foster carers

• there were two contrasting approaches to finance: one based on the status of the carer and the other on the status of the child

• benefits legislation is unhelpful for new kinship carers

• several different budgets are used to provide financial support for kinship carers

• many authorities operate a customised system of financial support

• there is need for some standardisation of financial support for kinship care placements".

We have many children living with relatives. As Robert Brown rightly pointed out, grandparents' lives have often not prepared them for the responsibility that they need to take on. Such children can live in relative poverty, without access to the dance lessons, music lessons, school trips, holidays and other things that other children enjoy. They are impoverished because of that.

If the minister can give me an assurance that the issue will be dealt with, I will not press amendment 365, but I need to know that the Executive has some purpose and will indeed deal with it. Given that it has been going on for many years, it is time it was resolved.

Dr Murray: I have a lot of sympathy for what Rosemary Byrne is trying to achieve in amendment 365. I, too, have received many representations from constituents who are kinship carers. Frequently, they are simply the relatives of people who have become unable to look after their children either because of drink or drug problems or because they are spending time in prison.

However, I have two issues with amendment 365. First, as the minister said, it states that the Executive "must" make provision for kinship care allowances, whereas the bill states only that the Executive "may" make provision for foster-carer allowances.

Secondly, the amendment includes the phrase,

"whether or not the child has been placed by the authority under section 26(1)(a) of the 1995 Act".

The inclusion of that phrase would seem to leave local authorities responsible for making payments even for completely private arrangements. As a result, people could decide to place a child with a relative because, basically, they will get more money if they do. I do not suggest that many people would do that, but it would become a possibility if that phrase were included.

I ask the minister to reflect on the possibility of lodging an amendment at stage 3 to ensure that kinship care is also referred to in section 103, "Regulations about fostering allowances".

Fiona Hyslop: I support Elaine Murray's suggestion. It is clear that the committee wants to see a strong indication from the Government that kinship carers will be recognised and that provision will be made for allowances. Kinship carers should perhaps be seen as a subset of foster carers. Therefore, as Elaine Murray suggested, if section 103 included a reference to provision for kinship carers, that would be a big step forward.

I hope that the minister appreciates why the committee feels frustrated. He has promised a national fostering strategy and said that he wants to recognise kinship carers. Hugh Henry said the same during the "Hidden Harm" debate. We have

tried hard to bear with the minister through this process, but Peter Peacock's letter, which we received today, refers only to developing, in the short term,

"an information guide for kinship carers".

As far as long-term measures are concerned, the letter refers to

"ensuring proper consideration of placement with other family members",

but it says nothing about providing support for that placement. I was reassured by the comments that ministers made in the chamber, but I have to say that I am less reassured after reading Peter Peacock's letter.

I accept that the detail of amendment 365 raises some genuine technical issues, but the committee still seeks a much firmer policy commitment on this matter and we want to ensure that, before stage 3, the bill contains some provision—however broad it might be—that allows these matters to be developed after consultation.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I simply want to amplify the concerns that others have raised. I know that, in his previous role as convener of the committee and in his present role, the minister has met representatives of the New Fossils Grandparents Support Group. As other members have pointed out, this issue might well end up slipping through the slats instead of being addressed. Of all the issues that have been kicked up in this debate, this is the one that, in moral and economic terms, the Executive must move on. If, in the period of reflection between now and stage 3—and, indeed, beyond—the Executive can be more accurate about its direction of travel, it might reassure many of the members who are very sympathetic to amendment 365.

Lord James Douglas-Hamilton: I support Frank McAveety's comments. Approximately 1,600 children are currently in kinship care in Scotland but, despite the fact that kinship carers have parity of legal status with foster carers, they receive much less support. Only 12 of the 32 Scottish local authorities pay the main categories of kinship carers the same basic allowances that they pay foster carers. There is obviously a major problem to address. After all, if prospective kinship carers are expected to make too large a financial sacrifice, the children whom they might have cared for will instead have to go into foster or local authority care. Natural justice will be best served if we give these individuals comparable financial support and end the current arrangements that are less than fair or just and, indeed, all too frequently appear to take them for granted.

Robert Brown: As I said earlier, this is a difficult area. I must again stress two or three points. First, we need an evidence base to highlight the various problems and issues that the general tax and benefits system is throwing up with regard to support for kinship care.

Secondly, I hope that I have made a reasonably strong statement about the Executive's determination to move on this issue. We have acknowledged the problem for some time now. Indeed, as Rosemary Byrne fairly pointed out, we provided additional funding to local authorities in the hope that they would take action on this issue. Some authorities have done so, but issues have arisen because of the somewhat localised nature of the current arrangements.

Thirdly, kinship care will be a major issue in the fostering strategy. I ask the committee to direct its attention to the relatively limited and technical issue of ensuring that the regulatory powers in section 103 are adequate. I am perfectly satisfied that the powers to specify types of people, kinds of circumstances and rates of pay are adequate, but the committee should bear in mind that the cut-off for getting into the system is set out in the definitions of children who are looked after and so on. We must therefore have within the fostering arrangements some form of state certification about who is and who is not a fosterer. Of course, such a system will apply to fosterers as well as to kinship carers. The committee might want to think about and discuss those matters. We want to ensure that those provisions are adequate to do what we reasonably want to do on this matter.

13:00

Frank McAveety mentioned the New Fossils Grandparents Support Group. Like other members, I have met a number of individuals and groups whose members are in this kind of ball game. We are talking about people who, later in life, find themselves having to cope with greater financial and personal pressures than do other people. It would be very difficult not to be affected by that. Like other members, I am very keen to put in place a scheme that will make a difference to people in that situation.

However, it is important that we get the scheme right, such as by identifying the proper catchment. Lord James Douglas-Hamilton mentioned the fact that 1,600 children are in this category at the moment. In one sense, dealing with 1,600 is not a major problem, but people will recognise that, behind that initial figure, we will find others in a series of different care situations that range from the relatively formal to the totally informal, the full-time to part-time, on-care to off-care, and respite care. We would want to capture some, but not all, of those situations. The issue is complex. Even the definition of kinship care is tricky; it relates not only to grandparents but to uncles, aunts, and other

relatives. Given the complexity of the issue, we have to be careful not to introduce into the system unforeseen and unintended side products.

As I said earlier, the central issue is to get the regulations right. I have given an undertaking that we will do our best to do that. Obviously, if members have further comments on the matter we are happy to hear them. The Executive is determined to go forward on the issue, but we will do that in the context of the development of the fostering strategy. I hope that those reassurances are strong enough for Rosemary Byrne to accept our good faith on the issue, the direction of travel, and the potential for the Executive to take a comprehensive look at the issue in the context of the fostering strategy and matters that are incidental to that strategy.

Amendment 354 agreed to.

Amendment 355 moved—[Robert Brown]—and agreed to.

Section 103, as amended, agreed to.

After section 103

The Convener: We now come to amendment 365, in the name of Rosemary Byrne.

Ms Byrne: I will not move amendment 365. I will analyse what the minister said.

Amendment 365 not moved.

Sections 104 and 105 agreed to.

After section 105

The Convener: Amendment 378, in the name of Adam Ingram, is in a group on its own.

Mr Ingram: Step-parent agreements enable step-parents to share parental rights and responsibilities with the existing parents. Although the minister has intimated that such agreements were dealt with in the Family Law (Scotland) Bill and will not be revisited, the bill under consideration gives us the opportunity to ensure that the views of the child are given due weight. It is important that agreements are not simply imposed on children; the consent of the child should be sought. This is what I am seeking to do with amendment 378.

I move amendment 378.

Robert Brown: As Adam Ingram said, amendment 378 is about step-parent agreements. As I indicated, we are not prepared to look afresh at the subject, given the examination that the matter was given during the passage of the Family Law (Scotland) Act 2006. There are a number of reasons why we do not think step-parent agreements are suitable. We are also unconvinced by the legal power to enforce such agreements and consider that they would fail to offer proper scrutiny of the child's position, given that they do not necessarily take into account his or her views, subject to age and maturity.

The most compelling reason to resist step-parent agreements is the existence of other ways for people to obtain parental responsibilities and rights in respect of a child, particularly an order under section 11 of the Children (Scotland) Act 1995. Such an order would allow a step-parent to gain parental responsibilities and rights and would leave intact the parental responsibilities and rights of the absent birth parent. I believe that that is preferable to a step-parent agreement. As court orders, section 11 orders are legally enforceable and thus leave no doubt as to who has parental responsibilities and rights. Section 11 orders also offer the external scrutiny of the child's position and views, which is lacking in step-parent agreements.

I am not sure that I follow Adam Ingram's concentration on the rights of the child in this connection. In lodging amendment 378, he may have sought to say something beyond the step-parent agreement. However, our objection to step-parent agreements is such that we invite the committee to resist amendment 378.

Mr Ingram: I accept the minister's position. The issue deserved to be aired, but I will not press amendment 378.

Amendment 378, by agreement, withdrawn.

Section 106—Rules of procedure

Amendment 379 moved—[Mr Adam Ingram]—and agreed to.

Section 106, as amended, agreed to.

Sections 107 and 108 agreed to.

Section 109—Orders and regulations

The Convener: Amendment 380, in the name of the minister, is grouped with amendments 381 to 383.

Robert Brown: Amendments 380 to 383 are technical amendments to section 109, which deals with orders and regulations made under the bill. The amendments provide that any such regulations made by the Registrar General for Scotland are to be made by statutory instrument. The amendments also set out the scope of the powers to make the regulations by the application of the powers contained in subsection (2).

I move amendment 380.

Amendment 380 agreed to.

Amendments 381, 382, 303, 304, 137 and 383 moved—[Robert Brown]—and agreed to.

Section 109, as amended, agreed to.

Section 110—Meaning of "appropriate court"

The Convener: Amendment 138, in the name of Lord James Douglas-Hamilton, is in a group on its own.

Lord James Douglas-Hamilton: Amendment 138 would ensure that EC regulation 2201/2003 is in the forefront of a practitioner's consideration of the bill. Jurisdiction in respect of a permanence order will be determined by that regulation, which does not apply to adoptions but would apply to other orders. Section 110(3)(b) is inconsistent with the regulation, so amendment 138 is necessary. The minister might consider the amendment to cover a technical, drafting matter, but he should consider it.

I move amendment 138.

Robert Brown: I will convey the benefits of my accumulated wisdom on the matter.

Article 1.3(b) of EC regulation 2201/2003 provides that the regulation does not apply to

"decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption".

The regulation therefore does not apply to adoption applications. In the Executive's view, nor will the regulation apply to applications for permanence orders that grant authority to adopt, which are referred to in section 110(3). Such orders can reasonably be regarded only as

"measures preparatory to adoption".

It would be inappropriate to make the provisions subject to a regulation that does not apply to them.

Applications for ordinary permanence orders, by which I mean orders that do not grant authority to adopt, will be made under the bill only in relation to children who are in Scotland and habitually resident here, and will therefore be compatible with the regulation. I hope that I have explained the matter adequately. I am convinced by the argument and I hope that Lord James is, too.

Lord James Douglas-Hamilton: I thank the minister for his assurance that the regulation will not apply to other orders. However, the Law Society of Scotland thinks that it will apply to other orders, so there might be a dispute about the interpretation of the bill. Perhaps before stage 3 officials will kindly consider the matter. As amendment 138 concerns a technical and drafting matter, I will not press it.

Amendment 138, by agreement, withdrawn.

Section 110 agreed to.

Section 111—Interpretation

Amendment 139 moved—[Robert Brown]—and agreed to.

The Convener: I invite Lord James Douglas-Hamilton to move amendment 178, which was debated on day 1 of stage 2.

Lord James Douglas-Hamilton: I will support the amendment in Adam Ingram's name and not move amendment 178.

Amendment 178 not moved.

Amendment 286 moved—[Robert Brown]—and agreed to.

Amendment 305 not moved.

Amendment 140 moved—[Robert Brown]—and agreed to.

Amendment 189 moved—[Mr Adam Ingram.]

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (Sol)
Douglas-Hamilton, Lord James (Lothians) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 189 disagreed to.

Amendments 160, 306 and 307 moved—[Robert Brown]—and agreed to.

Section 111, as amended, agreed to.

Section 112 agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Convener: Amendment 356, in the name of the minister, is grouped with amendments 183, 385, and 357 to 364.

Robert Brown: The end is nigh.

Mr McAveety: We have had enough today.

Robert Brown: The amendments in this group are all technical. They make minor and consequential amendments and repeals to various enactments that I will outline briefly.

Amendment 356 substitutes for references to the Adoption (Scotland) Act 1978, or adds to such references and references to the Children (Scotland) Act 1995 to refer to the corresponding or appropriate provisions in the bill. It also makes reference to adoption orders or permanence orders under the bill where appropriate.

The amendment to section 5(5) of the Social Work (Scotland) Act 1968 in sub-paragraph (2) is to remove a legislative confusion and inconsistency that existed there in relation to the definition of "child" and, in particular, to the issue of age of a child. It is a technical amendment.

The amendment to section 10(3A) of the 1968 act is consequential on the amendments to chapter 1 of the bill in relation to adoption support services.

Amendment 183, lodged by Lord James Douglas-Hamilton, would place a reference to the bill, once enacted, into the Social Work (Scotland) Act 1968 to ensure that it is included in the list of enactments about which ministers can issue directions. It would also mean that the bill was included in the list of legislation about which a person can make a complaint about the way in which a local authority has carried out any of its functions. That is in line with our policy and I therefore support Lord James's amendment. As a consequence, a reference to the Adoption (Scotland) Act 1978 in the same section of the 1968 act will need to be amended and we have lodged an amendment to achieve that. Our amendments seek to tidy up the list of enactments so that they are in chronological order.

Amendment 385 alters the definition of "parent" for the purpose of part 1 of the Children (Scotland) Act 1995 so that it is subject to the provisions of chapter 3 of part 1 concerning the status of adopted children.

Amendment 357 makes consequential amendments relating to permanence orders. Amendment 358 amends references in the Children (Scotland) Act 1995 to reflect the new provisions in the Adoption and Children (Scotland) Bill that have superseded those in the Adoption (Scotland) Act 1978. It adds under section 73 of the 1995 act a requirement on the local authority to refer to the principal reporter the case of a child who is subject to a supervision order where the local authority is satisfied that the best interests of the child would be served by seeking, varying, amending or revoking a permanence order. The reference to placing the child for adoption is just restated.

Amendment 359 inserts the word "section" where required in the relevant provisions. Amendments 360 to 364 concern enactments to be repealed. Amendment 360 will allow the Scottish ministers to make regulations in regard to reporting officers and curators ad litem, with which we dealt before.

In the Social Work (Scotland) Act 1968 the reference to the 1978 act as a whole is to be repealed and will be replaced with reference to the Adoption and Children (Scotland) Bill by way of consequential amendment, which Lord James has lodged in the form of amendment 183 and which we are happy to accept.

The reference in the Children Act 1975 to the definition of "adoption society" will be repealed and replaced under section 111 of the bill through amendment 356.

Finally, amendments 362, 363 and 364 insert various repeals into schedule 3 and add to the list of enactments concerned that are repealed to the extent set out in the second column as a consequence of the new provisions in the bill. These are minor amendments to related legislation to remove references to the 1978 act and various other acts that will be superseded by the bill, or act to be.

I hope that the committee will support all the amendments.

I move amendment 356.

13:15

Lord James Douglas-Hamilton: I thank the minister for accepting amendment 183, which will mean that a complaints procedure will allow a review of local authority decisions under the bill. I think that that is the only amendment of mine in the group that the minister said he would accept.

The Convener: It is the only amendment of yours in the group, although you have one or two others that are still to be disposed of.

Amendment 356 agreed to.

Amendment 183 moved—[Lord James Douglas-Hamilton]—and agreed to.

Amendment 385 moved—[Robert Brown]—and agreed to.

Amendment 384 moved—[Mr Adam Ingram]—and agreed to.

Amendments 357, 358, 386 and 359 moved—[Robert Brown]—and agreed to.

Amendment 387 moved—[Lord James Douglas-Hamilton].

The Convener: The question is, that amendment 387 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (Sol)
Douglas-Hamilton, Lord James (Lothians) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 387 disagreed to.

Amendment 360 moved—[Robert Brown]—and agreed to.

Schedule 2, as amended, agreed to.

Schedule 3

REPEALS

Amendments 361 to 364 moved—[Robert Brown]—and agreed to.

Schedule 3, as amended, agreed to.

Section 113 agreed to.

Long title

The Convener: I ask Lord James Douglas-Hamilton to say whether he wishes to move or not move amendment 145.

Lord James Douglas-Hamilton: I will move amendment 145, which is a symbolic act, because it will mean that children will never again be referred to as possessions.

Amendment 145 moved—[Lord James Douglas-Hamilton]—and agreed to.

Long title, as amended, agreed to.

The Convener: I thank the minister and his team, the members and particularly the clerks for getting us through the three intensive days of stage 2 of the bill. Stage 3 is likely to be on 7 December, so we have a couple of weeks in which we will have the joys of the Protection of Vulnerable Groups (Scotland) Bill instead. Members would probably appreciate an informal discussion with the minister once the Adoption and Children (Scotland) Bill, as amended, is published. There have been substantial amendments to and restructuring of the bill during stage 2, so it would be useful for members to have a discussion about that informally, to check that we are happy with how the bill looks before we move on to stage 3.

That concludes the public part of the meeting.

13:19

Meeting continued in private until 13:36.

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