EDUCATION COMMITTEE

Tuesday 20 February 2007

Session 2

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EDUCATION COMMITTEE
5th Meeting 2007, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Ms Rosemary Byrne (South of Scotland) (Sol)
*Fiona Hyslop (Lothians) (SNP)
*Mr Adam Ingram (South of Scotland) (SNP)
*Marilyn Livingstone (Kirkcaldy) (Lab)
*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)
Tommy Sheridan (Glasgow) (Sol)
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 3

Scottish Parliament

Education Committee

Tuesday 20 February 2007

[THE CONVENER *opened the meeting at 13:33*]

Protection of Vulnerable Groups (Scotland) Bill: Stage 2

The Convener (Iain Smith): Good afternoon, colleagues, and welcome to the fifth meeting of the Education Committee in 2007. Today's agenda has just one item—the continuation of our stage 2 consideration of the Protection of Vulnerable Groups (Scotland) Bill. We welcome again Robert Brown, the Deputy Minister for Education and Young People. As usual, he is accompanied by a group of the wise. I remind committee members that officials can assist the minister during the meeting but are not allowed to speak during our consideration of amendments.

Members should have the second marshalled list, the second grouping of amendments and a copy of the bill. I hope that they have their wits about them as well, because we will cover some fairly complex issues in the course of the afternoon.

Section 73—Child protection information

The Convener: The first group of amendments today is the 30th group of amendments for the bill to date and is on sharing child protection information. Amendment 238, in the name of Lord James Douglas-Hamilton, is grouped with amendments 1 to 9, 16 to 20, 11, 21, 22 and 12 to 14.

Lord James Douglas-Hamilton (Lothians) (Con): I second the convener's words of welcome for what might be the final day of stage 2 consideration of this bill. I start by saying that I strongly support the convener's amendments in this group, which are essential. However, I will not be moving my amendment 238, because part 3 of the bill, which the amendment seeks to amend, will be removed.

The Law Society of Scotland was concerned that the definition in the bill of "child protection information" was not sufficiently wide. It felt that the police might well hold information on an individual's propensity to violence, but that the information might not necessarily be related to the child.

Amendment 238 was lodged as a marker. The issue will require close consideration after the election. It could be covered in the committee's legacy paper; that would be a service to parliamentarians in the next session of Parliament.

Amendment 238 not moved.

The Convener: I will speak to amendment 1 and all the other amendments in the group.

Colleagues will be aware that the purpose of the amendments in this group is to delete part 3 of the bill. I had intended to lodge a single amendment saying "Delete part 3", but that could not be done. Amendments 1 to 9 will therefore delete the individual sections that make up part 3. The other amendments in the group are consequential; they will delete other references to those sections.

Members will know that lying behind the amendments is the strong recommendation in the committee's stage 1 report that part 3 should not be proceeded with at the moment. I want to put the committee's recommendation in context and to put on record that the recommendation does not mean that I or other committee members believe that child protection information should not be shared. Quite the opposite—we believe that information has to be shared when it is necessary to do so to protect children. No agency, statutory or otherwise, should think that this committee believes that, if agencies have information that should be shared with other organisations to ensure the protection and welfare of children, they should not share that information.

However, as members will recall from stage 1, concerns were expressed about part 3 of the bill, because it might lead to unforeseen circumstances. Children's charities that provide advice and assistance to children were concerned that part 3 might inadvertently discourage children from seeking appropriate advice and assistance in relation to aspects of their behaviour—in particular, their sexual behaviour or behaviour relating to drugs, alcohol or other issues that affect their health. Children might be discouraged from seeking advice if they were worried that information might be passed inappropriately to other authorities—in particular, to the police.

The intention behind my amendments in this group is to remove part 3 while proper consultation takes place. Any subsequent legislative requirement on statutory bodies should take into account the importance of children's right to confidentiality. They have a right to access health and advice services confidentially. Only when a child is at risk should information be passed on to other agencies that can help to alleviate the risk.

We welcome the Scottish Executive's acceptance of the committee's recommendation to remove part 3. I hope that any consultation, or any guidance issued, will take full account of the need to protect children's rights. On occasion, it may be in the interests of a child not to share information,

whereas on other occasions it will be absolutely essential that information is shared.

I move amendment 1.

Fiona Hyslop (Lothians) (SNP): I thank the convener for lodging the amendments in his name on behalf of the committee, following our recommendation at stage 1. It is clear that information sharing is critical in protecting children.

I will be interested to hear from the minister what steps are being taken to ensure that the on-going consultation on further proposed legislation is the kind of consultation that we have been talking about—consultation that can inform future legislation.

The Education Committee feels that we should not be considering only adults who share information about children; we should also be acknowledging that children have responsibility for information about themselves and will want to protect themselves. That is where some of the issues that have arisen have come from.

I hope that the convener's amendments do not result in the situation becoming static. I hope that this is a movable agenda, with information already being actively shared in practical terms. It is absolutely essential that we do not take an institutionalised approach to the sharing of information. I am more interested in the practical reality of what information sharing means for front-line services than I am in the legislative toolkit that is used to achieve that information sharing. Perhaps the minister can tell us what the current status of the consultation is, so that any incoming Administration—of whatever colour—can progress the agenda of child protection information in a sensible and co-operative manner.

The Deputy Minister for Education and Young People (Robert Brown): I support the amendments in the convener's name and I am grateful to Lord James Douglas-Hamilton for not moving amendment 238.

Underlying the comments that the convener and Fiona Hyslop have made is the understanding that we are less interested in the legislative vehicle for bringing about a particular result than we are in ensuring that information is shared, where appropriate. There are sensitivities to the background, as a number of members have commented, and we have to reflect those sensitivities in the mechanisms that are put in place. However, at the end of the day, we are interested in professional practice in terms of the individual decisions that are made by organisations, professionals and local authorities and in ensuring that there is in place a robust arrangement that enables us to avoid the sort of tragedies that have taken place involving situations in which things have fallen into the gaps between bodies or individuals because of a failure to share information. Part 3 was put into the bill because of the importance that was attached to that area and because of the repeated references in committees of inquiry and so on to difficulties in that regard.

The draft code is pretty well advanced at the moment. Subject to the views of ministers, it will be out for consultation before dissolution. It will consider carefully issues of confidentiality and the sort of things that the convener touched on. It will be underpinned by legal duties at the earliest appropriate legislative opportunity.

At a number of events, including one on Saturday, which will involve young people, some of the implications of the code of practice will be discussed with a view to drawing out some of the issues as clearly as we can. As has been rightly said, this is a sensitive area in which we need proportionality and balance. However, it is also an important area in relation to which inaction is not an option. We have to move forward in a way that is both comfortable to those who have to operate the system on the ground and effective. Due regard must be paid to the rights of individuals but we must not lose track of the important underlying issue of the protection of children, which is what this is all about at the end of the day.

The Executive decided to remove part 3 at this stage because we wanted to allow the discussions and consultation to take place and reach a satisfactory conclusion. We have every reason to believe that that will happen.

The Convener: Thank you for those reassuring comments.

Amendment 1 agreed to.

Section 74—Duty to share child protection information

Amendment 2 moved—[Iain Smith]—and agreed to.

Section 75—Duty to co-operate

Amendment 3 moved—[Iain Smith]—and agreed to.

Section 76—Code of practice about child protection information

Amendment 4 moved—[Iain Smith]—and agreed to.

Section 77—Duty to enable, encourage and help workers to share child protection information

Amendment 5 moved—[Iain Smith]—and agreed to.

Section 78—Lifting of restrictions on sharing child protection information

Amendment 6 moved—[Iain Smith]—and agreed to.

Section 79—Child's welfare to be paramount consideration

Amendment 7 moved—[Iain Smith]—and agreed to.

Section 80—Relevant persons

Amendment 8 moved—[Iain Smith]—and agreed to.

Section 81—Enforcement etc

Amendment 9 moved—[Iain Smith]—and agreed to.

Sections 82 to 84 agreed to.

Section 85—Regulations about registration

Amendment 74 moved—[Robert Brown]—and agreed to.

Section 85, as amended, agreed to.

Section 86 agreed to.

After section 86

The Convener: Group 2 is entitled "School care accommodation services: fire safety rules". Amendment 122, in the name of the minister, is the only amendment in the group. I wish the minister well in explaining what the title of the group means.

13:45

Robert Brown: In the furore around parts 2 and 3 of the bill, we have forgotten that there is also a part 4, to which amendment 122 relates. It seeks to achieve a proportionate regulatory model for people who provide residential accommodation on domestic premises, consistent with the aim of reducing the burden of regulation where possible.

Amendment 122 seeks to remove from the scope of part 3 of the Fire (Scotland) Act 2005—an act with which I am intimately familiar—those who provide a school care accommodation service in their home under an arrangement with an education authority or with the managers of an independent or grant-aided school. Such services will be regulated by the Scottish Commission for the Regulation of Care, as part of the education authority's or school's overall school care accommodation service. The aim of the amendment is to reduce inappropriate or unnecessary regulation, while ensuring the continuing oversight of the care commission.

I move amendment 122.

Amendment 122 agreed to.

Section 87 agreed to.

Section 88—Power to give effect to the Safeguarding Vulnerable Groups Act 2006

The Convener: Group 3 is on the power to give effect to corresponding provision in Northern Ireland. Amendment 75, in the name of the minister, is grouped with amendments 76 and 99.

Robert Brown: These amendments are fairly straightforward. To avoid cross-border loopholes developing, we need to have the flexibility to respond to developments across the United Kingdom. We have worked closely with colleagues in England, Wales and Northern Ireland to ensure that the bill is compatible with the Safeguarding Vulnerable Groups Act 2006. The policy intention for all other United Kingdom jurisdictions is to be part of one scheme operating throughout the UK. However, it is prudent to include a provision that allows Scotland to respond to a possible future separate scheme for Northern Ireland. Amendments 75, 76 and 99 ensure that we can respond to any future legislation that is made by the Northern Ireland Assembly, which we hope will be back in action in the near future.

I move amendment 75.

Amendment 75 agreed to.

Amendment 76 moved—[Robert Brown]—and agreed to.

Section 88, as amended, agreed to.

Section 89 agreed to.

Schedule 4

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

The Convener: Group 4 is on amendment of the Teaching Council (Scotland) Act 1965: registration. Amendment 77, in the name of the minister, is grouped with amendment 78.

Robert Brown: The General Teaching Council for Scotland has asked for these amendments, so that those who are training to join the teaching profession are subject to the same scrutiny of their professional suitability as qualified teachers. The amendments will allow trainee teachers to be investigated by the GTCS for alleged misconduct. I was happy to lodge the amendments, because they are in line with the principal objective of the bill—to keep unsuitable individuals out of regulated work.

I move amendment 77.

Amendment 77 agreed to.

Amendment 78 moved—[Robert Brown]—and agreed to.

Iain Smith: Group 5 is on fostering. Amendment 123, in the name of the minister, is grouped with amendments 134, 145, 271 and 148.

Robert Brown: As we know from consideration of the Adoption and Children (Scotland) Bill, foster carers play an important part in looking after some of Scotland's most vulnerable children. It is important to prevent unsuitable individuals from becoming, or remaining as, foster carers and, therefore, to bring fostering within the scope of the scheme. The amendments put beyond doubt that foster caring is regulated work. Their effect is that, before approving foster carers and as part of foster carers' continuing approval, councils will be able to require carers to become scheme members. The amendments will prevent those who are unsuitable to work with children from having access to potentially very vulnerable children through fostering.

In anticipation of a likely stage 3 amendment, I note that the Adoption and Children (Scotland) Bill raises in a new way the issue of people with permanence orders. We are considering how to deal with those people appropriately in the bill. There are a number of issues that we need to get right, because such people have some parental responsibilities and are in a slightly different category from foster carers. I give the committee notice that we are looking at the matter in detail and will return to it at stage 3.

I move amendment 123.

Lord James Douglas-Hamilton: Amendment 123 is an extremely important amendment, because the bill as drafted does not extend to fostering. That must be rectified, because the role of foster carer could present an opportunity to harm a child. Moreover, children who are fostered are generally even more vulnerable than the average child, so the amendment is necessary to fill a vacuum.

Fiona Hyslop: Amendment 123 is necessary to define the activities of foster carers as regulated work. However, we should be aware of the subsequent implications for the fostering strategy. Foster carers have raised with us a concern over the number of complaints that are made against them. We have to recognise that some of those complaints may be legitimate, but foster carers themselves are often in a vulnerable situation because there is a lot of soft information within the information that councils hold. Every concern must be investigated, but—this is probably more a matter for the fostering strategy than for the bill—we must ensure that foster carers are protected and that support services are put in place to help them when malicious complaints are made against them. In that context, we must be aware that a huge agenda still needs to be addressed in relation to fostering, but the amendment deals with the vital issue of protecting foster carers themselves as part of scheme membership.

Robert Brown: I will make a couple of comments in response to what has been said.

First, it is important to say that although we accept that there was an element of ambiguity, it certainly was not the case that foster caring was not intended to fall within the scope of the bill. The ambiguity carries over from the Protection of Children (Scotland) Act 2003. Amendment 123 is designed to put the issue beyond doubt rather than to establish something for the first time. Despite the potential ambiguity in POCSA, it had nevertheless been interpreted as including foster care for the purpose of referrals made to the disqualified from working with children list. The amendment takes the matter forward.

I agree with Fiona Hyslop's comments. I hope that she will be reassured to an extent by the rigorous way in which information is dealt with as it comes on to the vetting list, as it were, and then goes through the process. I accept the point—she will be aware that it is reflected in the fostering strategy discussions—that complaints against and support for foster patients constitute a significant agenda, on which we hope to make significant progress as the fostering strategy moves forward. I am happy to give that assurance.

Amendment 123 agreed to.

The Convener: Group 6 is on enhanced criminal record certificates. Amendment 79, in the name of the minister, is grouped with amendments 80, 81, 83 and 84.

Robert Brown: As members are aware, scheme disclosures will replace enhanced disclosures for people working with children or protected adults, but enhanced disclosures under the Police Act 1997 will continue to be available for work unrelated to regulated work. Casino licensing is one example of that.

Furthermore, enhanced disclosures need to continue to be available for caring activities in respect of which it would not be appropriate for people to become scheme members. In those cases, the enhanced disclosure should contain additional suitability information that reveals whether the individual is barred from regulated work under the terms of the bill.

The simplest example is that of checking individuals who are seeking to adopt a child. An enhanced disclosure check is only one part—but an important one—of the rigorous assessment that is made of individuals when they are in the process of adopting a child. It is important to note

that, after the child has been adopted, the adoptive parents assume the same full parental rights that are held by birth parents. Therefore, unlike an individual who does regulated work, it is not appropriate—for both definitional and practical reasons—to have an on-going vetting system for adoptive parents.

The amendments modify part V of the Police Act 1997 by removing existing provisions on enhanced disclosure for those who work with children or vulnerable adults. In their place, new sections will be inserted that enable ministers to make regulations to specify which activities should qualify for enhanced disclosures in future. A degree of flexibility is also provided to enable the information revealed through enhanced disclosures to develop in line with provisions in England, Wales and Northern Ireland. That is the background to the amendments.

I move amendment 79.

Amendment 79 agreed to.

Amendments 80, 81, 239, 125, 83 and 84 moved—[Robert Brown]—and agreed to.

Schedule 4, as amended, agreed to.

Section 90 agreed to.

After section 90

The Convener: Group 7 is on Crown application. Amendment 126, in the name of the minister, is the only amendment in the group.

Robert Brown: Amendment 126 is largely technical and makes provision for Crown application in line with the general presumption for acts of the Scottish Parliament. It reflects similar amendments made to the Safeguarding Vulnerable Groups Act 2006 during its passage at Westminster, and it relates to the Crown in the sense of the Government rather than Her Majesty individually.

I move amendment 126.

Amendment 126 agreed to.

The Convener: Group 8 is on promotion of children's and protected adults' well-being and safety. Amendment 152, in the name of Fiona Hyslop, is the only amendment in the group.

Fiona Hyslop: Amendment 152 reflects the concerns that were raised at stage 1 that much of what the bill does in relation to child protection is reactive and concerns negative adult behaviour towards children that has happened in the past. The amendment recognises that much of child protection is about awareness, training, the here and now and being alert and vigilant to any future potential behaviour that endangers children.

The amendment is also a recognition that, unless we put certain requirements in legislation, there is sometimes difficulty with their being supported by policy and by councils providing either funding or support services. Amendment 152 would provide specifically, in a piece of legislation that deals with the protection of vulnerable groups, that ministers must promote children's and protected adults' well-being and safety by providing advice, information and funding.

The provision is general, but the policy intention is specific. It would require the minister to have a more proactive position in on-going training and advice to ensure vigilance by the many people who work with children. That would allow agencies to have access to the information that probably provides more protection for children than a retrospective record of what adults have done in harming children in the past.

Amendment 152 is about both the here and now and the future, whereas much of the bill is about a record of the past. Including a reality check would provide balance in the legislation and help organisations that seek to promote a positive agenda for child protection to find funding and support.

I move amendment 152.

Ms Rosemary Byrne (South of Scotland) (Sol): I support amendment 152. The issue cropped up throughout stage 1, and it is clear that, if we want to ensure that complacency does not set in after we pass the bill, we need to ensure that we are making every attempt to raise awareness and train children and adults. In my opinion, everyone in the community should be involved, and including a provision in the bill would put forward the view that the promotion of children's and protected adults' well-being and safety is necessary and important.

Amendment 152 would make a huge difference to backing up the bill. Legislation will never prevent people from slipping through the net, so the more that we can raise awareness and train people, including children, to be watchful and deal with situations, the better. That point would be backed by children's organisations as well.

14:00

Robert Brown: I am gratified by members' belief in the magical powers of including provisions in bills. Having said that, a general and important point has been made that reflects some debates that we have had before.

I have gone a long way in saying, right from the beginning of the debates on the bill, that I personally regard the availability of advice as

extremely important. If I recall correctly, the financial memorandum identified that about £1.4 million for support for training and advice functions would go into the implementation of the bill for exactly the purpose that Fiona Hyslop spoke about. That is on top of other bits and pieces of money from Executive sources, such as the Health Department or the Education Department, which goes into the voluntary sector for a range of activities in relation to children's and protected adults' well-being and safety. It would be a mistake to move from the specific targets in the bill, which, as I have said previously, we want to develop in close collaboration with the central registered body in Scotland and with the sector itself, and move towards general provision.

Unfortunately, amendment 152 does not limit itself to the functions of the bill. As Fiona Hyslop rightly says, it is a general statement that extends well beyond the bill and would be a general duty to promote well-being, which would be so badly focused that it would not achieve much. The bill is not about children in general; it is about protecting children from unsuitable individuals who, at their place of work, might harm them. Although I go along with the underlying ethos of amendment 152, which seeks to bring a more positive note to the climate that surrounds the bill—another point with which I have sympathy—the bill is not the right place for such a duty. In any event, if it was to work, it would have to focus much more on particular purposes.

I take this opportunity to stress once again that we do not want to be complacent in this area. We want organisations and individuals who work with children to have in place effective recruitment and checking policies as well as the checks for unsuitability for which the bill provides. We want to support organisations that do their best in the field, but including in the bill amendment 152 would not bring us to that objective. The amendment is ill-defined and ill-focused, and it does not provide the assistance that Fiona Hyslop is looking for.

However, I congratulate Fiona Hyslop on lodging the amendment. The area is important, and we will have to come back to it once the bill is passed to ensure that the climate of opinion surrounding the bill is sensitive to and conscious of the issues that have been the subject of so much debate during the bill's passage.

With those points in mind, I ask Fiona Hyslop to consider seeking to withdraw amendment 152, given my general assurances about the amount of funding and support that is being put into the area, and the way in which the Executive intends to collaborate with the sector to fulfil both the bill's objectives and those of Fiona Hyslop.

Fiona Hyslop: I thank the minister for his comments. I will respond by making a few points that reflect on other pieces of legislation passed by the Education Committee.

I recognise that the financial memorandum shows that the budget contains an amount of money for training and advice functions. However, from the passing of the Education (Additional Support for Learning) Act 2004, we know that money that was available for training and advice related to the implementation of the legislation and not to the general functions that front-line services were meant to provide. I am therefore cautious about interpreting that commitment as meaning that money will be available for the intention and purposes identified in amendment 152.

It is not unreasonable for ministers to have a duty to promote advice about the protection of children. We have just passed the Scottish Schools (Parental Involvement) Bill, which gives ministers a duty and responsibility to promote parental involvement in education. The promotion of child protection is as much a ministerial function as is the promotion of parental involvement in education, so that weakens part of the argument against the amendment.

The minister might have a point about the crafting of the amendment as it stands. It is very general about the idea of well-being, so if I withdraw the amendment I might come back at stage 3 with a more focused amendment about the duty to promote specific advice and training in relation to child protection and safety.

Amendment 152, by agreement, withdrawn.

The Convener: Group 9 is on duties in relation to free disclosure requests. Amendment 240, in the name of Lord James Douglas-Hamilton, is the only amendment in the group.

Lord James Douglas-Hamilton: Amendment 240 is a probing amendment that was lodged in response to concerns of the central registered body in Scotland, which is referred to in the amendment and which acts as a clearing house and advisory service for the free disclosure checks that are currently given to volunteers. The central registered body would, if ministers were formally to give it duties by regulation, be reassured that the Executive would continue to provide into the future funding commensurate with those duties. The minister may wish to consider further amendment 240.

I move amendment 240.

The Convener: I want to raise another issue on the back of that. Lord James referred to free disclosures for voluntary groups. One concern for many small groups is the administrative burden that the bill could place on them. I wish clarification of whether a bar exists on any organisation other than the central registered body operating as a

clearing house or agency to provide services under the scheme for small voluntary organisations. For example, local community service volunteer organisations could provide a service to small organisations in their area to deal with the requirements of the vetting and barring scheme, so that those small organisations would not have to take on the administrative burden. I ask the minister to clarify whether that would require legislative change or whether it could be done under existing legislation. If, under existing legislation, organisations would be able to operate in that way along with the central registered body, will the minister agree to consider the issue as a way of alleviating some of the concerns of small voluntary organisations?

Robert Brown: Two issues have been raised. I will deal first with Lord James Douglas-Hamilton's point about the central registered body. His point is entirely valid but, for several reasons, amendment 240 cannot provide meaningful clarity for the CRBS on its role, so we do not support it. However, that is not to say that the debate is not valid. It is inevitable that uncertainties will arise over the future roles of several organisations as we move from the enhanced disclosure regime to the new vetting and barring scheme. The best way to resolve those uncertainties is through discussion in the coming months. We intend to consult everybody who is involved.

The central aim is to deliver a system that increases protection of vulnerable groups while cutting bureaucracy for the individuals and organisations that work with those groups. As part of that, we must ensure that the right support services are in place for scheme members and employers, and we must explore with the CRBS how it will evolve to fit into the new landscape. I have said in several contexts that we envisage the CRBS's advice role being enhanced under the new regime, with the assistance of the funding to which I referred. We see the CRBS as part of the on-going arrangements. However, on the precise way in which it will fit into the structures, all I can say is that we want to ensure that the structures fit the services and that they work as well as possible in practice.

We need to keep a certain distance between the CRBS and Disclosure Scotland because they have different functions in the overall scheme. Members will recall that the CRBS was set up at the instigation of the voluntary sector to provide a support mechanism. We want to work out how best to provide that support and we want to make full use of the CRBS's knowledge and expertise in the process. In effect, it will have an enhanced role.

Lord James Douglas-Hamilton said that amendment 240 is a probing amendment, so I hope that he is reasonably satisfied with what I have said. We do not need additional powers—the CRBS is set up as a non-statutory body, so we can adjust it without great difficulty.

The point that Iain Smith raised was raised at an early stage of the discussion of the bill—I think that it was first discussed in the consultation paper. We intend to move toward a situation in which other bodies in the voluntary sector can carry out the role of the central registered body and become approved groups for handling disclosure application arrangements. I think that part of Iain Smith's point is that, at present, a disclosure application can go from a voluntary organisation, to the head office of the organisation, to the CRBS, to Disclosure Scotland and then back round the same route again. Without legislative provision, we can approve other organisations as clearing houses to carry out the role that the CRBS carries out at present. We envisage that the head offices of certain big organisations, such as the scouts, the boys brigade and the guides, could be approved to carry out the role, although they will have to meet requirements that are set by Disclosure Scotland as to their ability to carry out the task, in order to ensure that they can do so efficiently and in accordance with the particular arrangements. I am not clear about how far information about the availability of that option has been spread in the sector, but I have asked for inquiries to be made into that matter.

I appreciate that the issue is linked to implementation of the bill and that following it through is logical, but there is currently no legislative bar or any other reason why what has been proposed should not be done. It is open to bodies to come forward for approval.

I hope that that provides the reassurance that the convener seeks.

Lord James Douglas-Hamilton: In the light of the minister's assurances, I will not press amendment 240.

Amendment 240, by agreement, withdrawn.

Section 91—Regulated work

The Convener: Group 10 is on the regularity and frequency of work. Amendment 241, in my name, is grouped with amendments 266 to 270, 252 and 261. Amendment 270 would be pre-empted by amendment 251, which is in a later group.

The purpose of amendment 241 is to include a requirement on organisations to take account of the regularity and frequency of work when they consider whether a post should be included in the scheme. At stage 1, concern was expressed about people being inappropriately required to be

members of the scheme as a result of local authorities' overzealous behaviour or for other reasons, and there was uncertainty about whether certain things should be included in the scheme. I am sure that Ken Macintosh would not allow me not to mention the famous examples of the school disco and the walking bus. There is also the example of parents being required by a local authority to be disclosure checked before going on to a bus to check that seat belts are correctly fitted on their disabled children. Obviously, that is a completely ridiculous situation.

The purpose of amendment 241 is not to get a statutory definition of "work", because such a definition would be too inflexible. In that context, I have concerns about the route that has been taken south of the border, which I will deal with when I discuss the amendments in the name of Ken Macintosh. The purpose of my amendment is to require organisations to take account of the regularity, frequency and general nature of the work in question when they consider whether a post requires to be included in the scheme, and to give ministers the power to provide guidance on the matter.

Following discussions with the minister, I accept that there may be technical deficiencies in the phrasing of my amendment, for which I apologise. Perhaps we could return to those deficiencies later. That said, it would be helpful if ministers would give clearer guidance than that which has been given under the existing POCSA regime on the types of work—or, more accurately, the nature of the work—that should be considered under the scheme.

I have concerns about the more definitional approach in the amendments in the name of Ken Macintosh. A different route has been taken in England, where members of the public who take on regulated work will commit an offence if they do not apply for scheme membership. In those circumstances, it is necessary for members of the public to have a clear idea about what is and what is not "regulated work".

A different approach is being taken in Scotland. It will not be an offence for a person to take on regulated work if they are not a scheme member. An offence will be committed only if the person has been barred, so people should be clear about whether they have been barred. Therefore, the issue will not arise here. Organisations will be responsible for ensuring that people who undertake regular work are not barred, and for requiring that a scheme record be provided. The route that has been taken in Scotland will allow a more flexible approach. Therefore, I do not intend to support the amendments in the name of Ken Macintosh. I hope that the minister and members will support the approach that I have suggested, albeit that we may have to reconsider the wording of my amendment 241 at stage 3.

I move amendment 241.

Mr Kenneth Macintosh (Eastwood) (Lab): The motive behind the amendments in my name in the group, like that behind amendment 241, is to address our concern about overzealous application of disclosure checks. We are talking about a difficult issue. We all have examples of checks having been insisted on for activities involving adults and children or vulnerable individuals or contact between them that many of us doubt were needed or desirable.

My amendments use a phrase that is borrowed from the equivalent legislation in England and Wales, using regularity or frequency of contact—to use the convener's expression—as a criterion with which to define "normal duties". The amendments would set contact on more than two days in every 30 as an appropriate threshold. If my amendments were accepted, I hope that they would clarify to local authorities and other organisations when vetting checks are called for and when they are not. The amendments would help to avoid the frustration that has built up over the past couple of years over the fact that occasional volunteers have been turned away because they have not been checked.

14:15

Fiona Hyslop: The minister should understand that a number of committee members are keen to have more clarity about what "normal duties" are and what the regularity of work will be. We need to find the best legislative solution to address the need for further definition, on which we all agree.

The amendments in the name of Ken Macintosh, which relate to various sections, are more specific than the amendment in my name. In lodging amendment 261, I approached the issue from a general broad-brush perspective and tackled the question of how "normal duties" should be considered. It might take a lawyer to work out what would have the best effect, but I think that the intention that I, Ken Macintosh and the convener have is to get more clarity. It comes back to the question of the success of the eventual legislation in operation and to people's understanding of when the provisions will and will not apply. Our concerns over POCSA are related to implementation and people's understanding of it.

There is also a policy issue. If somebody has committed an offence in the past, what is the likelihood of their doing it again? If they are going to do it again, are they going to try consistently to gain access to children or vulnerable groups of people through regular work, or are they going to engage in one-off activities? Such considerations

of what constitute predictors for behaviour become a policy issue. I have some sympathy with what the convener is trying to do to allow guidance to reflect that—as long as everybody understands clearly that we are not making things difficult for, or precluding, those who take part in one-off activities for the benefit of children. I say that in a positive sense, as opposed to in a negative sense, or in relation to predicting how past behaviour will affect future activities against children.

Dr Elaine Murray (Dumfries) (Lab): I congratulate other committee members on the different approaches that they have taken in trying to solve an important problem that was raised with us: that of the occasional volunteer. That includes someone who stands in to ensure that a crèche can be run despite a scheme member being off sick. In such instances, an activity involving young people or protected adults cannot go ahead unless somebody steps in at the last minute to substitute for the person who is unable to do it. That is a serious concern.

A situation might develop in which the system is counterproductive because people feel unable to use a casual volunteer, despite that person's being totally under the supervision of scheme members. If the Executive does not feel able to accept any of the amendments in the group, I hope that ministers might be able to come up with something at stage 3 that does work.

Robert Brown: I begin by thanking committee members for their different approaches to the issue. There is no doubt that it is a difficult area, and that the suggestions that have been made and the debate that we are able to have help to clarify our thinking about the best way forward.

It is necessary to consider the issue from the beginning. There is a definition of "work" in section 95. It is not as if there is no definition of "work"; it is a question of how specific and detailed that definition must be. As Iain Smith rightly said, we have certain qualms about the approach that was taken in England, which we think overcomplicates the matter rather than simplifies it, and therefore would not achieve the purpose that committee members and I have in mind, which is a definition that is simple and convenient for members of the public and organisations to deal with.

Sections 63 and 64 of the bill contain penalties for unlawful disclosure of scheme records or unlawful requests for scheme records. We do not want to go around hauling local authorities and others before the courts, but as well as situations that are allowed for in the bill, in which people can legitimately request information, there is also a strong prohibition, backed up by criminal sanctions, against people who ask for such things when they should not. It is important to point that out that there is that balance in the bill.

Some of the situations that have been referred to in today's debate and before have achieved almost mythical status: the school disco and the walking bus and so on. For the most part, most of the examples I have heard are manifestly not covered by the provisions in the bill. Elaine Murray's example of the crèche from which a worker calls off on one occasion, does not meet the regularity criterion and so would not be a problem. We have to use the phraseology of the legislation as the start point, whatever people do to misinterpret it later on. We have to consider whether there are things we can do to avoid gold plating and overegging the pudding. The first thing we must do is get the bill right in terms of what it will do in particular situations.

There are myriad different activities that take place in the real world, and there are no nice, regular cut-off points between one level and another. There is a continuous spectrum of levels of contact, of trust and of responsibility for vulnerable people. The bill seeks to divide work into a few categories: regulated work with children; regulated work with adults; regulated work with both; and work that is not regulated. Therefore, in a sense, the scheme is quite straightforward. There are arguments—which we have dealt with—about proportionality, which is basically about where to draw the line. Some of the amendments are about how to draw the line, which is a slightly different matter.

I do not think that it is possible to produce a comprehensive list of all the posts that constitute regulated work because the nature and description of people's jobs is so varied and changes constantly over time. Any such list would be out of date as soon as it was published. For that reason, the Police Act 1997 and POCSA, in relation to disclosures and working with children respectively, describe the characteristics of regulated work and ask organisations to work out whether they are doing it or not. I am aware that organisations have a number of difficulties in interpreting "normal duties" under schedule 2 of POCSA. When the bill was drafted, we had to choose between sticking with something that referred to "normal duties", or phraseology of that sort, or trying to come up with a different formulation that would be easier for organisations to interpret.

I accept that in England, Wales and Northern Ireland, the position has moved to a frequency-based model, about which I share the convener's concerns about implications. Scottish stakeholders are familiar with the normal-duties model from the previous regime. Some of the workings out of that have been done already and therefore there are some advantages in sticking with that rather than introducing a whole new formulation, which would not offer greater clarity and would require a massive re-education programme. We have gone

to some lengths to make the regulated work schedules of the bill easier to follow than schedule 2 of POCSA.

To the extent that the frequency test offers a specific cut-off, the concern would be that it is, arguably, somewhat arbitrary and designed more for the protection of vulnerable organisations than for the protection of vulnerable groups. Do not get me wrong: that is a legitimate concern, but it is not the main concern in producing the bill. The committee has on a number of occasions rightly observed that people, not systems, must be at the centre of the legislation. We need organisations to think about child and adult protection policies and about procedures, and to work out where the risks lie. A tick-box approach to disclosure, which would be very much encouraged by amendments 266 to 270, and to a lesser extent by amendment 261, would perhaps not encourage that because organisations would, in fact, think, "Well, okay, that's two days. Tick," and the matter would be dealt with in that way. Employers have to exercise sound judgment and good sense about the normal duties of a post. That is a matter of good employment practice, which all committee members and ministers have said throughout the bill process must be central to how we deal with the bill.

I can give an example of a peculiarity of a frequency-based test for regulated work. It relates to the friend of a scout leader, who does not work at the scouts' weekly meeting but helps out when they go camping overnight, perhaps every couple of months. Under amendments 266 to 270 and 261, he would not be doing regulated work because such work is not of sufficient duration, yet he is in a position of trust and several times a year he has overnight access to teenagers sleeping in tents. Under the "normal duties" test, he would be covered, because his normal duties include helping out the scouts on occasional overnight camping trips. The example demonstrates that almost any formulation that appeared to be more precise would not necessarily cover the situations that it was intended to cover.

The phrase "normal duties" provides flexibility and focuses on the overall sense of what a person does in their work. That approach is preferable to an artificial or empirical test that would require employers to count the days on which a person was engaged in certain activities, which would create an arbitrary barrier. We will issue extensive guidance to help organisations to interpret "normal duties" and we will give numerous examples of what are and are not a person's normal duties. However, it is better that the phrase "normal duties" should stand alone in the bill and have its ordinary, dictionary meaning.

Ministers have the power to amend schedules 2 and 3 by order, under the affirmative procedure, so if subsequent discussions with stakeholders and the voluntary sector indicate that there is a particular difficulty, we will—I hope—be able to address the problem.

Amendment 241, in Iain Smith's name, relates to guidance. We have said that we will lodge an amendment at stage 3 that will confer on the Scottish ministers a general power to issue guidance. Although we do not need such a power, we thought that it would be useful to put it in the bill. Therefore, there is no need for a specific requirement to issue guidance on the meaning of "regulated work". A further difficulty, which Iain Smith touched on, is the drafting of amendment 241, which it appears would allow ministers to modify primary legislation by guidance. Guidance can offer interpretation on the operation of legislation but it cannot change the legislation—I am sure that Iain Smith did not intend that it should do so.

Fiona Hyslop talked about regularity of work in relation to amendment 261. I think that she was referring to grooming, which—almost by definition—has regularity at its core, because it involves steady access and the building of a relationship of trust. A one-off situation would probably not be covered by provisions that addressed grooming.

Ken Macintosh and others were right to talk about "overzealous" application of disclosure checks. That is a major and significant issue, about which I have agonised during the bill's progress. We should do what we can to avoid the overuse of supervisory powers and the gold plating of processes. We must avoid a situation in which things that ought not to be regulated are regulated because public bodies or others play safe. I hope that the comments that committee members and ministers have made throughout the bill's passage will have some effect on how people deal with such matters.

As I said, sections 63 and 64 provide that people who request disclosure information when they are not entitled to do so will be subject to criminal sanctions. That approach echoes the approach in the POCSA regime, but we want the issue to have greater prominence—I do not want to sound too threatening—as the bill is implemented. I am more than happy to continue to discuss the matter with committee members and to consider particular arrangements that might enhance that important aspect of the bill. Although the amendments that address the matter generated a useful debate, they would not make things easier—on the contrary, they would probably make things a wee bit more difficult.

I hope that my comments are helpful and give an indication of the Executive's approach and the importance that we attach to the issues that

committee members raised in their amendments in this group.

The Convener: Thank you. It is reassuring to know that ministers intend to issue appropriate guidance on the meaning of "regulated work" and "normal duties". However, I remain slightly concerned that unless the bill requires ministers to deal specifically with that issue, they will not do so, so I might seek further discussions with the minister before stage 3. However, I accept that the second part of amendment 241 is probably technically defective, so I will not press the amendment.

Amendment 241, by agreement, withdrawn.

Section 91 agreed to.

Schedule 2

REGULATED WORK WITH CHILDREN

14:30

The Convener: I suggested to members that they should keep their wits about them and I have begun to show that I have already lost mine. We come to group 11, which concerns regulated work and incidental activities and contact in the course of children's or protected adults' employment. Amendment 127, in the name of the minister, is grouped with amendments 128, 242, 243, 129, 130, 245, 246, 248, 249, 135 to 138, 253, 254, 139, 255, 141 and 143.

I hope that members are following this. If amendment 128 is agreed to, amendments 242 and 243 will be pre-empted. Likewise, if amendment 130 is agreed to, amendments 245 and 246 will be pre-empted; if amendment 138 is agreed to, amendments 253 and 254 will be pre-empted; and if amendment 139 is agreed to, amendment 255 will be pre-empted.

Robert Brown: I want to spend a little bit of time on the group, because it brings us to the second substantial issue in this afternoon's discussions.

The amendments in the group take us to the heart of what regulated work with children and adults is. It is helpful that they are grouped together, because they are interrelated. I will summarise briefly what Executive amendments 127 to 130, 135 to 139, 141 and 143 do and my broad response to amendments 242, 243, 245, 246, 248, 249 and 253 to 255, in the name of Kenneth Macintosh. Amendment 10, in the name of Iain Smith—his first amendment on the definition of "child"—to which we will come later, is also relevant. I will mention it, but we will debate it later on.

Executive amendments 127 to 130 adjust schedule 2, which defines regulated work with children. First, they make the provisions on caring for children and teaching, instructing, training or supervising children easier to follow. Secondly, they carve out those activities from regulated work in so far as they are only incidental to carrying on the same activities with adults. That puts it beyond doubt that, for example, a white-water rafting instructor—a mythical creature that has featured once or twice in our discussion of the bill—who runs courses that are aimed at adults and incidentally include a few 16 or 17-year-olds is not doing regulated work. That is a useful move forward, which I hope will commend itself to the committee.

Amendments 135 to 139, 141 and 143 restrict the scope of certain types of regulated work with adults as defined by schedule 3. The activities concerned are those that relate to: teaching, instructing, training and supervising protected adults; being in sole charge of protected adults; and providing advice or guidance to protected adults. As with the amendments to schedule 2, these amendments to schedule 3 exclude those activities from regulated work if the carrying out of the activity for protected adults is incidental to its being carried out for other persons. A practical example of that would be a driving instructor with 20 clients, only one of whom happens to be a protected adult, and the instructor does not offer any services that are aimed particularly at protected adults. I think that the committee will agree that it would be faintly ludicrous if particular provision had to be made for such a situation.

Amendments 242, 243, 245, 246, 248, 249 and 253 to 255 seek to replace "employment" with "work" in all instances in schedules 2 and 3. No doubt we will hear from Kenneth Macintosh shortly about the background to that approach and his reasoning for it. The amendments seek to narrow the scope of regulated work by excluding from it individuals working with children and protected adults who are themselves volunteers, just as the bill excludes individuals working with children and protected adults who are employed.

I am grateful to Kenneth Macintosh for lodging his amendments and am prepared in principle to support amendments 242, 243, 245 and 246 to paragraphs 2 and 3 of schedule 2. They would mean that people who work with 16 and 17-year-old children who were themselves working as volunteers or paid employees would not be undertaking regulated work with children. For example, they would mean that an adult supervisor of a charity shop with 16 and 17-year-old assistants would not be doing regulated work regardless of whether the assistants were volunteers or paid employees. That is absolutely right. However, as the convener explained to us in his lucid introduction to the group, amendments 242, 243, 245 and 246 are pre-empted by

Executive amendments 128 and 130, so we will have to introduce amendments to the same effect at stage 3.

I also want to consider the remaining amendments lodged by Kenneth Macintosh—amendments 248, 249 and 253 to 255—at that time to ensure that we do not inadvertently remove protection from younger children or vulnerable adults. The principle behind and practical aspects of Ken Macintosh's proposals will be dealt with at stage 3, with a wee bit of tidying up needed at the edges to deal with certain technical issues in relation to amendments 128 and 130. We will return with a slightly different formulation at stage 3. I hope that everyone has followed all that.

Without wishing to pre-empt our later debate on amendment 10, which seeks to lower the age of majority for regulated work with children from 18 to 16, I have to say that we will need some persuading in that respect, because such a move would open a fairly significant gap in protection for children in Scotland. Legitimate concerns have been expressed about what activities involving 16 and 17-year-olds should be classed as regulated work. However, given our amendments and in following the spirit of amendments 242, 243, 245 and 246, I hope that we have addressed members' concerns that the bill has a disproportionate emphasis on work with 16 and 17-year-olds. Indeed, that concern partly lies behind amendment 10, which, as I have said, will be debated later.

I hope that Ken Macintosh is reassured enough both by these steps and by our promises and undertakings to tighten up regulated work not to move the amendments in his name.

I move amendment 127.

Mr Macintosh: I thank the minister for that explanation and, indeed, for accepting the principle behind amendments 242, 243, 245 and 246, which, like other amendments that I have spoken to, were suggested by the Scottish Council for Voluntary Organisations. In the bill, the Executive has, rightly, differentiated between our treatment of vulnerable individuals and of children who are looked-after or who are in employment. For example, an individual in sole charge of and providing a service to a child would need to be disclosure checked, whereas an individual in sole charge of but providing paid employment to the child might not. As I understand it, the logic behind that approach is to remove barriers to paid employment for children and vulnerable adults.

However, the bill will remove barriers only for protected groups in paid employment and differentiates between them and people who are not in paid employment but are, for example, volunteers, interns or involved in work experience. I hope that we would wish to encourage such activity and not discriminate in that manner.

I acknowledge that some of the Executive's amendments in this group pre-empt some of my amendments and that, as far as my other amendments are concerned, the Executive has accepted the argument in principle and will consider how they might be reapplied at stage 3.

Fiona Hyslop: Although this area is complex, I think—and, indeed, hope—that we are reaching a solution. I have also been very confused at times, especially when I heard the convener described as lucid.

The Convener: That does not happen very often.

Fiona Hyslop: I want to pick our way through this issue, which brings us back to the concept of predictors of behaviour. On the example of the driving instructor that was mentioned earlier, I should point out that, in his regular work, he does not deliberately seek out children. The nub of the issue, particularly in relation to amendment 127, is whether the young person proactively seeks employment in, for example, a charity shop. As the minister might recall, I have raised concerns about 16 or 17-year-olds working with homelessness charities and coming into contact with someone who might have a record as a result of activities with other vulnerable people. The minister has come some way towards acknowledging that situation by ensuring that the policy is driven by the young person's activity, not by any situation in which an adult deliberately seeks constant access to a young person. I think that that allows us to get around some of the definitions.

I wonder whether the convener or the minister will recapitulate for us the various pre-emptions in this grouping. The minister has accepted Ken Macintosh's point that we should not differentiate between paid employment and voluntary work; however, we should again make it clear that this policy should be led by the child seeking work, not by the prospect of predatory adults seeking out children. If that is the underlying guidance, the policy will be well rooted.

The Convener: I will avoid getting back into any discussion on pre-emptions just now.

Robert Brown: This is a good example of how the committee's scrutiny of the bill has enabled us to move forward in what I hope is a reasonably satisfactory way.

Fiona Hyslop's comments about predictors of behaviour and a young person's actions in coming forward are a good specification of some of the thinking behind this. She laid that out extremely well.

The example of the homeless person, which was dealt with in the stage 1 discussions on evidence, is quite a good example in all sorts of ways. It touches on the protected adult aspect of the bill. Obviously, a 16 or 17-year-old young person working with a homeless person who is barred does not raise the protection of children issue in quite the same way; it is a slightly different issue. However, an organisation that dealt with people in that position would clearly have to have fairly robust procedures in place to deal with the complicated ramifications that would arise from the situation, although not necessarily in terms of the protection of children aspect, which is the important point here.

Although there are lots of difficult situations on the edge of the definitions, I think that what we are arriving at now is a proportionate and reasonable way in which to take things forward. It reflects the reality and the grain of what happens in real life—that is really what it is all about—without losing, where we need them, the appropriate protections for children and vulnerable adults.

Amendment 127 agreed to.

The Convener: Amendment 266, in the name of Ken Macintosh, was debated in the previous group.

Mr Macintosh: This is the test relating to contact with children on more than two days out of 30. I accept the arguments that the amendment reflects the English legislation and could, potentially, be overly rigid and that cases could fall outside any threshold, no matter how low it was set. Nevertheless, I retain an anxiety about the issue and look forward to the further discussion that the minister promised before stage 3 about what the guidance might contain. On that basis, I will not move amendment 266.

Amendment 266 not moved.

The Convener: The information that Fiona Hyslop asked for is that, if amendment 128 is agreed to, amendments 242 and 243 will be pre-empted.

Amendments 128 and 129 moved—[Robert Brown]—and agreed to.

Amendment 267 not moved.

The Convener: If amendment 130 is agreed to, amendments 245 and 246 will be pre-empted.

Amendment 130 moved—[Robert Brown]—and agreed to.

Amendments 268, 248, 269 and 249 not moved.

The Convener: Group 12 is on the definition of "unsupervised contact". Amendment 250, in the name of Ken Macintosh, is the only amendment in the group.

Mr Macintosh: At the risk of repeating myself, I say that the motivation behind amendment 250 is the concern that the committee has expressed over the proportionality or potential overuse of disclosure or vetting and barring legislation.

When he responded to the debate on the previous group of amendments, the minister talked about some examples of inappropriate disclosure checks reaching near-mythic status. He also talked about the contrast with his real-life experience. I am aware of the fact that some of the examples that have reached the papers have not been entirely accurately reported. However, the examples that I have brought to the committee are specific examples of legislation that has been passed by the Parliament not being interpreted in the way in which it was intended. I refer to the example of the Santa, which was a one-off. Somebody volunteered on one occasion to be a Santa and had to be disclosure checked, despite the fact that he had already been disclosure checked elsewhere. Frankly, he could not be scunnered to do it again in East Renfrewshire.

14:45

I accept that the bill is trying to introduce a system whereby most people who will have contact with children by volunteering irregularly will at some point have a disclosure check that will be portable, so situations such as that which I described will arise less and less. I accept that that is the end point.

Another example of such a one-off situation is that of a school trip—to a cinema, theatre or museum—when a volunteer pulls out at the last minute and an adult is needed to accompany the students. Sometimes, if the one-off parent volunteer has not been disclosure checked, a trip is cancelled. That cannot be right. We must address such informal activity.

In amendment 250, I suggest that families and family friends should not be treated in the same manner as local authority employees. I understand that the bill deems contact to be unsupervised when it is in the absence of a parent, which means that a disclosure check is required. My amendment would allow parents and guardians to make arrangements with people who have a personal relationship to them to supervise contact with their children. That would transfer the risk to the parent or guardian. The amendment would not intervene in personal or informal arrangements or try to impose inappropriate or disproportionate legislative burdens on such arrangements.

I move amendment 250.

Fiona Hyslop: I see what Ken Macintosh gets at. Perhaps an underlying concern is that we have forgotten that, in most circumstances, parents

should take responsibility for their children. All of us as parents frequently give supervised contact to somebody else for a variety of reasons.

I understand where Ken Macintosh comes from in trying to separate out such situations but, in legislating for them, we would start to define them. That would involve huge and fundamental questions of the rights of the individual and the state and the relationship between parents and other people in legislation. Inadvertently, amendment 250 would open a huge can of worms—the definition of when parents have responsibility for giving supervision to somebody else. It has been suggested that the bill could touch on anything from 300,000 to 1 million people, but the amendment would start to touch on the 5 million people or whatever who are in the country. I understand what Ken Macintosh gets at, but to put such matters in legislation would be worrying.

The Convener: I note that in section 95, "Meaning of 'work'", subsection (7) says:

"Any friend of a member of an individual's family is to be regarded as being the individual's friend."

A friend of your friend is my friend, indeed.

Fiona Hyslop: Unless you are a Liberal Democrat.

The Convener: Perhaps we could refer to amendment 250 as the Santa clause—I do not know.

Robert Brown: The amendment is quite cunning, dare I say it, and is quite good. It encapsulates a practical situation that emerges in real life, so I support it. Subject to the committee's agreement, we will consider whether any minor technical amendments are needed at stage 3 to give full effect to the amendment.

The amendment would give a parent or guardian of a child the right to agree that a friend could supervise their child's contact with a worker, which would take that work out of the scope of regulated work. Far from extending the ambit of the state into individual life, as Fiona Hyslop suggested, the amendment would take an aspect out of regulation.

The amendment relates to the definition of unsupervised contact with children in schedule 2, which lists people in whose absence contact is unsupervised. The amendment would take some people out of the bill's scope and would widen the unregulated bit of activity. That is the opposite of what Fiona Hyslop suggested.

The reason why we need to consider stage 3 amendments is that amendment 250 refers to personal relationships but not to family relationships, so we want at stage 3 to extend the amendment's scope in line with its intention. We want to get the phraseology right.

Without wishing to set other hares running, I should mention that it crosses my mind that, although the age of 18 is mentioned in the amendment, some parents are under 18. That might raise some issues that we need to think about. However, I have no fixed view on that aspect and I encourage members to agree to amendment 250.

Let me respond to some of the more general points that members made. As Fiona Hyslop said, the need for parents to take responsibility for their own children must be at the heart of what we do and the starting point for many of the activities that we are talking about. I accept that Ken Macintosh instanced real examples of situations in which people have gold plated things that, arguably, should not have been gold plated but, nevertheless, it is important that we try to draw out such things and provide clarity on whether particular situations should be regarded as regulated work. We need to keep in mind the big thing, to which we keep returning, which is that organisations need to have regard to the general safety of the arrangements for such matters. Certainly, the last thing on earth that we want to do is to regulate Santa unnecessarily but, in that example, I think that Ken Macintosh suggested that the irregularity would have been dealt with by the multiple disclosure provisions that are now contained in the bill. Therefore, that situation might have been tackled in a slightly different way in any event.

I am grateful to Ken Macintosh for amendment 250, which I think adds significant value to the definitions that are contained in schedule 2.

Mr Macintosh: I thank the minister for his comments. I will press amendment 250.

The Convener: The question is, that amendment 250 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)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

ABSTENTIONS

Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 250 agreed to.

The Convener: I was about to say that the result was six votes in favour rather than seven, as I almost forgot to include my vote. That is always a problem when a convener votes, because the convener cannot see himself.

Group 13 is on the provision of advice or guidance to children. Amendment 251, in the name of Lord James Douglas-Hamilton, is the only amendment in the group. If amendment 251 is agreed to, amendment 270 will be pre-empted.

Lord James Douglas-Hamilton: Convener, that danger will not arise because amendment 251 is a probing amendment.

Amendment 251 probes whether the provision of advice or guidance to children is intended to be included within the scope of regulated work. The Law Society of Scotland has questioned whether the Scottish Executive intends to include work that is carried out on behalf of children by professional bodies, which are already regulated, within the meaning of regulated work. I will be most grateful to hear the minister's response.

I move amendment 251.

Robert Brown: I am not sure that we totally understand the point that Lord James is making with amendment 251, so I will be more than happy to have more detailed discussions with him to follow the matter through.

As I read it, amendment 251 would remove paragraph 6 of schedule 2, which is about providing advice or guidance to children. We are not in favour of that. As the provision of advice or guidance to children is not, of itself, included within the definition of working with children that is contained in POCSA, new provision to make such activities regulated work was deliberately included in the bill.

It might be helpful to explain why we think that such a provision is necessary and why it should not be removed by amendment. Examples of work that will be caught by the provision in paragraph 6 include careers advisers; schools liaison staff in a university; relationship or sexual health counsellors; and an agony aunt on a teenage girl's magazine who receives and replies to letters from teenage girls and who therefore has an opportunity to build a relationship with individual children. It seems right that we should capture the kind of work that is illustrated by those examples. However, paragraph 6 would not cover a writer on the same teenage magazine because she would not be providing advice to a child or to particular children but would be addressing a more general audience.

In summary, the effect of amendment 251 would be a reduction in child protection that the examples that I have given—for example, the situation of a sexual health counsellor—show is not justified by the reality of the matter. Therefore, I ask Lord James to withdraw amendment 251.

However, I hope that I have not misunderstood the detail of his amendment. Is he referring to lawyers giving advice to children or to other contexts involving professional people? I would be grateful for more clarity about that. Lawyers would not be covered, as the advice relates to the

"physical or emotional well-being, education or training"

of children. However, I may have misunderstood Lord James Douglas-Hamilton's concerns.

Lord James Douglas-Hamilton: The minister has kindly offered more detailed discussions on the matter. I would be grateful if I could study everything that he has said on the subject and come back to him to discuss it in detail. I will not take up any more of the committee's time on the amendment.

Amendment 251, by agreement, withdrawn.

Amendment 270 not moved.

The Convener: Group 14 is on regulated work with children with respect to moderating chat rooms. Amendment 131, in the name of the minister, is the only amendment in the group.

Robert Brown: Amendment 131 is a technical amendment that will limit the scope of regulated work in respect of those who moderate websites for children. It will bring the definition in question into line with that which is used in the Safeguarding Vulnerable Groups Act 2006 for England and Wales, by excluding technical staff.

I move amendment 131.

Amendment 131 agreed to.

The Convener: Group 15 is on regulated work with children with respect to education. Amendment 132, in the name of the minister, is grouped with amendments 133 and 85.

Robert Brown: Amendments 132 and 133 are technical amendments that will ensure that the bill can respond to changes in the way in which the further education sector is organised and, in particular, to the creation of new further education institutions. The amendments respond to comments that were made by the Subordinate Legislation Committee on the clarity of the order-making power in the provision.

Amendment 85 responds to a request from the Convention of Scottish Local Authorities for terminology in schedule 2 that will reflect current and future changes in the way in which responsibility for education services is organised in councils.

I move amendment 132.

Amendment 132 agreed to.

Amendments 133, 85 and 134 moved—[Robert Brown]—and agreed to.

Schedule 2, as amended, agreed to.

Schedule 3

REGULATED WORK WITH ADULTS

Amendment 252 not moved.

Amendments 135 to 137 moved—[Robert Brown]—and agreed to.

The Convener: Amendments 253 and 254 will be pre-empted if amendment 138 is agreed to.

Amendment 138 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 255 will be pre-empted if amendment 139 is agreed to.

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

The Convener: Group 16 is on regulated work with adults. Amendment 140, in the name of the minister, is grouped with amendments 142, 265 and 144.

Robert Brown: The amendments respond to concerns that were expressed by stakeholders, particularly Universities Scotland and the Scottish Commission for the Regulation of Care. We have carefully considered those concerns and I hope that the amendments deal with them and fine-tune schedule 3 appropriately.

Universities Scotland was concerned that references to "work in" or "management of" educational institutions would mean that the work of a disproportionate number of its staff would come within the definition of "regulated work with adults". The policy intention was that the work of staff in educational establishments would come within that definition if their role required contact with protected adults or it was likely that such contact would take place. The work of welfare officers or special needs co-ordinators, for example, might be included. The unifying factor in that type of work is the provision of educational assistance to protected adults, and not necessarily that the work takes place in an educational establishment. That echoes the purpose of earlier amendments in different contexts.

Amendment 142 will remove from schedule 3 reference to work in educational institutions. Amendment 140 will insert a reference to "assistance … which relates to physical or emotional well-being, education or training." Amendment 144 will remove managers of educational institutions from those positions that are considered to carry out regulated work with adults.

15:00

Amendment 265 introduces a new category of regulated work to schedule 3. It brings within the scope of regulated work with adults those staff who are authorised by the care commission to inspect adult care services. Employees performing that role routinely visit adult care services and are often required to have one-to-one contact with protected adults. It is therefore right that they should be included.

I move amendment 140.

Amendment 140 agreed to.

Amendments 141 to 143, 265 and 144 moved—[Robert Brown]—and agreed to.

Schedule 3, as amended, agreed to.

Section 92—Individuals barred from regulated work

Amendments 256 and 257 not moved.

Amendment 86 moved—[Robert Brown]—and agreed to.

Amendments 258 and 259 not moved.

Section 92, as amended, agreed to.

Section 93—Meaning of "harm"

The Convener: Group 17 is on the definition of "harm". Amendment 260, in the name of Lord James Douglas-Hamilton, is the only amendment in the group.

Lord James Douglas-Hamilton: I can sum up the amendment briefly. It is a probing amendment that seeks to establish whether "psychological harm" has been properly defined. The Law Society of Scotland is concerned that section 93 has not been appropriately worded. In its view, "harm" has not been properly defined; "psychological harm", in particular, is clearly subject to interpretation. I invite the minister to consider the matter before stage 3.

I move amendment 260.

Robert Brown: I am not entirely certain what Lord James Douglas-Hamilton is seeking here. I have heard his explanation, but I understand that the amendment would remove altogether the provisions that make clear that harm includes psychological harm. The effect of the amendment would be to prevent organisations from referring an individual for consideration for listing if the harm or risk of harm were psychological, which would be very bad. For example, a teacher involved in verbal bullying of children at school or a care worker who was verbally aggressive to old people in a care home could not be referred. It is clear to me that such conduct is unacceptable, would be regarded in common parlance as

causing harm to children and should not be ruled out as a ground for referral.

Lord James may be concerned that psychological harm is difficult to disprove if false allegations are made. However, there is a second step before a referral is made about an individual: the organisation must have taken action against him, or it must be the case that it would have taken action against him if he had still been in employment. That means that a teacher would be referred for bullying only if the education authority had dismissed or transferred him, or if it would have done so had he not left of his own accord. There is quite a strong filter against malicious allegations before a referral is made.

From what Lord James has said, I am not clear about his concerns regarding the definition of "psychological harm". Section 93(1)(a) states clearly that an individual harms another when

"A's conduct causes B psychological harm".

The provision seems quite straightforward. However, as always, if I have misunderstood the point in some way, I will be more than happy to chat to Lord James about it later and to endeavour to put his mind at rest or to take on board his concerns, provided that we can be a bit clearer about what they are.

Lord James Douglas-Hamilton: I do not want to take up the committee's time on the point at this stage. However, if there are particular problems that the Law Society has encountered in the area, I will provide the minister with more detail on the definition in writing. As I said, amendment 260 is primarily a probing amendment.

Amendment 260, by agreement, withdrawn.

Section 93 agreed to.

Section 94—Meaning of "protected adult"

The Convener: Group 18 is on the definition of "protected adult". Amendment 87, in the name of the minister, is grouped with amendments 15 and 88.

Robert Brown: I will speak to Executive amendments 87 and 88 before I deal with amendment 15, in the name of Lord James Douglas-Hamilton.

We have listened carefully to the concerns that were raised at stage 1—by, for example, the WRVS—about the definition of "protected adult" and we are clear that it must be amended so that it is more workable in practice.

Amendment 87 seeks to introduce into the definition of "protected adult" at section 94 an additional category of "prescribed welfare service" and amendment 88 further defines the term "welfare service". The aim of the amendments is to provide greater clarity for voluntary organisations on whether an individual who receives a service from them is a protected adult. They will mean that when a prescribed welfare service is provided to an adult, that fact will, in itself, make them a protected adult under the bill. Such services could be provided by voluntary or charitable sector organisations. Amendments 87 and 88 will result in a broader definition of "protected adult" because the existing definition is limited to persons who receive care and support services that are provided by the statutory sector. People expressed concerns about that.

The detail of the services will be prescribed in secondary legislation, but we view that as a valuable opportunity to work with, and consult fully, the relevant sectors so that we can arrive at an arrangement that best meets their concerns and which, ultimately, is workable in practice. That approach minimises the possibility of introducing any unintended negative consequences at this stage.

Amendment 15, in the name of Lord James Douglas-Hamilton, takes a different approach to solving the same problem and, like amendment 87, seeks to introduce into the definition of "protected adult" a new category of services—albeit one that is defined in terms of the person who receives the service rather than the service provider. The effect of the amendment would be to widen the definition of "protected adult" to include everyone who was in receipt of a service because they possessed particular personal characteristics.

In our view, amendment 15 is too broad in scope. Given that the definition that it uses includes adults who receive support because of illness, any adult who went to his general practitioner for a cold remedy would qualify as a protected adult. That demonstrates the problem of adopting too wide a definition. In the light of the importance of the definition of "protected adult" to the operation of the scheme for adults, I suggest that the Executive amendments, which allow for further consultation on the regulations that will specify what constitutes a prescribed welfare service, offer a better way forward. The draftsmen have produced quite an elegant way of dealing with the problem. The regulation-making power is sufficiently wide to encompass reference to a person's characteristics, should that be the recommended outcome of consultation. As I have said before, we are committed to working with the voluntary sector and other stakeholders to ensure that we arrive at a definition that goes with the grain of how they work in practice.

I hope that Lord James will be satisfied that the Executive's amendments deal both with the specific issue that he has sought to address in amendment 15 and with the committee's broader

concerns on the area. I ask him not to move the amendment in his name and to support amendments 87 and 88.

I move amendment 87.

Lord James Douglas-Hamilton: I hope that the minister's amendments will do what I sought to do through amendment 15, which I lodged on behalf of the WRVS. It carries out a number of activities in the public interest, including the provision of meals on wheels.

As section 94 is currently worded, it defines adults as being protected if they are in receipt of certain services. As is the case for much of the bill as it was initially drafted, that is fine for local authorities and health boards, which are responsible for delivering regulated services, and for voluntary groups that have taken over the provision of regulated services under contract. However, many voluntary groups work with adults outside such contracts and, in such circumstances, it will be difficult to ascertain with confidence whether an adult is protected.

The Executive has made it clear that voluntary groups will have the responsibility of judging whether the people who work with specific individuals need to be checked. If a voluntary group does not know whether the adults for whom an employee works are protected, it is questionable whether it will have the right to ask that the employee be checked. Worse, it is also conflictingly unclear whether the voluntary group has a duty to provide only employees who have been checked. Both those uncertainties might be resolved only in the event of prosecution. As voluntary groups such as the WRVS have expressed willingness to be unequivocally empowered and required to vet all their employees, I suggest that the Executive should concede to that. The best way of doing that is to address directly the deficiencies of the current definition by tying protected status to an obvious characteristic of the client adult rather than the service that they might or might not receive as a result. Such clarity is necessary to ensure that both the adults and voluntary groups are better protected.

It is obvious that amendment 15 would help the WRVS because it makes it clear when it has a responsibility to carry out a disclosure check on an employee and when it has the right to carry out that check. The minister said that the scope of the amendment is too broad. It would, however, be beneficial to the WRVS because it would mean that the organisation could continue to operate effectively with appropriate certification. The question that I must ask the minister is whether his amendments would satisfactorily protect work that a body such as the WRVS already carries out in the public interest.

Fiona Hyslop: It is important to provide some comfort and instruction to voluntary organisations that do welfare work. The problem is one of definition. In our stage 3 consideration of the Adult Support and Protection (Scotland) Bill last week, concerns were raised about defining individuals with disability. The issue in this bill is whether "welfare service" in section 94(1)(d), as defined in amendment 88, will still come under part 1 of the 2001 act. The definition of "welfare service" in amendment 88 is very wide indeed. It could well include the provision of debt advice, which would mean that someone in receipt of debt advice could be considered a protected adult. If the definition of the term in section 94(1)(d) were to follow that in part 1 of the 2001 act, that would narrow the definition and, as long as that definition applied to the work of the WRVS, for example, that would satisfy our concerns.

I would be concerned that defining the services in question with reference to the disability of the individual, as Lord James proposes, could have unintended consequences. It might help the WRVS, which I am keen for us to do, but it might cause difficulties to do with classifying individuals as protected adults, which might cause offence to those concerned.

Robert Brown: It has been a worth-while debate. There is acceptance all round the table that Lord James and others have raised a valid point about the WRVS and we need to deal with it. Measures have to be workable in practice on the ground with individuals.

Lord James made the valid point that organisations need to know whether they have the right to ask for a check—I stressed that point earlier, as members will recall.

To address Fiona Hyslop's point, the whole point of amendment 87, which Executive officials have produced, is that prescribed welfare services are not just any old welfare services. For the purposes of this bill rather than any other act or definition, we will deal with what that definition covers after consultation. The definition in this bill is self-contained, as I understand it, and has no relation to the bill that we passed last week. That is an important point to make.

15:15

I say to Lord James that I understand that the WRVS is content with the way forward that is suggested in the amendment. Among other things, it allows the WRVS and others to be involved in the consultation on what is to be prescribed, so the WRVS can continue to make its point in that way. The objective of the exercise is to have this done in a way that does not involve any unintended complications and complexities for

organisations such as the WRVS. We want them to be able to carry out their services without having to get too involved in all of that kind of thing. We want organisations such as the WRVS to have a definition with which they can work as a matter of practice—one that goes with the grain of their service. That is what Executive amendment 87 does. I am happy to give that reassurance to Lord James.

Amendment 87 agreed to.

The Convener: Amendment 15 is in the name of Lord James Douglas-Hamilton.

Lord James Douglas-Hamilton: In view of the minister's reassurance, I will consult the WRVS and, if it feels that a further adjustment is necessary, I may return to the matter at stage 3. On the other hand, the WRVS may feel that the minister's officials have brought forward perfect work. In that case, it will not be necessary for me to do anything further. I will not press amendment 15.

Amendment 15 not moved.

Amendment 88 moved—[Robert Brown]—and agreed to.

Section 94, as amended, agreed to

Section 95—Meaning of "work"

Amendment 145 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 146, in the name of the minister, is in a group on its own.

Robert Brown: Amendment 146 allows ministers to specify in regulations what is meant by work that is done

"in the course of a family or personal relationship."

Clarity on that point will be important for barred individuals, who will need to know what they can and cannot do with children of friends and family, and protected adults who are friends or family. Different pieces of legislation have different definitions for different purposes. It is therefore not appropriate to have a one-size-fits-all definition in the bill. Some further work needs to be done on the terms of the powers that we intend to give ministers, subject to the committee's agreement on amendment 146.

I move amendment 146.

Fiona Hyslop: Again, it would have been helpful to the committee if the minister had given us more time to consider the amendment. We are being asked to put into legislation an awful lot of broad provisions that ministers will use at a later date.

Robert Brown: I hear Fiona Hyslop's observation, but we must appreciate the time constraints that we are under towards the end of the parliamentary session. However, it is fair to reflect on the point that we have reached on all of this. We have managed to take forward the vast bulk of amendments with a fair degree of agreement around the committee and in a way that is increasingly satisfactory to the sector. We also need to bear in mind that we have always had it in mind to implement the legislation by way of consultation on the subordinate legislation and guidance that will follow on from the passage of the bill. In that context, amendment 146 is a fairly typical stage 2 amendment.

Amendment 146 agreed to.

Section 95, as amended, agreed to.

After section 95

Amendment 271 moved—[Robert Brown]—and agreed to.

Amendment 261 not moved.

Section 96—General interpretation

Amendment 16 moved—[Iain Smith]—and agreed to.

The Convener: Amendment 10, in my name, is in a group on its own, and it addresses the definition of a child. I lodged it largely as a probing amendment. At stage 1, some concern was expressed about the overlap between a protected adult and a child. Amendment 10 is being considered in a group on its own—strangely, as the penultimate amendment in the penultimate grouping—because of the fundamental principle that is involved: the meaning of vulnerable in relation to the protection of vulnerable people. We need to be clear about the definition.

The bill is about protecting vulnerable people. It is fairly clear that young children are vulnerable in light of their age and maturity, and therefore they must be protected, and that many adults are also vulnerable as a result of illness, infirmity, age or dependency on drugs or alcohol. Those vulnerable people require a degree of protection. However, I am not clear whether all 16 and 17-year-olds are, by definition, vulnerable people. The issue is whether, in setting the age of maturity as a definer of vulnerability, we are drawing the line at the right place.

The bill defines those who are 16 or 17 as children, but many people of those ages are perfectly capable of making decisions about the activities that they undertake. It is traditional to point out that they can join the army or get married and that they have long been held in Scots law to have a degree of responsibility. However, if a group of 16 and 17-year-olds were, for whatever purpose, to form an organisation in which no other

people were involved, it might fall under the scope of the bill. Volunteers with or paid employees of the organisation might have to register with the scheme, because those 16 and 17-year-olds could be deemed as vulnerable, even though there was no evidence to suggest that they were. My question is whether it is appropriate to define people of that age as vulnerable.

To return to our mythical cases, examples were given at stage 1 of people being overcautious, even though they may not come under the legislation. We heard about a young girl who volunteered to be the minute secretary of a community council. If anyone has ever been involved with community councils—those members who were previously councillors will have been—they will know that getting someone to take the minutes at meetings is one of the hardest tasks that community councils undertake. They often hold several meetings before they get someone to do that. It does not seem appropriate for a community council to decide not to accept a young volunteer to take the minutes because of fears that it will fall under the ambit of the legislation. Examples were given of arts and other groups that are, in essence, adult groups that do not wish to extend their membership to younger people because of fears about coming under the ambit of the legislation.

The minister may say that such groups should not fall under the legislation and that the issue therefore does not apply. However, organisations may choose to set their membership qualification at 18 to guarantee that they do not come under the ambit of the legislation, which will therefore needlessly reduce opportunities for young people. That might happen with amateur sports organisations. The adult level of the sport may be defined as beginning at 18 rather than 16, which may reduce opportunities for young people. If anyone watched Bell Baxter high school's rugby team winning the schools championship and then going on to play the following week in its guise as the Howe of Fife under-18 squad, they would realise that it is not sensible to deem any of those kids to be vulnerable.

An issue arises about whether the definitions are right. I do not intend to press amendment 10, but it is worth raising the issue and considering it. We need a debate in society about how we can define children more clearly. We need to consider how to set the age of majority and responsibility in a way that gives us a much clearer definition of young people's rights and responsibilities. I want to ensure that the bill does not make it more difficult for young people to be and feel empowered. By defining 16-year-olds as vulnerable, will we be disempowering those children and telling them that they are not yet full members of society, when they should be? That is why I will move amendment 10, although I do not intend to press it.

I move amendment 10.

Fiona Hyslop: The issue is another complex one. My understanding is that, particularly now that we have passed amendment 127, the definitions in the bill are not about children or young people but about those who seek to carry out regulated work with young people. Unless I am mistaken, the definition is indirect, not direct—there is no direct definition of a vulnerable child or young person in the bill. The same is true for protected adults. The convener said that protected adults are defined by their disability or illness, but that is not the case. As I understand section 94, the services that people receive, not the individuals themselves, are the definitional drivers of the term "protected adult".

The convener gave the example of the minute secretary of a community council. However, we passed amendment 127, which exempts

"caring for children which is merely incidental to caring for individuals who are not children."

A child or young person who attended community council meetings to take the minutes would fall within that, because a community council, in general, is a body that cares for individuals who are not children.

In our stage 1 report, we expressed concern about the definitions and wondered whether the age should be reduced to 16. That was absolutely right, given that we were thinking that the definition was directly about the child. However, I do not think that there is a direct definition in the bill. I might be wrong, and I will be interested to hear what the minister says, but the definitions in the bill are about regulated work and the services that are received rather than about the age of the individual. I stand to be corrected, but if my understanding is correct, we might not need to be as anxious as we were at stage 1 about the definitions. However, I support the convener's arguments on reasons why we might want to reduce the age from 18 to 16.

Ms Byrne: I welcome amendment 10, which allows us to debate an area about which there has been a lot of uncertainty. A number of related issues were considered at stage 1 and I look forward to hearing what the minister says to clarify the position. The issue has arisen in relation to other legislation, so it is about time that we sorted it out once and for all.

I am pleased that Iain Smith lodged amendment 10 and I hope that, after discussing it, we will reach agreement on where we are going. As he rightly says, young people can get married at the age of 16 and are entitled to do all sorts of other

things at that age, so why is the age of 18 mentioned in the bill? There is great confusion about that. I will listen to what the minister has to say.

Mr Macintosh: I have a lot of sympathy with the convener's arguments. The matter is complicated. Initially, the committee wanted to end any confusion that might exist because of the overlap, but, as Fiona Hyslop pointed out, the confusion that we feared might exist has not materialised.

Although I support the idea that young people should be able to take decisions for themselves and be treated as adults when they are 16, I want to increase to 18 the age at which people may smoke and I want to introduce controls to limit the use of sunbeds to over-18s, so I consciously face in two different directions on the matter. It is not a black-and-white issue. It is about maturity, and decisions should be made on a case-by-case basis.

Lord James Douglas-Hamilton: Amendment 10 would remove the overlap whereby a 16 or 17-year-old could be classified as both a child and a protected adult. Despite the Executive's assurance that such overlap would just necessitate ticking two boxes on an application form instead of one, it could cause confusion, as Ken Macintosh suggested. The key point is that 16 and 17-year-olds who are especially vulnerable could be classified as protected adults. Whether they are classified in one way or in another, they should be protected. This afternoon, the minister has to persuade us where the balance of advantage lies.

15:30

Robert Brown: Thank you, convener, for raising this interesting debate which, if I may say so, is three debates in one. The first issue is the age of majority. You made the point that we might need to consider whether it would be appropriate to have a single age of majority. Personally—I stress that I am not speaking on behalf of the Executive—I regard that as being a gradual thing, to some extent, for different purposes. Although it is illogical and, no doubt, anomalous that people can do some things at 16, some things at 17 and other things at 18, it would be difficult to set a single age of majority. Therefore, we have to consider the practicalities. The second issue is about childhood: what is it, when does it finish and what are the rights of childhood? That is linked to the first issue. The third issue, which is what the bill is concerned with, is child protection, and that has to be our central concern.

I would like to correct one point that the convener made about whether young people of 16 and 17 are vulnerable. Strictly speaking, that is not the issue. As Fiona Hyslop mentioned, the question is whether the person is a child. A child is defined in section 96 as

"an individual under the age of 18".

It may be tautological, but it fits in with the United Nations Convention on the Rights of the Child, which also refers to the age of 18, and a number of other arrangements under which 18 is defined as the age at which individuals cease to be children.

As a Scots lawyer—somebody asked for the services of a lawyer earlier—I accept that 16 has often been seen as the age at which people in Scotland move from childhood into adulthood. One example is the age at which people can marry without parental consent. That point comes into the debate. However, vulnerability per se is not the issue with regard to the protection of children, although behind the fact of being a child is the implication that the person needs protection in certain situations.

The point has been made that a number of situations, for example relating to the minute secretary of a community council or an adult arts group, could be adversely affected by the arrangements. We largely dealt with those concerns in the amendments on working and volunteering that we passed earlier. Unlike the position under POCSA, whose arrangements would have caused some issues, the improved arrangements in the bill should remove a number of the concerns that substantially adult organisations have about whether a 16 or 17-year-old could get involved with them. The new system should help organisations such as adult art groups, community councils and amateur sport groups. Under POCSA, there are some issues for them, but there should not be problems under the new arrangements.

A number of points were raised, but let me return to the general consideration of the situation of 16 and 17-year-olds, which, as the committee will be aware, has caused me some difficulty as the minister in charge of the bill. When I spoke on 29 November, and in my letter of 12 December, I undertook to reconsider the age of majority, because I wanted to be satisfied that our approach in the bill was right. I foresaw difficult situations, some of which we have debated this afternoon.

Having considered the matter as carefully as possible, I have come to the conclusion that the age of majority for the purposes in question should remain at 18 for three essential reasons. First, changing it to 16 would open a gap in child protection in Scotland—that is the central point on which we must keep focused. Secondly, I am convinced that the overlap problem is not a real overlap or a real problem in practical terms for organisations. Thirdly, as I have already said,

amendments that we have passed this afternoon address legitimate concerns about the work or the voluntary activities that amount to work of some 16 and 17-year-olds that should not be covered by the scheme.

I shall deal with those points in a little more detail. Let us first consider the gap in child protection that would be created by amendment 10. It would leave 16 and 17-year-olds unprotected because there would be settings in which a large number of people who worked with them could not be scheme members. Furthermore, and importantly, amendment 10 would mean that harm to a 16 or 17-year-old that was outside the realm of convictions could not normally be referred for consideration for listing, which would mean that activities in which 16 or 17-year-olds had been harmed could not be used to place people on either the child protection register or the adult register.

Those situations would not be covered, and although I am not saying that it would be impossible to cover them differently, we would create greater complexity in so doing. We have to deal with that situation if we are not to lose some protection. The risk is not theoretical. Things have happened with the existing child protection register after young people were harmed in such situations. Individuals have been added to the disqualified from working with children list for having harmed 16 and 17-year-old children in the real world and in a real way.

The Safeguarding Vulnerable Groups Act 2006 for England and Wales defines children as being under 18 years of age, so changing the age of majority here would mean that child protection in Scotland was less stringent than—as well as different from—the protection in other parts of the United Kingdom. Arguably, that could make Scotland attractive to harmdoers. I do not want to overstate the point, but we should acknowledge the potential difference.

As I have already mentioned, the UK Government has ratified the United Nations Convention on the Rights of the Child. In the convention, a child is defined as an individual under 18 years of age. Wherever possible, the Executive is committed to reflecting the convention's provisions in its policy and practice.

I think that I am right in saying that the perceived problem of overlap was the basic reason for the committee's concerns at stage 1—you felt that confusion might arise because people between the ages of 16 and 18 could be simultaneously considered as vulnerable children and protected adults. As I said in my letter to the committee on 12 December, the overlap does not present any real difficulties to the organisations involved.

I will address some issues that the committee highlighted in its stage 1 report. Only a tiny minority of 16 and 17-year-old children will also be protected adults, so reducing the age of majority to 16 would leave the vast majority of 16 and 17-year-old children unprotected in situations where they should be protected. An individual working with 16 and 17-year-old children who are also protected adults will be a member of both schemes. That will not give rise to any particular issues and it will not be any more onerous—there is no suggestion of a higher fee or more form filling. An individual who harms a 16 or 17-year-old child who is also a protected adult can therefore be referred to both lists. In practice, the individual will be considered for both lists, however they are referred.

It is not true that 16 and 17-year-olds will be doubly protected. Protected adults who are in that age group will be protected, as they should be, from people who are unsuitable to work in either workforce. Any possible confusion would be best addressed through the guidance that we are already planning for scheme users, rather than through a legislative fix that actually takes away the protection that 16 and 17-year-olds should have.

Legitimate concerns have been expressed about work with 16 and 17-year-olds that should not be part of the scheme. We touched on that subject earlier when discussing the large group of amendments that, if you like, moved the barrier. Legitimate concerns were expressed about what activities with 16 and 17-year-olds should constitute regulated work. However, the general tightening up of schedule 2—to which the committee agreed when we considered that group of amendments—addresses those concerns. The incidental test and the amendments in the name of Ken Macintosh—the details of which we have agreed to accept—should take a significant amount of work with 16 and 17-year-olds out of regulated work. However, we will leave protection in place for those 16 and 17-year-olds who are in activities and settings where they require protection from unsuitable adults.

Iain Smith has already said that amendment 10 is a probing amendment. I hope that I have offered a reasonably persuasive argument against it. It might help the committee if I give one or two examples. As I have said, if amendment 10 were agreed to, individuals working with 16 and 17-year-olds could not be disclosure checked, other than for a basic disclosure. As a result, barred individuals could work lawfully. That might be a technical point, but it is important. No posts in universities, and very few in further education, would be covered by the scheme. A teacher who engaged in inappropriate sexual conduct with a 16-year-old pupil—a not uncommon situation, as

we know from well-documented cases—could not be referred to the list. Such a teacher could therefore continue to work with children of any age, and could later abuse younger children.

I know that this is a difficult and delicate area, and we know about many different situations that have arisen. However, I think that there is general acceptance that teachers who have children under their care are in loco parentis. In such situations, there should be appropriate protection for children. If amendment 10 were agreed to, we could not have protection to the extent required.

From November 2005 to January 2007, panels to determine who should be on the list of people who are disqualified from working with children considered 30 organisational referrals. The individuals had been provisionally listed, but a large number of referrals do not get as far as that. Five of the cases were for harm done to a 16 or 17-year-old and two individuals were listed as a consequence. My point is that, although we are talking about small numbers, they are substantial numbers when considered as a percentage of the total. There would be a real reduction in protection if amendment 10 were agreed to.

I hope that that places a bit of flesh on the convoluted, difficult and complex arguments that we must address. Against that background, I hope that my comments are of some assistance to the committee in coming to its determination.

The Convener: I thank the minister for that reply.

It was never my intention in lodging amendment 10 that it would result in any unforeseen consequences. One of the purposes of lodging it was to examine whether there would be any such effects from changing the definition. I am not 100 per cent convinced by some of the arguments that the minister has made as to why 16 and 17-year-olds require to be protected in this way. However, I understand that when a responsible adult abuses their position of trust in relation to a 16 or 17-year-old—which I am not entirely convinced is not an offence in itself; it is certainly likely to result in dismissal or deregistration from the General Teaching Council for Scotland—they should be listed and barred appropriately, subject to the offence. If changing the age would mean that that was not possible, that would be an unforeseen consequence of amendment 10, and on that basis I would not wish to press it. I would like to consider further the minister's comments.

I indicated that amendment 10 is largely a probing amendment to raise the issue and, in particular, to ask whether we need to have a proper debate in Scotland to clarify once and for all issues about the age of majority. In response to Ken Macintosh, that does not mean that I think that every age should be the same. There are obviously occasions when protecting health may require a different age from situations when the issue is about the rights and responsibilities of young people to make decisions for themselves. In light of what has been said, I seek permission to withdraw amendment 10.

Amendment 10, by agreement, withdrawn.

Amendment 17 moved—[Iain Smith]—and agreed to.

Amendments 89 and 90 moved—[Dr Elaine Murray]—and agreed to.

Amendment 91 moved—[Robert Brown]—and agreed to.

Amendments 18 and 19 moved—[Iain Smith]—and agreed to.

Amendments 92 and 93 moved—[Robert Brown]—and agreed to.

Section 96, as amended, agreed to.

Schedule 5

INDEX

Amendment 20 moved—[Iain Smith]—and agreed to.

Amendment 94 moved—[Robert Brown]—and agreed to.

Amendment 11 moved—[Iain Smith]—and agreed to.

Amendments 148 and 95 moved—[Robert Brown]—and agreed to.

Amendment 21 moved—[Iain Smith]—and agreed to.

Amendment 96 moved—[Robert Brown]—and agreed to.

Amendment 22 moved—[Iain Smith]—and agreed to.

Amendment 97 moved—[Robert Brown]—and agreed to.

Amendment 12 moved—[Iain Smith]—and agreed to.

Amendment 98 moved—[Dr Elaine Murray]—and agreed to.

Schedule 5, as amended, agreed to.

Sections 97 and 98 agreed to.

Section 99—Orders and regulations

Amendments 262 and 263 not moved.

Amendment 13 moved—[Iain Smith]—and agreed to.

Amendment 99 moved—[Robert Brown]—and agreed to.

Section 99, as amended, agreed to.

After section 99

15:45

The Convener: We have reached the final group, on the review of the operation and implementation of the act. Amendment 264, in the name of Lord James Douglas-Hamilton, is the only amendment in the group.

Lord James Douglas-Hamilton: Amendment 264 was prompted by the central registered body in Scotland, which is the clearing house and advisory body for all vetting checks for volunteers. Even under the current system, the CRBS is the biggest client for checks by quite a margin; it is responsible for more than a sixth of Disclosure Scotland's turnover. When the CRBS expresses a need for regular monitoring of the bill's implementation, we should acknowledge that it has a pretty large interest in the matter.

The new system will be significantly different from the current system. Although the Executive has provided further information and has narrowed many areas down to a series of options, significant detail will perhaps still not be clear when the Parliament is asked to pass the bill. Therefore, the bill's effect on the voluntary sector in practice remains uncertain. It would be a great help if the Executive were committed to the production of a regular report, to assist with better scrutiny and refinement of the scheme.

I move amendment 264.

Fiona Hyslop: There should perhaps be automatic reviews of all legislation, but we definitely need a review of this bill's implementation, given the process that has been followed and the concerns that have been expressed. I support amendment 264.

Robert Brown: Before we consider the final amendment at stage 2, I take the opportunity to thank members of the committee for their consideration. I accept that the process has been complex, but the committee's approach has provided an example of the parliamentary process. I am grateful for the courteous and co-operative manner in which the arrangements for stage 2 debates have been conducted.

I agree with Lord James Douglas-Hamilton that it will be important to keep the act under constant review as it goes live and more and more individuals become scheme members. We have committed to a range of consultation on practical aspects of the scheme's implementation, not least retrospective checking, fee levels, the level of the bar and other matters that we have discussed during stage 2. Active monitoring and review will enable us to move quickly to correct unexpected difficulties that might surface. However, I am not sure that a statutory duty to make a biennial report to the Scottish Parliament is the best or even a necessary mechanism to achieve that effect.

Ministers will agree a framework document on the establishment of the new agency that will clearly set out the accountabilities of the chief executive and the Scottish ministers. The framework will include an agreed set of performance measures by which the success of the implementation and operation of the act can be judged. The agency, like all executive agencies, will be formally required to produce an annual report and accounts, which will be laid before the Scottish Parliament. As the sole function of the agency will be to deliver the provisions of the act and the remaining provisions of part V of the Police Act 1997, the agency will report to the Parliament annually on the operation and implementation of the act.

The Education Committee can of course exercise its power to call a future education minister or chief executive of the agency to give an account of how the scheme is working. I dare say that the committee will do that if it has cause for concern about aspects of the scheme.

I reassure Lord James Douglas-Hamilton that we will work hard to secure a successful outcome through extensive and diligent preparation. I have learned as an MSP—even more so as a minister—that it is all very well to pass a good bill, but nine tenths of the problems are in the act's implementation. Extensive preparation and implementation arrangements have helped to carry several recent education bills through to actuality after their passage through the Parliament—the Education (Additional Support for Learning) (Scotland) Bill is a good example of such an approach. Detailed discussion and consultation prior to going live will enable us to come up with a scheme with which the vast majority of people are happy in theory and, more important, which will work in practice.

We are already discussing the mechanics with Disclosure Scotland and the police. We have had extensive discussions with a wide range of stakeholders ever since the consultation was published in February 2006, and those discussions will intensify during the coming months. We will consult all stakeholders fully on the significant secondary legislation; the Education Committee will be notified of all consultation publications and it will be able to involve itself as appropriate, as well as subject the secondary legislation to scrutiny.

Given those commitments and the opportunity for scrutiny that the annual report to Parliament

provides, there is no need for the inclusion of a provision that requires a biennial report to be laid before the Parliament. I hope that Lord James Douglas-Hamilton will accept the minister's good faith in the matter and, more particularly, accept the fact that there is an underpinning framework that gives substance to the review and accountability mechanisms that he seeks in his amendment.

Lord James Douglas-Hamilton: I most certainly accept the minister's good faith, but if I may say so he has put the wrong point to the committee. He has already admitted that it is important to have a review, but he cannot bind future ministers. One Administration cannot bind the succeeding one. At this stage, none of us can guarantee what kind of Administration there will be or what kind of minister will succeed the minister or whether the minister will remain in his post after the election.

I would prefer it—and I am sure that the minister would prefer it—if the minister lodged an amendment of his own. I have suggested a biennial review; he might prefer to use different wording. I would be content if he came forward with plans for a review. His difficulty is that he cannot bind the next Administration.

I do not doubt the minister's good faith for one second, but, because one Administration cannot bind the next, it would help if minimum requirements were put into the bill, which is going through Parliament in a considerable hurry. Such an amendment would help charities and voluntary organisations in particular.

I therefore suggest that the minister takes the issue away, considers it and, if possible, proposes his own form of wording. If he flatly refuses to do that, I will, very reluctantly, have to press my amendment, because this is an important issue of principle.

The Convener: The member has asked the minister a straight question and I am happy to give the minister the opportunity to respond.

Robert Brown: I take Lord James Douglas-Hamilton's point. In addition to offering my good faith in the matter, I indicated that the establishment of the executive agency, which is central to the way in which the act will function, will be the subject of a framework agreement with the Executive. That follows what has been set up in other contexts; it is part of the Government framework.

I am happy to consider the detail of the issue, but if the Education Committee wants an opportunity to comment on or to help shape the performance measures against which the agency will be assessed, that might be a more reasonable way to get involved in the process. I would be happy to talk that through with Lord James Douglas-Hamilton and others to see whether we can satisfy people in that way.

There is no question about the objective of the exercise. We are talking about an annual report from the agency to Parliament. The question is about how that is best achieved and brought into the legislative framework in a way that is satisfactory to the committee and others.

Lord James Douglas-Hamilton: The minister has given his own commitment. Obviously, he cannot bind a future minister, but if that simple commitment went into the bill I would be satisfied. I genuinely think that, with a bill of such importance, voluntary organisations will need some reassurance on this point. I do not think that it is too much to ask the minister to go away and word an amendment that he thinks would be most appropriate.

Robert Brown: There is a limit to how often we can go backwards and forwards on this point. I was trying to say that it is envisaged that there will be an annual report to Parliament. That is the centrality of the matter. I am not entirely certain how easy it would be to put that into the bill, but I am more than happy to consider it between now and stage 3 and to talk about it again with the committee, and with Lord James Douglas-Hamilton in particular, to see whether we can formulate something.

The centrality of the issue is the way in which executive agencies work in similar contexts. I hope that that assurance is acceptable to Lord James Douglas-Hamilton. If it does not work out to his satisfaction and that of others, I am sure that an amendment could be lodged at stage 3.

Lord James Douglas-Hamilton: The matter can be followed up in discussions with the minister. If necessary, and if there is no meeting of minds, we can lodge a further amendment at stage 3. I hope that, with a little bit of good faith on both sides, we will be able to get some appropriate wording.

Amendment 264, by agreement, withdrawn.

Sections 100 and 101 agreed to.

Long Title

Amendment 14 moved—[Iain Smith]—and agreed to.

Long title, as amended, agreed to.

The Convener: I am not entirely sure what would have happened if we had not agreed to the long title.

That ends stage 2 consideration of the bill.

As the committee's direct involvement in the bill has now concluded, I put on record my

appreciation for the way in which committee members have handled this difficult, complex and very sensitive piece of legislation throughout. I also thank the many people who have given the committee evidence and advice, and the minister and his team, who have responded fully, effectively and always willingly to requests for further information and time. We all still feel that the bill has been a little bit rushed and that we have gone through it more quickly than we would have liked, but with the assurances that we have for amendments at stage 3, we will end up with better legislation.

Finally, I place on record our appreciation for our clerks. Not only did they construct an effective stage 1 report, they managed to get an unlucid convener through a complex set of amendments on days 1 and 2 of stage 2. Thank you all very much indeed.

That concludes today's business.

Meeting closed at 15:57.

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