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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 17 March 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
8th Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Claire Baker (Mid Scotland and Fife) (Lab)
*Aileen Campbell (South of Scotland) (SNP)
*Ken Macintosh (Eastwood) (Lab)
*Christina McKelvie (Central Scotland) (SNP)
*Elizabeth Smith (Mid Scotland and Fife) (Con)
*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Ted Brocklebank (Mid Scotland and Fife) (Con)
Hugh O'Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)
Dave Thompson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Kenneth Norrie (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Gaynor Davenport (Scottish Government Children, Young People and Social Care Directorate)
Daniel Kleinberg (Scottish Government Children, Young People and Social Care Directorate)
Shirley Laing (Scottish Government Children, Young People and Social Care Directorate)
Laurence Sullivan (Scottish Government Legal Directorate)
Denise Swanson (Scottish Government Children, Young People and Social Care Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 4

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 17 March 2010

[The Convener *opened the meeting at 10:00*]

Children's Hearings (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): I open the eighth meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of this morning's session.

Agenda item 1 is stage 1 consideration and scrutiny of the Children's Hearings (Scotland) Bill. This is our first evidence-taking session on the bill, and we will hear from the Scottish Government's bill team. We will take evidence from: Shirley Laing, who is the deputy director for workforce and capacity issues; Denise Swanson, who is the senior policy and programme manager within the children's hearings system reforms branch; Gaynor Davenport, the bill team leader and policy officer within the children's hearings system reforms branch; Daniel Kleinberg, who is the team leader within the youth justice branch; Laurence Sullivan, who is the senior principal legal officer within the solicitors children, education, enterprise and pensions division; and Claire McGill, who is a principal legal officer of the solicitors children, education, enterprise and pensions division.

As there are so many officials here, it leaves us asking who is running the Scottish Government this morning.

I understand that Shirley Laing will make an opening statement.

Shirley Laing (Scottish Government Children, Young People and Social Care Directorate): Thank you, convener, and good morning. The purpose of the bill is to strengthen and modernise the children's hearings system. It aims to do so by providing improved support for professionals and panel members and by introducing national standards. Combined with the quality assurance and accountability that the bill creates, that approach will ensure that the system is able to deliver national consistency in approach and practice. The bill therefore seeks to streamline processes and procedures to improve understanding and use of the system and to streamline structures—things such as the recruitment, selection, training and continuing support of panel members.

In progressing the package of reforms, officials and ministers have undertaken well over 100 engagement activities with partners between August 2009 and the bill's introduction. Those are in addition to all the written communications addressing comments that were received in response to the draft bill that was published last June and the bill progress paper and table that were published in September. That engagement with partners, along with the creation of five short-life working groups, has helped to shape the bill that has come before the Parliament.

I will outline briefly some of the main changes that the bill proposes, the first of which are the creation of a new national body—children's hearings Scotland—and a principal officer for that body: the national convener. The national convener will ensure that statutory functions on the work of the children's hearings system are carried out to a high standard. He or she will have responsibility for driving up standards consistently throughout Scotland and for the support, selection, training and monitoring of panel members using nationally agreed standards. Children's hearings Scotland will support the national children's panel and the national convener in the delivery of his or her functions. It will be established as a non-departmental public body to ensure that the governance structure in place is publicly accountable for achieving improvements in the children's hearings system.

The bill provides for the establishment of area support teams by the national convener in consultation with local authorities, which will ensure that local government is fully engaged with, and has influence over, the delivery of the system. The national convener must consult local authorities before designating area support team coverage. Local authorities may nominate people, including elected members, for inclusion in the teams and the national convener must consider those nominations. The national convener must also consult local authorities before specifying the functions of area support teams and giving directions to the teams on how those functions are to be carried out.

Little changes with regard to the role of the children's reporter. The reporter will have a right to attend hearings and will continue to have responsibility for organising them, issuing papers, arranging review hearings and handling appeals. However, the national convener will have responsibility for the provision of independent advice to the children's hearing.

The bill provides for a feedback loop, which permits the collection of information on whether or how local authorities have implemented the

decisions of hearings. That information will improve panel members' decision-making process by providing a more accurate picture of how hearings' decisions are being implemented and knowledge of which types of compulsory supervision have proved effective and, therefore, might be useful for other children.

The bill introduces a permanent legal representation scheme that will make legal representation for children and relevant persons available through the normal civil legal aid system, as administered by the Scottish Legal Aid Board. The scheme will ensure that, where appropriate, children and relevant persons have access to state-funded legal representation that supports effective participation.

I hope that my remarks have helpfully summarised the main reasons for reform and the key changes that the bill introduces to the children's hearings system. My colleagues and I are happy to answer members' questions.

The Convener: Thank you for providing a brief overview of what is undoubtedly a complex piece of legislation.

Kenneth Gibson (Cunninghame North) (SNP): Thank you for your helpful and informative introduction. What specific elements of the existing legislation are no longer fit for purpose in the 21st century?

Shirley Laing: Through the new bill, we are looking to build on the Kilbrandon principles and the welfare principles and to enshrine the rights of children.

Kenneth Gibson: Could the existing legislation continue quite comfortably, or does it contain cracks that the new bill seeks to fill? Is the new bill essential, or is it merely an enhancement of existing legislation?

Shirley Laing: The present system needs to change to provide the consistency, quality assurance and accountability that are required in the system.

Kenneth Gibson: How can consistency and quality be achieved and best practice be ensured, other than by legislative means?

Shirley Laing: We see the bill as providing the structural framework. The new structures will support cultural change that will lead to improved partnership working and improved relationships. The bill and children's hearings Scotland will set national standards on issues such as training, and there will be greater consistency in practice and approach. Much of that will happen through culture change, once the new structures are in place.

Kenneth Gibson: When the draft bill was considered last year, it was quite contentious and did not get far. What contentious issues remain, now that you have had a chance to consider the concerns that were expressed last autumn and to move forward?

Shirley Laing: We believe that there is broad consensus on the bill that is before the Parliament, but we will never get everyone to agree with every element of a piece of legislation. As outlined in the policy memorandum, one of the main issues is the local delivery mechanism. We have opted for area support teams, but other models were put forward.

Kenneth Gibson: What do you envisage that the link will be between the bill and getting it right for every child?

Shirley Laing: We see a clear link between the two. The children's hearings system must be seen in the wider context of getting it right for every child and early intervention. With early intervention and the getting it right for every child approach, only children who may need compulsory measures should come before a children's hearing, so we will use the resource of children's hearings more effectively to focus on those children and young people who require the service.

The Convener: It is right that the bill, which reforms existing legislation, takes account of GIRFEC. However, although everyone believes in the GIRFEC agenda, it is embedded at different stages in the 32 local authorities in Scotland. Some, such as Highland Council, which had a pathfinder project, have embraced it fully; others are at a less advanced stage of implementation. Is there a risk that we are reforming the children's hearings system a bit prematurely, before we are confident that GIRFEC is fully embedded? It is critical that there is an effective interface between GIRFEC and reforms to the children's hearings system.

Shirley Laing: We do not think that the reform is premature. We think that, for the reasons of consistency, quality assurance and accountability that I have outlined, reform of the children's hearings system is required.

The Convener: In your opening statement and in response to Mr Gibson, you mentioned that there remains some contention around the reform of the children's panel advisory committees. Will you explain to the committee why you feel that it is necessary to create a national body? What will be the difference between the national body and the system that currently operates?

Shirley Laing: Denise Swanson can answer that.

Denise Swanson (Scottish Government Children, Young People and Social Care Directorate): The current system of CPACs managing children's panels can be fragmented

across the country. There can be varying standards and processes. The bill offers an opportunity to put in place national standards for recruitment, selection, training and monitoring of panel members so that every child in every part of the country faces a panel of the same quality and standard.

The bill provides for national strategic leadership and ownership of and direction for the children's hearings system. It will create a sense of ownership—of panel members being part of a national system that is delivered in their local community. It will also provide opportunities for national evidence to be gathered on the effectiveness of the children's hearings system in improving outcomes for children, which the system is not particularly able to do at the moment.

The Convener: Did the Scottish Government consider doing anything else to improve consistency while safeguarding the local connection? Ms Swanson described what currently happens as fragmented and differing, but we could describe it as local responses to local needs, which is a great strength of the children's hearings system. I understand that many local authorities have considerable concerns about the creation of the national body. How do you respond to those concerns?

Denise Swanson: The CPACs themselves created a standardisation working group, because they were aware of issues of differentiation across the individual committees. However, it seemed fairly difficult for that group to reach consensus on standards of process and quality, and it was not as successful as it may have been.

The bill provides for an element of local flexibility through the area support teams, which will allow the system to adapt to local community needs. What is perhaps more important is that the effectiveness of those area support teams will be consistent across the country. As I said, every panel member who is part of the children's hearings system will be recruited, trained and monitored to the same standard, and the child will see the same service no matter in which part of the country he or she appears at a hearing.

The Convener: What will be the difference in operation between CPACs and the new area support teams?

Denise Swanson: The area support teams will be directly accountable to the national convener, who will be responsible for ensuring that standards are set. There will be a very consultative process, with the national convener working with local authorities and members of the area support teams to agree the standards that those teams will be accountable for meeting. Every panel member across the country will have the same level of support and the same access to training, and there will be accountability in the system, with the national convener being able to take steps if that is not happening.

10:15

The Convener: What business case did the Government make to ascertain that the structural changes were required? What improvement do you think that there will be as a result? The Convention of Scottish Local Authorities is quite clear that it does not believe that there is a business case for the changes. Local authorities have told me that they believe that the bill will create one new super quango, which will be very costly, take away local control and delivery, and undermine standards.

Shirley Laing: The challenge in all this is that we do not have national facts and statistics, because of the fragmentation in the current system. We know that there is not consistency. As we go round the country, we hear concerns being expressed by panel members and others about the support that is offered to them and the inconsistency in training, support and the level of expenses that they are paid. We know that things are not the same in every part of the country. I cannot give you hard statistics, because we have to base our information on anecdotes. Having a national body will help us move on from that and it will lead to a more robust and improved system.

We want to retain the local link. As I did my best to outline in my opening remarks, we have had many discussions with colleagues in COSLA and we feel that the bill addresses most of, if not all, the concerns that they had about localisation. We went down the route of area support teams for reasons of accountability and governance. We have been consulting on the need for change in the system for four or five years now in different guises. It is clear that change is required. As I said earlier, the challenge lies in achieving consensus about how that change is achieved.

The Convener: I accept that, but it strikes me that we might be talking about two separate issues. I think that everyone accepts that there is a need to monitor and evaluate properly what the children's hearings system does to see the positive effects that it has on many lives in Scotland. I do not think that we have done that effectively in the past. However, in attempting to do that, we might risk undermining the local delivery of a service that is run by volunteers who understand their community and who will feel alienated from the centre and might be less willing to participate in the future.

Shirley Laing: The bill envisages an on-going role in the system for local authorities and panel

members. However, we feel that national leadership is required to get the consistency, quality assurance and accountability that ministers think is lacking in the system.

The Convener: What services will local authorities provide to support the new administration?

Denise Swanson: The bill allows for local support to be delivered in much the same way as it is at the moment, if that is what is agreed between the national convener and local authorities. Under the current system, a combination of volunteers, CPACs and paid staff—the clerks who work for local authorities—provide support to panel members. That process can remain under the provisions in the bill. It would be the preference for volunteers to remain in the system, because they have experience, insight and knowledge that it would be valuable to retain. All those things are for the national convener to agree when he or she takes up post. The intention is that we will work with partners to provide some modelling of structures and processes that may be suitable for providing the area support that panel members need. We will start work with a group of partners before the end of this month.

The Convener: If what the local area support teams do will be more or less the same as what CPACs currently do, why are we making this change?

Denise Swanson: Because governance and accountability are missing. Local training is the responsibility of local authorities and we hear from panel members that there is not equitable access to training opportunities across the country. We would expect the national convener to ensure that there was such equity of access. Localised training is extremely important in helping panel members to understand the local context in which they operate. It supports partnership working with local authorities and the maintenance of a local link. At the moment, we do not have an equitable system for all panel members.

The Convener: It strikes me that we might be taking a sledgehammer to crack a nut. There are some things that the national convener could do, but CPACs could be allowed just to continue with their work. Perhaps the driver for the change is more to do with meeting targets on quangos than it is about improving service delivery, but it might be better to put that question to the minister when he appears before us.

I have a specific question that panel members have asked me. Who will be responsible for issues such as rostering?

Denise Swanson: Rota management will be done by the area support team.

The Convener: You are very clear about that. Will there be any input from the national convener?

Denise Swanson: No. It is a delegated function.

The Convener: How will you ensure that local decision making is fully maintained when—for the first time, thanks to the bill—panel members who are not from the geographic area concerned will be able to participate in hearings?

Denise Swanson: The national convener will have responsibility for ensuring that training, knowledge and understanding are shared among panel members, and for ensuring that the panel is constituted in a way that will deliver the needs of the hearing. If any decision were made to use a panel member from outwith a local area, it would have to be ensured that that panel member was fully aware and knowledgeable of the local context in which they would be working.

The Convener: I would have thought that a key strength of the hearings system is that it is made up of local people who understand the communities of which they are members. With the best will in the world, I might live in Lanarkshire and think that I understand Glasgow, but I am not from Glasgow. North Lanarkshire is very different from Glasgow and some of the challenges that we face are different. People might think that there are great similarities between the two areas, but huge chunks of North Lanarkshire have major transport issues that no one from outside the area would necessarily understand. Lanarkshire's transport infrastructure all goes towards Glasgow, but it is not possible to cut across the county using public transport. That is just one example of how vital local decision making is.

I have a slight reservation about the proposal, because giving someone a briefing before they sit in on a hearing will not necessarily mean that they will understand the local community. Breaking the link between panel members and the local area is an issue that is of concern to me. I believe that we should ensure that members of panels are local people.

Denise Swanson: It is not the intention that having someone from outside the area on a panel will be the norm. The norm will be to have three panel members who are drawn from the local community. The proposed flexibility would offer benefits in times of crisis. We did some crisis planning for the recent flu pandemic. Another circumstance to consider arises when a panel member moves home—at the moment, they have to resign from the panel and reapply in the new district that they live in. That will no longer be necessary. We risk losing that member's experience and wasting the investment in their

training when they move away if they cannot retain that status.

The issue of someone coming in from an outside area and being unaware of the local authority context would arise rarely—probably only in emergency situations. It is not the intention to make that the norm.

Margaret Smith (Edinburgh West) (LD): Shirley Laing said that, at the moment, you do not have access to the level of national information that you would have under the new proposals. What kind of data are you talking about? For what purpose would you use those data? Many people have told the committee that they have access to a range of information but that they take no action on the back of it.

Each local authority has different sets of circumstances and different services that might be available. What value is there in upsetting a system that works, with the support of local volunteers, by moving to a centralised, national system, unless you have a clear idea about the data that you will be able to get and the purpose of having that information?

Shirley Laing: I was alluding to the national overview that the national convener and children's hearings Scotland would have, which would enable them to learn from good practice around the country. In my opening statement, I mentioned the feedback loop. That is a way in which the national convener can be informed of how decisions are being implemented locally and the impact that that is having on children and young people, so that the system as a whole can learn from that. That information will also inform the training needs of panel members, to ensure that they are as trained, competent and confident as they can be when they go into a hearing. That is the level that I was talking about.

Margaret Smith: Nobody would disagree with the assertion that people should learn from best practice. However, it can become a bit of a mantra, and there are lots of examples of people not learning from one another's best practice, even when systems are in place to enable them to do so. A lot of children's panel members have told me that problems arise not from the practice of the panels but at the point when the matter goes outwith the panel, once the panel has made its decision, which is the point at which local authorities make decisions based on what services are available and how much money there is in various budgets. Many panel members have told us that, once they have made their decision, the matter does not necessarily get the resourcing that it needs.

What do you intend to deliver? What can the national convener do to ensure that the good practice that they find out about at a national level will be disseminated across the country, so that there is some benefit to the process? There is no point in someone having lots of national statistics on their desk if they have no powers to ensure that that good practice is adopted by others.

Shirley Laing: The new structure gives clear lines of accountability, down to area support team level, so there are mechanisms by which good practice can be disseminated from children's hearings Scotland directly to panel members.

On your point about panels' decisions not being implemented as intended, we, too, hear those anecdotes. We are keen to learn from what happens in local authorities. Local authorities make decisions based on the needs of their children in the same way that children's hearings panels make decisions based on the information that is before them. We must learn from the process and strip back the anecdotes so that we can understand better why the decisions that are made are being made, and the impact that those decisions have.

10:30

Margaret Smith: Let us suppose that, using the national information, you discovered that in large tracts of the country local government was failing to take action on panels' decisions. I understand that the national convener would be able to do something internally, within the organisation. However, what power would they have outwith the organisation to effect change at a local level? What mechanisms would they use to do that?

Denise Swanson: The bill makes provision for area support teams to be involved in local children's services planning in the same way that the principal reporter is involved in that at the moment. Influence could be exerted locally within that planning and engagement process.

The national convener might also be able to influence decisions outwith the organisation if a hearing asked the national convener to enforce one of its decisions. In that case, the national convener would follow various procedures to hold the local authority to account, if that was necessary. The expectation is that the transfer of information about the implementation of decisions between local authorities and the national convener would support a greater understanding of the level of implementation and of the reasons why certain decisions had not been implemented in the way that hearings wanted them to be implemented. If a decision was not being implemented because the local authority felt that a child's circumstances had changed, it would be possible to ask for a review of that hearing.

On the national picture and the national standards, the national convener will be able to quality assure the training that is provided to panel members nationally and locally and assess the effectiveness of that training with regard to the practice of panel members. At the moment, the training is input driven, and there is not a lot of knowledge about the impact that it has on the skills and abilities of panel members and the decisions that they make.

The Convener: On that point, is there not a conflict of interest in the role of the national convener? They will act as the regulator and ensure that the standards are met, but they will also be the public voice of the organisation, and it will be their job to champion the difference that panels make and the work that panel members do. We need to be clear what we want the national convener to do.

Denise Swanson: The national convener will be able to champion the difference that the system makes to outcomes for children by drawing on the evidence that they can gather as a result of the position that they hold and the functions that they carry out. They will act as an evidence-based champion of the system. They will be able to see where improvements could be made and have the power to make them across the system, rather than in a piecemeal fashion.

The Convener: Surely if the national convener's role is to be a public advocate and to say what a good job the system is doing, but you also ask them to be the regulator, they cannot be impartial in that regulatory role. There is an obvious conflict. What will the main priority be? Will it be regulation and ensuring that a thorough and robust evaluation of standards is carried out, or championing the hearings system? Both are necessary, but the question is whether they should be carried out by the same person.

Denise Swanson: Our view is that that is entirely possible. As I explained, the national convener, in setting standards and ensuring that they are implemented, will be able to provide evidence-based championing of the children's hearings system. They will be able to draw on evidence to illustrate how and why the hearings system is making a difference to children's lives. As I said, they will be able to identify where improvements can be made and they will work with partners from throughout the system to do that.

The Convener: The Scottish Government obviously believes that the approach can work, so that is what I expected you to say. However, did you receive representations that there might be a conflict of interest and, if so, did you consider that issue and, in formulating your view, decide that the strength of having a national convener with so many functions overruled any concerns that were expressed?

Gaynor Davenport (Scottish Government Children, Young People and Social Care Directorate): During the drafting of the bill, we identified areas of conflict. That is why some of the functions that the national convener can delegate to area support teams are categorised completely to area support teams. The function of the provision of advice cannot be given to area support teams, because there would be a conflict of interest, so that is a separate delegated function that area support teams will not be able to carry out. We are clear that, in the reforms, the national convener will have no authority whatever to interfere with the decision-making process of children's hearings. We tried to identify and iron out conflicts as they arose during the drafting of the bill, through the separation of functions.

The Convener: Thank you for demonstrating some of the changes that you have made. We might have to give further thought to those issues.

Claire Baker (Mid Scotland and Fife) (Lab): My questions are on structure, although some of them have been pre-empted by other questions, so I will try not to ask you to repeat yourselves. My first question is on the relationship between the principal reporter of the Scottish Children's Reporter Administration and the national convener of children's hearings Scotland. How do you envisage that relationship operating and how will it differ from the current arrangements?

Denise Swanson: The bill has provisions for mutual obligation between the SCRA principal reporter and the national convener of children's hearings Scotland, where that is appropriate. Obviously, there are issues about protecting the independence of decision making, but appropriate working relationships are supported through provisions in the bill. It is expected that those will be similar to the professional relationships that already exist in the system between the principal reporter, the Association of Directors of Social Work, local authorities and various other professional organisations that are involved in the children's hearings system.

Claire Baker: The key issue that I want to ask about is the relationship between the national convener and local authorities. We have already discussed enforcement, but do you have anything further to say on that or on how you envisage that relationship operating?

Denise Swanson: The bill makes provision for the national convener to consult local authorities on the establishment of area support teams, to take nominations from local authorities on membership of those teams, and to consult them on the functions of those teams. That provides a

clear practical link between the national convener and local authorities. There will also be work with local authorities on the feedback loop and the exchange of information on implementing decisions. Local authorities will still be responsible for implementing decisions from hearings, and hearings will continue to sit in local authorities—a child will still have the right to go to a hearing in his or her local authority. Therefore, strong practical links are provided for throughout the bill so that there are good relationships between the national convener and local authorities.

Claire Baker: Obviously, enforcement, which Margaret Smith has talked about, is key. It is proposed that the national convener will be able to seek an enforcement order, but it is not clear what kind of measures they can take to make a local authority carry out what a children's panel has decided. What are the levers or mechanisms? Have there been discussions and decisions on them yet?

Gaynor Davenport: The provision is not new. The 1995 act has exactly the same provision for children's hearings to direct the principal reporter to take enforcement action against a local authority. SCRA can recall only 10 cases in which such a direction was made, and in those cases the principal reporter did not use their discretion.

Under the bill, when a children's hearing directs the national convener to take enforcement action, a review process will be triggered. That is likely to happen when a child has gone before a panel and the panel thinks that an order has not been implemented. An application for enforcement will be sought at that stage. During the application process, there will be a 28-day period for the local authority to take action to ensure that the supervision requirements are implemented. The child's changing circumstances will be taken into account. Often, supervision orders are not implemented because of the dynamic environment and changing circumstances. The first step merely triggers a process to allow the child, their family and the local authority to get back together and consider the child's needs. If the local authority does not have proper reason for not implementing the order, the next and final stage could be the national convener taking it to court, as is the case under the current law.

Claire Baker: Thank you. That is helpful.

How much of a role will financial constraints play? We are all aware that local authorities and other public services face a tighter financial environment.

Gaynor Davenport: That important provision strengthens the system. There is a clear message that the decisions of panel members should now be independent of resources, financial or otherwise. It is not just about services in a particular local authority; local authorities can buy in services if a child needs them. Children could go to secure accommodation in Wales. Decisions should be made completely independently of financial considerations. If the ultimate step of enforcement action is taken, local authorities will not be able to claim a lack of financial or any other resources as justification for not implementing an order.

Claire Baker: That is helpful.

Finally, under the new proposals, will there be any changes to the sheriff's role in the system?

Gaynor Davenport: No, there will be no changes. There may be some changes to court rules in general, but the sheriff's role has not been interfered with in the drafting of the bill.

10:45

Elizabeth Smith (Mid Scotland and Fife) (Con): The term "business meetings" in the original draft bill was changed to "pre-hearings" in the current bill. Can you clarify the thinking behind that change? What are the advantages of a pre-hearing over a business meeting?

Denise Swanson: The term "pre-hearing" describes much more clearly what a business meeting is. It is simply a clarification.

Elizabeth Smith: I want to tease out the nature of the clarification, as it is quite a change in terminology. I am interested to hear exactly what you expect that a pre-hearing will do. Will it involve anything different from what would have happened in a business meeting?

Denise Swanson: It reflects the idea that the business should be conducted in an open, inclusive and transparent way. The bill provides for the child and relevant person to attend a pre-hearing if they so wish, but they do not have an obligation or a duty to attend. Current practice is that they are made aware that a business meeting will be held, and they can provide comments or views, which the reporter presents to the panel.

Elizabeth Smith: So the change is an attempt to improve transparency and accountability.

Denise Swanson: Yes.

Elizabeth Smith: There was considerable controversy about emergency protection orders when the original draft bill was published. Representations were made to the committee on that issue. The thinking on that element has now changed. Can you explain why?

Gaynor Davenport: During the consultation process, we received a significant response on child protection orders. In fact, we are in practice

changing very little in that respect. Practitioners found that the orders were sound, and that there was no reason to change them. We changed the label to "emergency protection order", and stakeholders were outraged.

The child protection order is one of the few orders that are born outside the children's hearings system. The only real change that the bill makes to those orders in practice is to extend some of the non-disclosure information to parents and relevant persons. That information could be as simple as the name and address of the place of safety.

Elizabeth Smith: You described the stakeholders as being outraged; I was going to be a little less strong on that, but there was obvious concern. Are stakeholder groups much happier with what is proposed in the current bill?

Gaynor Davenport: Yes. The proposal in the current bill is very much the same; the concern was really about the fact that we had taken the term "child" out of the name of the protection order. As I mentioned, the order is born outside the children's hearings system, so we had decided to call it simply an emergency protection order. Every other order in the children's hearings system relates to the child, but those orders are within the context of that system. As this order is born outside that system, it was important to stakeholders that the tag "child" was attached to it. However, the draft bill contained no real change to current practice in any case, and there have been no revisions. There was no demand for revisions to the draft bill, apart from a change to the label.

Elizabeth Smith: How has the warrant system been improved in the current bill? That was another area of controversy.

Gaynor Davenport: There is consensus that the current warrant system, which operates under the 1995 act, is extremely complex and difficult to understand. SCRA has called for a single warrant order for many years, as panel members find the system difficult to understand. Around 12 sections in the 1995 act relate to what could be just a few outputs in relation to warrants. A place of safety warrant is the most commonly used warrant in the children's hearings system. In the bill, we have tried to streamline and rationalise the procedures for warrants.

Let me take a little step back to talk about the interim compulsory supervision order, which is a new measure in the bill that provides for the rationalisation of warrants. Basically, interim compulsory supervision orders can have two key components. One of those is a place of safety warrant—this involves no real change to current practice—whereby a child is removed from home into a place of safety under urgent circumstances. The second component, which is an issue that we consulted on, is that the order is an interim measure that may be less intrusive than taking a child away from home, as the bill provides that any condition that is currently contained in a compulsory supervision order may be attached to an interim order. Whereas previously we had only place of safety warrants, we will now have place of safety warrants combined with the new interim arrangements, rationalised into one order. That will give greater protection for the child. For example, as the policy memorandum mentions, a child could be given extra protection by allowing them to be kept at home but imposing a condition that is similar to that of a compulsory supervision order.

It is important to note that interim compulsory supervision orders will not be issued casually, as they will still be subject to the test that the circumstances are urgent and that the measures are necessary

"for the protection, guidance, treatment or control of the child",

which is the wording in the 1995 act.

Elizabeth Smith: My final question is about the ability to make an "appeal" to the sheriff, which the draft bill had proposed would be changed to "review". Why do you feel that "appeal" will work better?

Denise Swanson: We received representations on the draft bill, which was a working draft, about the wording and phraseology of "review" rather than "appeal". The bill as introduced reverts to the familiar language of "appeal", but it retains the intention to clarify that the sheriff has at his disposal power to conduct, if he thinks it absolutely necessary, a wide review of the circumstances of a hearing decision. We understand that such powers would be used infrequently, as sheriffs remain of the view that hearings are the best place to make decisions about children, but there may be occasions on which the sheriff considers that a wider review is necessary.

Christina McKelvie (Central Scotland) (SNP): Good morning, panel. I want to move on to look at the United Nations Convention on the Rights of the Child and the European convention on human rights. How have those been embedded in the bill? In particular, I have three areas of interest: the age of criminal responsibility, the right to confidentiality and the right to appeal.

Daniel Kleinberg (Scottish Government Children, Young People and Social Care Directorate): The age of criminal responsibility is not dealt with in the bill. As you will be aware, the Criminal Justice and Licensing (Scotland) Bill takes steps to raise the age of criminal

prosecution to 12, which will keep young people out of the court system.

Christina McKelvie: Can I explore that a wee bit with you? How will the Children's Hearings (Scotland) Bill link with the Criminal Justice and Licensing (Scotland) Bill? If we increase the age of criminal responsibility in the latter but still have an age of eight for criminal referral to the panel in the hearings system, how will that situation remedy itself? Do we need to remedy it in the bill?

Daniel Kleinberg: I do not quite see the thrust of your question. The intention is to keep children out of the court system. A referral on offence grounds will still take the child into the children's hearings system, which is based on the welfare and needs of the child.

Christina McKelvie: There is still a debate about the age gap, is there not? That is my reading of the situation.

Laurence Sullivan (Scottish Government Legal Directorate): The offence is a ground for referral, but the issue is not the offence but the conduct or behaviour behind it. The bill does not deal with the criminal age of responsibility. The issue of 12 is outwith the scope of the bill; it would be a matter for the Criminal Justice and Licensing (Scotland) Bill. Any decisions on amendments to the scope of the bill would be a matter for the convener.

Christina McKelvie: Will that be made clear in guidance? I have spoken to people who are wondering about the difference between the age of criminal responsibility on the one hand and the grounds for referral to the hearings system on the other. Will that be made clear for the panel members who make decisions?

Laurence Sullivan: That will be a matter for the training that is provided to panel members by the national convener. It will be made clear that even though the bill, like the 1995 act, states that a child can be referred to the children's hearings system on offence grounds, that does not mean that they committed an offence, because they are not subject to the criminal justice system.

The Convener: Before Christina McKelvie moves on, I have a question on that. What consequences will there be for criminal records? Will the change make a difference?

Denise Swanson: If an offence is considered an offence under the Rehabilitation of Offenders Act 1974 and the Police Act 1997, it will be placed on the disclosure record as an offence, under current procedures.

The Convener: Will that be the case in the future even if the Parliament decides to raise the age of criminal responsibility to 12?

Denise Swanson: I think that that is being considered as part of the Criminal Justice and Licensing (Scotland) Bill. Depending on the outcome of that, it could be considered under the terms of the Children's Hearings (Scotland) Bill.

The Convener: I do not know that you have made things clear for either Ms McKelvie or me. Perhaps you can provide some clarity in writing to follow up on those points, particularly on criminal records. That would be helpful.

Denise Swanson: I am happy to do that.

Christina McKelvie: The convener said before the meeting that she could not read our minds, but she read mine and pre-empted my next question.

I will move on and ask about the right to confidentiality and the right to appeal, which are new things that children's and young people's organisations are crying out for. I am interested in the proposed right to information and the proposed right to confidentiality, whereby information is not automatically passed on to the relevant person, be that the parent or whoever. Will you explain how that makes the system different and how it takes forward children's rights?

Denise Swanson: Do you want me to start with the right to withhold information?

Christina McKelvie: Yes.

Denise Swanson: The bill makes a new provision that states that the panel need not disclose information about the child to a person if disclosure would be significantly against the interests of the child. The information could have been provided to the hearing by the child or by another person. The bill makes the test for that intentionally high. In deciding whether to withhold information, the hearing will need to be satisfied that the high-level test of significance is met. That benchmark is used elsewhere only in child protection legislation.

11:00

The provision could capture the withholding of a wide spectrum of information, ranging from the child's address or place of residence to information about some of or all the supervision requirements. We expect the provision to be used rarely to withhold permanently information that the child provides. It could be used to withhold such information until or beyond the time when reasons for a decision were provided, but the test would be high—the hearing would need to be satisfied about the risk of significant harm to the child to justify withholding that level of information from a relevant person.

Christina McKelvie: Can we move on to the right to appeal?

Denise Swanson: Are you asking about the right to appeal generally or in relation to secure accommodation authorisations?

Christina McKelvie: I am asking about the right to appeal in general, but I also have a question on secure accommodation, if you want to cover that, too. I am particularly interested in the changes to secure accommodation authorisation and implementation and in whether they will protect the child's rights under article 6 of the ECHR.

Denise Swanson: The bill retains the general provision that a child's relevant person can appeal a decision that a hearing makes, and it adds the right for a safeguarder to appeal such a decision. The current appeals process will be retained, so that will not change, apart from the inclusion of safeguarders, which is in response to representations from safeguarders.

Daniel Kleinberg: The bill provides for a right of appeal to a sheriff on the implementation by a chief social worker of a secure accommodation authorisation under section 145. A secure accommodation placement ultimately deprives a young person of their liberty, so it is absolutely right to maintain the part of the process that allows for professional judgment about whether the placement in secure accommodation is in the child's best interests at that point. We have spoken about how that judgment is dynamic.

Agreement is uniform that only young people who must be in secure accommodation should be there. When the idea of removing the chief social worker's discretion was consulted on for the proposed children's services bill in 2007, it did not find favour, so retaining that legitimate flexibility is important.

The current bill therefore acts to make the process as transparent as possible. That is why we propose powers to set standards of decision making through regulations and a right of appeal to a sheriff against a decision.

Christina McKelvie: Article 6 of the ECHR gives a child the right to a fair hearing before an independent and impartial tribunal. Who acts as the tribunal?

Daniel Kleinberg: It is worth recounting the stages in the process that is set out in the bill. First, the children's hearing is required to issue the authorisation. The decision to make that authorisation is subject to an appeal to a sheriff. Secondly, the chief social worker may implement the authorisation, with the agreement of the head of a secure unit. That decision-making process will be specified in regulations and will also be subject to an appeal to a sheriff.

Christina McKelvie: Do the changes to the definition of "relevant person" satisfy entirely the article 8 right to respect for family life?

Denise Swanson: The bill makes a couple of changes to relevant person status. We have clarified the criteria for establishing the legal fact by which someone automatically receives relevant person status.

The bill also makes provision for someone who considers that they have significant contact with and control over a child to make a case before a pre-hearing to be considered a relevant person. A hearing would decide whether providing the person with relevant person status was justified. Article 8 rights under the ECHR would form a relevant part of that decision-making process, and the process would be set out in guidance.

Our intention is to ensure that the test catches people who exercise significant control over the way in which a child is brought up, as opposed to the day-to-day control that is exercised by a grandparent who might look after a child a couple of days a week, for instance. There is an element of significance in relation to the part that the person plays in a child's life.

Christina McKelvie: I am looking at the figures that we received from SCRA. Approximately 34,000 referrals to the children's hearings system were basically on the ground of welfare. About 15,000 involved alleged criminal behaviour or behaviour beyond parental or relevant person control. Will observance of the UNCRC and human rights legislation be enough to maintain a welfare-based approach to the hearings system? I have been concerned about the process becoming more one of criminalising young people, and about a perception of that—even though I know that that perception is not the truth. How can we maintain a welfare-based approach to the children's hearings system, rather than a criminal approach?

Shirley Laing: In our view, the bill absolutely retains and builds on the Kilbrandon principles. It retains the welfare principle at its heart and involves consideration of needs alongside deeds. We view hearings as the best forum to make decisions for the child, bearing in mind the importance of involving the child in the discussion. Indeed, that builds on the GIRFEC approach.

The Convener: I have a question about ECHR. Is the Scottish Government confident that, in reforming the children's hearings system, it is protected from any future ECHR challenges?

Laurence Sullivan: ECHR challenges are always likely, with thousands of children's hearings taking place across the country every year, all involving different children, facts and circumstances. Some such hearings go to appeal and, in addition to the substantive appeal, the

appellant might attach a human rights argument, in which case it becomes a devolution issue in terms of the Scotland Act 1998. Appellants are perfectly entitled to make such arguments.

Some challenges might involve attacks on the legislation, rather than saying that the hearing made a wrong decision on the day. There could be a systemic attack, for instance, on something incompatible in the legislation. That has been the situation in two cases in the past 10 years: S v Miller in 2001 and the SK case in 2009. It is always likely that people will find ways to challenge and test the system on ECHR grounds, as they and their solicitors are entitled to do.

The Scottish Government's view is that the bill is ECHR compatible.

The Convener: Is there any risk that making the national convener a ministerial appointment poses grounds for an ECHR challenge, as someone could question the national convener's independence?

Laurence Sullivan: The Government's view is that that provision is ECHR compatible, given the security of tenure that will be given to the national convener when they are appointed.

Aileen Campbell (South of Scotland) (SNP): My question is about the relevant person and has already been touched on. Why was the terminology changed from that of the 2009 draft bill back to that of the 1995 act? I think that the phrase "recognised carer" appeared in the draft bill.

Gaynor Davenport: Views were expressed by stakeholders, who asked us to change the terminology. It was not the same response that we got about changing the child protection order. There were concerns, so we went through the bill line by line, after June, considering whether we needed to change the wording. Some people liked the old name, and some people liked the new name. We just made a drafting decision to change the label back. We had no substantive reason for changing it other than a drafting prerogative.

Aileen Campbell: Let us return to a point that Denise Swanson made. Problems have been identified with removing from the reporter and giving to the hearing the assessment of a person as a significant carer of a child. Part of the problem is the fact that a significant carer will not get notice of or be involved in CPO proceedings and will not be entitled to legal aid until after the pre-hearing or the hearing has made a decision. What is your response to that?

Denise Swanson: We expect that the reporter will provide information on an impending hearing to everyone who has automatic relevant person status and those who may fall into that category. We also expect that someone who has a significant role in the child's life will know about the hearing anyway and will be able to make representations to the reporter. Not only the potential relevant person, but the reporter, the person with automatic relevant person status and the child will be able to ask for a pre-hearing to consider the case.

Aileen Campbell: And the safeguarder?

Denise Swanson: No. There are a range of ways in which someone can make a representation to the reporter to arrange early in the process a pre-hearing, at which the reporter decides whether a child should be referred to a hearing.

Aileen Campbell: There are concerns that the bill excludes guardians and those with right of contact. Do you imagine that those people will be caught in the way that you have described? Do you foresee any problems down the line because people do not have that assumed notice of the pre-hearing or CPO? Is there a chance that those people might not get the notice that you envisage?

Denise Swanson: Yes, there is always the potential for that to happen. However, we hope that such issues will be addressed through the guidance that we will draft to support the process, which will be developed in consultation with a range of partners.

Aileen Campbell: So, the guidance will cover that possible gap.

Denise Swanson: It will cover the decision-making process, the framework for decisions and so on.

Aileen Campbell: Do you believe that the updated grounds for referral are sufficient to capture children who are at risk while excluding those who are not at risk? Concerns have been raised about some of the new grounds. Are they in need of greater clarification, or are some perceived as being too broad?

Denise Swanson: It is important to remember that there is a two-pronged test. We consulted widely on the grounds for referral through a bill group that worked with us, and there was broad consensus in that group on what is in the bill. There are two aspects to the referral of a child to a hearing: the grounds for referral that the reporter identifies and any compulsory supervision measures that the reporter considers the child may need. We expect to see both those aspects in a twin-track approach to capture every child. Obviously, that will be combined with the GIRFEC and early and effective intervention work that is under way. We certainly do not anticipate there being gaps that children could fall through. In fact, the domestic abuse ground was put in place

because we received information that children in a household where domestic abuse was taking place were at risk of not being able to be referred to a hearing.

11:15

Aileen Campbell: Was that because of the definition, or because of the lack of a definition?

Denise Swanson: Because of the lack of a ground for referral on that subject.

Aileen Campbell: It has been suggested to us that there might need to be greater clarity on the definition of domestic abuse as opposed to abuse.

Ken Macintosh (Eastwood) (Lab): Before I move on, I will pick up on the point about legal representation. I want to check that the legal representation of adults is still covered by the Scottish statutory instrument that went through the Parliament last year—the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009.

Denise Swanson: It is still covered at present.

Ken Macintosh: The bill, when enacted, will replace that SSI in some, but not all, situations. Is that correct?

Denise Swanson: The circumstances in which a relevant person can have access to state-funded legal representation will remain the same, but the provider of that legal representation will change—it will transfer to the Scottish Legal Aid Board.

Ken Macintosh: Effectively, legal aid will automatically be provided in certain cases—there will be no means test in serious cases, for example.

Denise Swanson: Yes.

Ken Macintosh: In other cases, will the decision be made by SLAB, or will it be made under the Children's Hearings (Legal Representation) (Scotland) Amendment Rules 2009?

Denise Swanson: There will be no provision for legal representation under the current scheme, if the bill is successful in its passage. All aspects of that will transfer to the Scottish Legal Aid Board. However, you are right that a means test will be applied, which is not presently applied.

Ken Macintosh: So in serious cases legal aid will automatically be granted. Is there still to be a decision on a means test? Will there definitely be a means test in other cases?

Denise Swanson: The bill makes provision for there to be a means test. The bill also makes provision for legal representation to be provided in a variety of ways. The current system of giving advice and assistance before and after hearings will continue to be available. Currently, that is provided through SLAB. Assistance by way of representation will be available to children and relevant persons who meet the criteria, which are the same criteria as in the SSI that you mentioned. Legal aid will be automatically available to children in urgent cases. We expect it to be available in circumstances in which a child protection order is sought. If a child is arrested by the police, legal aid will be available automatically for the child and the relevant person. If a child has not sought legal representation but secure accommodation is a likely consideration, SLAB will be directed to appoint a legal representative for that child for their hearing.

Ken Macintosh: Putting the issue of serious grounds to one side, the decision will now be one for SLAB, but the rules that it will use will effectively be the same as those introduced in the SSI last year.

Denise Swanson: Yes.

Ken Macintosh: May I ask another question about the consultation generally? I think that you said earlier that there is now broad consensus—I appreciate that it has been a difficult process—but that one outstanding area might be local delivery, because COSLA and local authorities are in disagreement. How do you intend to resolve that? Or how do ministers intend to resolve that?

Shirley Laing: We are certainly in continuing discussion with COSLA on that. Our view is that the structure in the bill addresses the convention's concerns, apart from the accountability route, which we felt was lacking from the COSLA model.

Ken Macintosh: Are any discussions on-going with COSLA to try to resolve that, or is the matter in effect closed?

Shirley Laing: The position in the bill is the Government's position.

Ken Macintosh: Did stakeholders make any other proposals that have not been included in the bill?

Shirley Laing: The other main issue beside the one that we have just touched on was the proposal for a statutory right to advocacy support in children's hearings. That has also been highlighted in the policy memorandum. Although there was agreement that it was incredibly important that the child's voice be heard and that they had support, there was no consensus on how such support should be provided. We will do some further thinking on that, so it is not in the bill at the moment.

Ken Macintosh: Do you expect to introduce something on that during the bill's progress

through the Parliament or to introduce something non-statutory after the bill has been passed?

Shirley Laing: Our expectation is that it will be non-statutory.

Ken Macintosh: Section 173 allows local authorities to provide information to panel members through the national convener. However, such information will be non-specific; it will not identify individual cases. Why not? Why have you decided not to allow panels to be informed about the cases that they deal with?

Shirley Laing: That is the feedback loop to which I have been referring. We do not want to place an undue burden on local authorities to report back on individual cases. We look to garner examples of best practice and the impact of decisions that have been made and to elicit where there are differences in decisions that hearings make so that we and the panel can learn from that and do so on a broader basis.

Ken Macintosh: Does the Government have a view about whether there is an issue with the implementation of panel decisions throughout the country?

Shirley Laing: We do not have a firm view but, as I mentioned earlier, we hear from some panels that they are frustrated when decisions about which they have thought long and hard have not, they perceive, been implemented in the way that they envisaged. However, we do not have hard data on that.

Ken Macintosh: Is it your view that it would be unduly expensive or an undue administrative burden to ask local authorities to report back on what they do following a hearing?

Shirley Laing: The purpose of the feedback loop is to learn from the impact of decisions. We do not need to do that for individual cases, so we do not envisage asking for the information on individual cases.

Ken Macintosh: Do you agree that there is quite a difference between a children's hearing and a court case in which a decision is reached on the future of an adult and duties are placed on local authorities? If the duties that a court decision places on anybody are not followed through, there are severe consequences, but it is not uncommon for the decision of a children's hearing not to be followed through. Does that not concern the Government?

Shirley Laing: I agree that there is a difference.

Ken Macintosh: Is it not a matter of concern?

Shirley Laing: We feel that the provision in the bill that establishes the feedback loop will provide the national convener and children's hearings Scotland with some evidence on that situation.

Ken Macintosh: Have you asked panel members whether they would be satisfied with that measure? They are the ones who raise concerns that they take decisions that are not implemented. The common complaint is that a case comes back to them next year and nothing has happened. Does that give you no cause for concern?

Shirley Laing: That is why the feedback loop provision has been included in the bill.

Ken Macintosh: Why would a feedback loop, which tells us about a local authority's overall performance but gives us no information about an individual case, reassure any panel member?

Shirley Laing: It will do so because we are also introducing enforcement changes. If a panel feels that there has been a breach of a duty, the national convener can take up the matter in the manner that my colleague described earlier.

Ken Macintosh: You have already said that that power exists but is never used—or it has been used in 10 cases. You are not changing it. It is not a new power at all, is it?

Denise Swanson: It is new in the sense that, at the moment, it is at the principal reporter's discretion whether to follow through with a request from a hearing; the national convener has no discretion to enforce such decisions. Now that process will be put in play by the national convener.

Ken Macintosh: Is the move expected to affect the number of cases in which this course of action is used?

Denise Swanson: Possibly, because the convener will be able to gather information from the local authority on, for example, whether the decision has been implemented or why it might not have been. As I said earlier, if it has not been implemented because the local authority considers that the issues in the child's life have changed, the local authority is responsible for seeking a review of the decision. There are a number of ways in which the national convener can address the situation, but there might well be an increase in the number of enforcement issues being raised with local authorities.

Ken Macintosh: Is there any feedback loop at the moment? Will the information and feedback that you seek be provided automatically or will each hearing have to ask for it specifically from each local authority?

Denise Swanson: The national convener will ask for the information and local authorities will have a duty to provide it. The fact that the provision does not cover any irregularities gives the national convener the flexibility to stipulate how regularly he or she might expect these reports from local authorities.

Ken Macintosh: The question that I was about to ask is probably better put to the minister.

I want to go into more detail about criminal records, which Christina McKelvie and the convener asked about earlier. Am I right in thinking that if a young man of 14 or so commits a sexual offence, goes before a children's hearing and accepts the grounds, the offence stays on his criminal record?

Denise Swanson: Yes.

Ken Macintosh: Could the record be challenged or expunged before the information went on to a disclosure record or would it automatically go on to a disclosure statement?

Denise Swanson: It would go on automatically.

Ken Macintosh: In such cases, there is clearly a conflict between helping young people and trying to give them the best start in life and tarring them with a reputation that they might or might not deserve. When a child is asked to accept the grounds of an offence, are they made aware of the fact that it will become a criminal offence, will give them a criminal record and will follow them for many years to come?

Denise Swanson: My understanding is that that should happen. I am not able to provide any evidence that it happens at every hearing, but the expectation is that it would happen. I think that SCRA also provides a leaflet for young people in those circumstances.

Ken Macintosh: I have to go back to this, because it is still a bit unclear to me. Under what legislation is this matter decided? In other words, how long does an offence committed by a young man of 14 stay against his name?

Denise Swanson: The matter comes under the Rehabilitation of Offenders Act 1974 and, I believe, the Police (Scotland) Act 1967.

Ken Macintosh: Are those acts being reviewed at the moment?

Daniel Kleinberg: There is a question about the retention of offence grounds from the children's hearings system. We are aware of it, and are actively considering whether it needs to be addressed.

We must take into account the needs of public safety. Where there are serious grounds that can be accepted at a children's hearing, it is right and proper that that information should remain on a person's record. We will write to the committee on the matter, as it is under active consideration.

11:30

Ken Macintosh: I am anxious that we should have information on the matter while the bill proceeds. A number of pieces of legislation are coming our way. Both subordinate legislation under the Protection of Vulnerable Groups (Scotland) Act 2007 and the bill touch on the matter, yet neither seems to control it directly. The issue seems to be subject to a separate piece of legislation that is not before the Parliament—it is being considered, but it is not being amended. Can you assure us that we will have a chance to look at the issue in the round during consideration of the bill?

Daniel Kleinberg: Yes. We still need to seek a position on the matter from ministers, but I expect that shortly we will be able to write to the committee indicating when and where we expect any response to take place.

Ken Macintosh: To summarise, the current position is that if someone admits to a sexual offence at the age of 14 and accepts the grounds, we do not quite know whose job it is to inform them that that will be on their criminal record and how long it will be there.

Denise Swanson: As I said, the SCRA provides a leaflet that explains the circumstances. Such issues are discussed with the child, as part of the discussion that takes place between the hearing and the child.

Ken Macintosh: So the situation should be clarified at the hearing, by the panel or by the reporter.

Denise Swanson: By the panel and the SCRA.

Ken Macintosh: When the grounds are read out to a child, it should be spelled out that, if accepted, the child will have a criminal record, which will stay with the child for two decades, or whatever the rule is.

Denise Swanson: If it is a sexual offence, the 20/40 rule applies.

Ken Macintosh: Under the new disclosure legislation, the child will automatically be included on the list of sex offenders. The Government is looking at the issue in the context of the Rehabilitation of Offenders Act 1974 but not in the context of the bill.

Daniel Kleinberg: The provisions that operate currently are in the 1974 act, so the matter is not being considered at the moment. Any action to address it would require the 1974 act and, I think, the Police (Scotland) Act 1967 to be amended. We need to identify the best mechanism for taking forward a decision on the issue.

Ken Macintosh: If, at the age of 14, a child admits a sexual offence that stays on their record for some time, do they have any right of appeal, so that their name may be removed from the list of sexual offenders?

Denise Swanson: They have the right to seek a review by the sheriff of the determination of grounds.

Ken Macintosh: Currently?

Denise Swanson: Yes, under both the 1995 act and the bill.

Ken Macintosh: Would that affect the record?

Denise Swanson: If the sheriff upheld an appeal against the determination of grounds that took place at the hearing, the acceptance of grounds, which leads to the criminal record, would be expunged.

Ken Macintosh: If the child accepted the grounds at the age of 14 but did not discover that they had a record and were on the sex offenders register until they applied for a job at 18 or 20, would they be able to challenge it at that point?

Denise Swanson: That would be a matter of disclosure.

Laurence Sullivan: Section 114 and the following sections provide for that situation. They essentially replicate what is in the 1995 act, which allows a review by the sheriff of the grounds determination, even when the child is an adult. If a 19-year-old accepted grounds of referral or had those grounds established by the sheriff when he was 14 and new evidence comes to light and he thinks that those grounds should never have been accepted by him or established by the sheriff, he has a right to go the sheriff for a review. That is provided for by the 1995 act and is carried forward in this bill.

Ken Macintosh: Thank you for that. I will say for the record that there is a concern, which has now been raised by three committee members. In a way, the issue that we are discussing runs counter to the ethos of the children's panel system of addressing needs rather than deeds and therefore it may place burdens on young people into adulthood that are not deserved or fair. I would welcome further information on the minister's approach to criminal records as the bill progresses.

The Convener: I am sure that the officials will take those views on board.

That concludes our questioning today. I thank the officials for their attendance and for responding to our questions. I am sure that this will be their first appearance of many over the next few months, and we look forward to their returning to the committee shortly.

11:37

Meeting suspended.

11:43

On resuming—

Subordinate Legislation

Refuges for Children (Scotland) Amendment Regulations 2010 (SSI 2010/59)

The Convener: Item 2 is consideration of a Scottish statutory instrument. I advise members that no motion to annul has been lodged and that the Subordinate Legislation Committee made no recommendation on the regulations. Unless members have any comments, we will move to the question.

Does the committee agree that it has no recommendation to make on the regulations?

Members *indicated agreement.*

Meeting closed at 11:44.

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