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Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 22 September 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
23rd Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)
*Claire Baker (Mid Scotland and Fife) (Lab)
*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:

Adam Ingram (Minister for Children and Early Years)

THE FOLLOWING GAVE EVIDENCE:

Stuart Eydmann (Royal Town Planning Institute in Scotland)
Charles Strang (Royal Town Planning Institute in Scotland)
Dave Sutton (Heads of Planning Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 2

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 22 September 2010

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

Decision on Taking Business in Private

The Convener (Karen Whitefield): Good morning. I open the 23rd meeting of the Education, Lifelong Learning and Culture Committee in 2010. I remind all present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

We have received no apologies from committee members. However, I understand that Claire Baker and Margaret Smith are running late.

Agenda item 1 is a decision on whether to consider a matter in private. Does the committee agree to consider its future work programme in private?

Members *indicated agreement.*

Historic Environment (Amendment) (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is the committee's continued consideration of the Historic Environment (Amendment) (Scotland) Bill. I am pleased to welcome Dave Sutton, who is representing Heads of Planning Scotland; Charles Strang, who is the Scottish planning policy officer with the Royal Town Planning Institute in Scotland; and Stuart Eydmann, who is a member of the RTPI. I thank them for attending the committee and for their written submissions in advance of the meeting.

The committee will put a number of questions to the witnesses. I will start.

How easy is it to access reliable and accurate information about the condition of historic buildings, scheduled monuments and listed buildings? Are the witnesses confident that it is easy to access that information and that, when they access it, it is up to date and accurate?

Dave Sutton (Heads of Planning Scotland): The pastmap website is excellent for accessing information on listed buildings in that we can find the list description of the building and search for it by parish and area. It is good for finding out whether a building is listed. I understand that Historic Scotland is moving to do the same with scheduled monuments but is not quite there yet. The work on the historic environment record is at a much earlier stage because, although it is mentioned in the Scottish Planning Policy, I am not sure that we are all aligned with the European regulations. Heads of Planning Scotland is liaising with the Royal Commission on the Ancient and Historic Monuments of Scotland and Historical Scotland. In time, that will all come together.

The basic information on the listing of a building is less of an issue, but the picture on the condition of the building is much more mixed. My authority was surveyed early for the buildings at risk register. When that survey was carried out, all categories of listed building were included but, subsequently, Historic Scotland has surveyed only category A buildings for the register. I am not convinced that that provides a robust enough picture. There is more work to be done to get an up-to-date record.

In England, there is the heritage at risk survey, an electronic survey that English Heritage carried out. The agency got an 81 per cent response from local authorities, but that survey enabled it to have

a big picture of not only the category A buildings but all categories of building.

There is scope for the RTPI, the Institute of Historic Building Conservation and local authorities to work with Historic Scotland to get a better annual update. The most recent report from Scotland's historic environment audit was in 2007 and we have just had the draft data for 2010. What about 2008 and 2009? The SHEA report should be an annual publication.

Stuart Eydmann (Royal Town Planning Institute in Scotland): We agree that access to information on individual buildings and individual cases in Scotland is good and getting better. There may be a deficit in the general picture of the built environment in Scotland as a whole—precisely how many buildings are at risk, how many historic buildings there are and where they are. In the higher-level information, we sometimes struggle to get a good snapshot of the state of the country's historic environment, but the information on individual cases is good.

The Convener: Does the legislation need to be amended to allow that information to be collected annually or could the matter be more easily addressed through guidance? Could it even be something that the minister could address by directing Historic Scotland to undertake that work? It would be helpful to know your opinion on the most effective way in which that could be done.

Dave Sutton: There would not necessarily be any benefit from legislation on that. Elected members could just expect Historic Scotland to produce an annual statement. I put a link in my report to the Scottish Environment LINK that sets out a page and a half of suggested performance initiatives. We still do not have clarity from Historic Scotland on how our councils are to be assessed on their performance on the historic environment. We do not know how many times urgent works and repair notices are being served, yet every quarter we get a freedom of information request from a private sector solicitor asking us for that information. It would be much better for Historic Scotland to be proactive, and to collect that information and publish it, so that everyone can see it and we can compare how different authorities are doing. Instead, one private firm pursues it, and we have to spend our time dealing with freedom of information requests.

When we are considering the legislation on enforcement, the question to ask is whether it is being used. To put it another way, are we sharpening a knife and then putting it back in the cupboard, where it is not being used? We welcome the general thrust and direction of the bill but, at the end of the day, is the legislation being effective? There are concerns about the deterioration of the historic environment and whether it is being effectively monitored.

The Convener: Do you believe that that monitoring role should sit firmly with Historic Scotland?

Dave Sutton: Yes.

Kenneth Gibson (Cunninghame North) (SNP): In its submission, the Royal Town Planning Institute in Scotland called for an extension of listing definitions to include

"historic road or footpath surfaces which are currently largely unprotected."

However, the Scottish Rural Property and Business Association believes that any expansion of the definition of "monument" would make it too wide and too vague. Will the RTPI expand on its suggestion that monument listings should be extended to cover historic road or footpath surfaces?

Charles Strang (Royal Town Planning Institute in Scotland): Just to clarify, the reference is to the listing of buildings not the scheduling of monuments. We understand that there is a lacuna in the legislation that means that the surface treatment in the Square in Kelso, for example, cannot be listed. There appears to be case history in which proposals for listing have been knocked back by what were described as "Scottish Office lawyers", who took the view that it was not covered by the legislation. We think that there is perhaps an opportunity to correct that in the small number of circumstances in which it would be appropriate. The aim is primarily to safeguard features of local interest. I cannot see that it would be of any major financial consequence, but it might prevent local authorities or owners of private roads from removing something that has been there for many years and is of historic interest and is—dare I say it?—important to the quality of place. We are simply suggesting that that be considered.

Kenneth Gibson: The SRPBA disagrees. Section 14 of the bill refers to

"any site ... comprising any thing, or group of things, that evidences previous human activity".

Surely that is pretty wide ranging. You are talking about a small number of circumstances, but the SRPBA disagrees because it seems almost like a catch-all. The Law Society of Scotland thinks that it might be more appropriate to allow ministers to act when they hold a reasonable belief that the site is likely to comprise any thing or group of things that evidences previous human activity. That narrows it down to the focus that you were talking about a couple of minutes ago, Mr Strang.

Charles Strang: I am afraid that we are getting confused with the scheduling of ancient

monuments and the suggestion that the range of possibilities for scheduling be expanded. I am talking about listed buildings and a completely different piece of legislation; the possibility of listing has nothing to do with the rather more esoteric possibilities that the Scottish ministers would have in scheduling ancient monuments. I hope that I am right in that, but I look for support from those to my right and left.

Kenneth Gibson: The point has been brought to our attention by previous witnesses. They have concerns about the expansion of the definition of "monument". That is the issue that we are talking about.

Stuart Eydmann: I want to reinforce what Charles Strang said. What is being proposed in the RTPI's submission is the expansion of the definition or scope of listed buildings. It refers to surfaces of an historic nature, which—off the top of my head—could be the rather unusual but not unique paving that exists at the back of Charlotte Square and in parts of Falkland. It is probably 150 years old and was laid at the same time as the houses around it were built, and therefore it contributes to the setting of important buildings and the areas in which they are. We are talking about relatively small pockets of clearly historic works rather than footpaths, rights of way or footfall, as one of the witnesses previously described it. We are talking about small and discrete areas of, for example, clearly and skilfully laid pieces of paving.

Alasdair Allan (Western Isles) (SNP): We have had evidence from HOPS about situations in which owners try to evade liability by moving ownership between different paper companies. Will you comment on that and the extent to which you feel it is a major issue?

Dave Sutton: We discussed the issue, and we would suggest that there is little usage by local authorities of either urgent works notices or repair notices—the number is unlikely to be in double figures. At the very start, we should gather the information to find out whether the legislation is being used. In three years in North Lanarkshire, we have used one urgent works notice. The legislation is not hugely used, as we would normally prefer to use dangerous structures notices under the Building (Scotland) Act 2003. They tend to have a budget because they are focused on health and safety, and often it is a question of making the site secure to prevent the building from deteriorating.

On evasion by owners, when we served the urgent works notice, the first thing that the owner did was move ownership of the property to another company. Indeed, in my experience of serving urgent works notices, it is best to err on the wider side. I have found that, if there are any doubts, ownership will usually be clarified a day or two before any legal action. We served the notice on the individual owner and on both of the companies lest there be any doubt. The suggestion in the legislation that there will be a legal charge against the property is therefore to be welcomed. However, the five-year limit on the recovery of costs would be of concern. We have to take a long-term view for some sites, and I am not sure whether any costs incurred by the council in making the site safe would always be resolved in the five-year time limit that is suggested.

Alasdair Allan: Do you believe that the five-year time limit would encourage procrastination? If so, what is the solution?

Dave Sutton: We negotiate with owners to try to get them to look after the listed building; they negotiate probably to get enabling development—to knock down part of the building or whatever. The more it falls down, the better for them. We have 40 to 50 ruinous buildings that we are trying to find ways of unlocking, which is difficult in the current climate with the limited grants and so on. If the council takes action to make the building safe for the local community and prevent further deterioration, it is a legal charge on the property. The liability notice expires after five years. If I am an owner three years into the period of the notice, I will wait for another couple of years because then I will get away without having to pay it.

10:15

Estimates have been done of the cost to the council of serving an urgent works or repairs notice, which might be one of the reasons why they are used so little. Should local authorities be able to get financial support from Historic Scotland for serving such notices? It is about managing the risk to local authorities. As I said, when our council looked at the matter in detail, we felt safer acting under the building standards legislation in which there are fewer defences against notices. The repairs notice has no enforcement attached other than the use of a compulsory purchase order. If a CPO is used, there is the possibility of a counter notice being served. Then there are the complications of having a back-to-back agreement with building preservation trust. It is incredibly complex. That is why there is reluctance to use either of those measures.

Elizabeth Smith (Mid Scotland and Fife) (Con): May I pursue that point further? Are you confident that the technicalities of those details are sufficiently well laid out in the bill?

Dave Sutton: The processes relating to an urgent works or repair notice are clearly laid out, but the question is whether they are effective in practice. It seems that the bill tries to shut the door

after the horse has bolted. I offer you an example. Residents ring me up to say that their neighbour is not maintaining his dovecot, which is a listed building, and they have to deal with the pigeons and deterioration of the listed wall. We cannot take any action until the building either needs urgent works or becomes dangerous.

There has been a lot of discussion about the duty of care. I think that the public expect owners of listed buildings to care for that piece of heritage, but there is no financial incentive for them to do so. Indeed, on the contrary, they might let the need for repairs accumulate to the point at which they need to do much more substantial works. Although some works might be exempt, there is currently no tax or VAT incentive for normal repairs. Although we designate the historic environment and say that we want it to be cared for, we do not have a corresponding system to help people to care for it. The local authorities' role is as a last resort when a building gets to a serious stage of disrepair. Councils understand that but, because of the complexity of the legislation and the number of defences set out in it and in case law, they are reluctant to use it.

Elizabeth Smith: Notwithstanding your valid point about the lack of financial incentives, is there anything else that we can do to encourage people to take up their duty of care more than they do at present?

Dave Sutton: The Scottish historic environment policy from Historic Scotland contains a duty of care—I describe it as an implied duty of care. It is for politicians to consider whether that duty should be in the policies or in the legislation. If an authority is not carrying out that duty of care or using appropriate expertise, the defence mechanism is for someone to make a complaint of maladministration. We have seen that happen more in England as councils have cut back on conservation services. Councils that do not have either the appropriate expertise or the resources have sometimes cut corners. That has led to a number of successful maladministration cases.

You asked whether there are other things that we can do. Historic Scotland's inform guides are a good-practice example of educating people in how to care for the historic environment. The number of stone buildings that I see being destroyed because people are trying to care for them but are using cement pointing or things like that is ridiculous. There needs to be an education process. For example, I understand that there is no slate training course north of Arbroath to train people in the slate industry and skills are being lost. Increasingly, when we are looking to have a listed building refurbished, we find that we need to ensure that the people who are doing the work—whether it be leadwork, stonework or work involving some other trade—know what they are on about. In the longer term, we need to plan to address that skills shortage.

Ken Macintosh (Eastwood) (Lab): How big is the problem of people damaging their buildings or letting their buildings go to wrack and ruin? I do not quite grasp how widespread that is. There is little information on how much the current powers are used against owners.

Dave Sutton: In England, the heritage at risk survey shows that, over a 10-year period, the proportion of buildings that are rated 1* and 2*—equivalent to categories A and B in Scotland—has come down from about 3.9 per cent to about 3.1 per cent. In Scotland, it is suggested that the figure is about 6 per cent, but that is based on a survey of category A listed buildings only. The short answer is that we do not know. Based on anecdotal evidence—we talked about this earlier—we suggest that there is a much higher level of deterioration of the heritage. That is why the starting point is to ensure that there is a proper annual survey that gives us a bit more confidence about the state of that heritage. For example, the 2010 data that Historic Scotland has just issued refer to a net gain in listed buildings. I have asked Historic Scotland how many listed buildings were demolished last year, but I have not received an answer. If we do not monitor what is being lost as well as what is being added, we will not know how much we are losing.

Many of the good listed buildings are fairly obviously listed. There is much discussion of whether people should be able to acquire immunity from listing. A much better alternative would be to ensure that Historic Scotland has reviewed every area within the past 10 or 12 years, because then we would have an up-to-date list in a preventive sense rather than a firefighting sense. There is concern that Historic Scotland's listing focuses too much on individual requests and not enough on either thematic reviews or overall area reviews.

Ken Macintosh: We will come back to the issue of immunity from listing. You make a good point about the need to collect information. Can you confirm that you do not want that to be a duty in legislation and that you see it just as good practice?

Dave Sutton: Yes.

Ken Macintosh: All of you are members of the Built Environment Forum Scotland, which has suggested that the scope of the bill could be extended much further and that a duty could be placed on public bodies, especially local authorities, to take account of the built environment. Do you think that such a duty is needed?

Stuart Eydmann: We have not seen a mechanism for how that could work. In theory, it is wonderful. As has been mentioned, there is already an implied duty in national policy. It is not clear to the RTPI how that could be implemented and enforced in a legislative sense, but we welcome anything that would reinforce the responsibility of property owners.

Dave Sutton: The SHEP includes what I describe as an implied duty of care, but I do not know whether that has been carried through into Improvement Service guidance on asset management plans. I wrote to the service a year and a bit ago, when it was consulting on asset management plans, which relate to councils' property services departments. Why does the guidance that the service issues not address heritage issues? Our more recent discussions with national health service bodies have indicated that the NHS property sector may be starting to receive some guidance, because those bodies are talking about the need for management plans for all their properties that will address the situation of the historic environment. It is about starting to build the objectives of the SHEP into the good-practice guidance, and making sure that that is linked to easily monitored data on the heritage environment and performance under the legislation.

Ken Macintosh: Would placing a duty in statute be helpful in that regard?

Dave Sutton: Heads of Planning Scotland supports the bill because it does not go that extra step into the legislation. Some councils probably run a negligible historic environment service and, in my view, they put themselves at risk of maladministration cases. I do not know that the bill adds anything. I would rather have something that is practical and working than legislation.

On the two requests from the Built Environment Forum, such a duty is built into the existing Scottish historic environment policy

Ken Macintosh: Historic Scotland says that it wants a partnership approach. That is your view too.

The Built Environment Forum called for the bill to ensure that local authorities have access and give special regard to appropriate information and expert advice. Your submission has highlighted your concern about the lack of staff with relevant skills.

Dave Sutton: There might be some councils now that do not have those skills in-house, and that is of concern.

Ken Macintosh: Would you therefore welcome it if the bill imposed a duty on local authorities to ensure that they have access to those skills?

Dave Sutton: There is a requirement on councils to take expert advice, but the question is about what happens when they do not take that advice. I do not know that legislation would make a huge difference. It would be an unnecessary burden on local authorities. One of our concerns was that, when Arup did a detailed staffing survey of local authorities, that took around 18 months to surface publicly, by which time it was largely out of date. It is not rocket science to monitor the numbers who are employed in local authorities. Part of the staffing survey illustrated some of the complexities of defining the built heritage staff, especially if planners or people without dedicated skills and knowledge are being used. When councils have trained officers, it is very easy to define the staff. The emphasis should be more on gathering information, so that we can have an informed debate, rather than on legislation. I do not know what legislation would add.

Ken Macintosh: Your points are well made, and I do not think that anyone around this table or any of the witnesses who have given evidence on the bill would disagree with what you are saying. The difficulty for the committee is that we are trying to work out what should go into statute and what should not.

Our concern is that you are talking about good intentions and good practice in some cases, but poor practice in others. It is a common argument that if something is put into statute, it is given extra force or weight and local and other authorities pay particular attention to it. The RTPI's submission raises a concern about the lack of available resources. At a time of financial constraint, local authorities and others will retreat from everything other than their statutory duties. Are you not therefore tempted to put more statutory duties in the legislation?

Charles Strang: It would be a naive local authority that considered only its statutory responsibilities and cut to that point. We certainly view the planning service as being rather more complicated than that. It is certainly true that there is an important consultation out at the moment to which we intend to respond. Our response will be informed by hard information, and there does not seem to be a great deal of that around at the moment, which is unfortunate, as has been explained. Hard and current information is an essential part of any sound planning process. We are not in an ideal position, but no doubt those points will be made in response to the consultation.

10:30

Stuart Eydmann: The consultation that Charles Strang refers to is "Resourcing a High Quality

Planning System", which comes from your house to us as consultees.

It is worth mentioning that specialist staff working in the historic environment are not solely concerned with day-to-day control matters, which much of the bill is concerned with; the presence of specialist staff has a substantial educational aspect and a community liaison aspect. Having specialist staff means that the local authority can act as a one-stop-shop on historic environment matters for people who may not be able to take the time and effort to contact Historic Scotland at a national level. Specialist staff and services have been embedded in the planning system since the 1970s. They are not a relatively new development; they could be vulnerable, but they have a much wider role than only the day-to-day control aspects that we have talked about.

Charles Strang: For the avoidance of doubt, we would see that as being very relevant to the on-going round of development plans—both strategic development plans and, in particular, local development plans, because understanding of the historic environment and the physical environment is tremendously important in terms of place and all the other things that the wider community perhaps thinks of as key aspects of planning.

Ken Macintosh: I have another question about listing, but perhaps I should ask it later.

The Convener: I clarify, for the record, that the consultation on resources for planning is being undertaken by the Scottish Government, not the Scottish Parliament or the Education, Lifelong Learning and Culture Committee.

I also point out that someone clearly has a mobile device switched on, because it is interfering with the sound system. Can we all ensure that our mobile devices are off and not just on silent? [*Interruption*.] I do not disbelieve you, deputy convener. The mobile device is much more likely to be in the vicinity of Mr Macintosh, as it was his microphone that was being interfered with.

Christina McKelvie (Central Scotland) (SNP): Good morning. I will move on to certificates of immunity from listing, which Ken Macintosh mentioned earlier. Some organisations have expressed quite strong concerns. I ask Mr Sutton to give us a wee bit insight into how HOPS feels about the issue. It has been suggested that the process could

"be used by hostile third parties to delay or derail a proposal without a developer being aware of the request for a certificate".

Dave Sutton: I do not think that the proposed certificate of immunity is a big issue. All those worries were expressed when the certificate of immunity was introduced in England, and they have withered away because there has been very little use of such certificates. It is more important to look at their role if there is a development application and the building is not already listed. I would rather that the emphasis was on Historic Scotland doing an area listing review within a 10 or 12-year period, because that is being proactive in identifying the heritage that is worthy of being protected in a more general sense, rather than firefighting in an individual case.

If there is a development application and the building is not already listed—and we have had some applications in relation to health authority buildings, for example, that were identified in the Historic Scotland thematic review and that one might, therefore, have considered to be worthy of listing—the problem is that Historic Scotland goes into a state of suspended animation, because if there is a current planning application or, indeed, a building regulation application to demolish a building, it cannot say anything. We want local authorities to make decisions early on about what is worthy of protection. Let us know whether something is or is not worthy of protection, then that can be considered through the planning process. That helps developers. It has been suggested that third parties should not be able to apply for a certificate of immunity. In my view, if something is important, it is better to have that assessed as early as possible in the process, so that we know what it is important to try to preserve, protect or enhance.

There are also people—although there are fewer of them in Scotland—who wilfully ignore the planning regulations. If they get a sniff of the fact that listing is being considered, the wall in question will be flattened by the end of the weekend; authorities do not work over the weekend, so the wall will just disappear. There is a need for protection while listing is being considered. The bill does not provide explicitly for stop notices or protection notices over a two to four-week period.

It is in everyone's interest to have early, quick assessment. Stuart Eydmann may want to caution the committee about how the process might be abused.

Stuart Eydmann: I am not sure that I have any concerns. Certain parts of our legal fraternity might see the issue as another thing to build into the home report or the preparatory information for which people are required to pay before they buy or sell property, but that is not really an issue for the Royal Town Planning Institute. I emphasise that it should be open to all, rather than a limited number of people, to apply for certificates. If a building is worthy of protection, that information should be available to everyone, not just to a limited number of people. It should be in the public domain.

Christina McKelvie: My memory is telling me about an historic wall that was knocked down in the very circumstances that you describe. Is that the type of situation in which a stop notice should be issued?

Dave Sutton: That is why legislation needs to make it explicit that if there is to be an emergency review, the presumption is that no works will be undertaken during consideration of a site's importance, and that if someone undertakes pre-emptive works, they will be legally liable. My preference is for regular area reviews; Historic Scotland can advise on whether such reviews should take place on a 10 or 12-year basis. Again, that is preventive action. Educating and working with owners on what is important and is to be looked after will avoid the need for urgent works, enabling development and so on.

Christina McKelvie: It is a worry that we may have lost to the demolishers some things that would have been valuable.

Dave Sutton: That emphasises the need for comprehensive and thorough reviews. One difficulty for us in authorities is that when Historic Scotland lists a building, it does not state a curtilage. In e-planning, we are moving to digital mapping, which involves polygon data rather than point data. Our authority will include best-guess polygons in the planning process, because listed building curtilage is defined by case law not legislation. There are five tests, although Historic Scotland persists in suggesting that there are four, without telling us on what basis it does so. My preference is to stick to the five tests that are set by case law.

In 90 per cent of instances, it is obvious what the curtilage is, but assessing the curtilage for some larger estates and more complex sites is quite complex, particularly if there have been changes of ownership over time. Even if something is defined as a listed building, there are still issues for us to discuss with Historic Scotland. Historic Scotland suggests that modern listed buildings—post-1948 buildings—have no curtilage, which I find incredibly strange. It has in one case changed its view, and we are still in discussion with it, but it seems to me that buildings that are listed as modern architectural gems must have a curtilage or boundary. Clarifying technical issues of that sort would be more helpful than worrying unduly about other points.

If a building is listed but people do not see it as worthy of listing, or if it is unlisted but people consider it worthy of listing, it is right and proper that there should be a review procedure, provided that the status quo is maintained during the short period of the review.

Christina McKelvie: That is heard loud and clear.

Why does the Royal Town Planning Institute believe that applications for a certificate against listing should be subject to a charge?

Charles Strang: That is not because we are necessarily pro-charging. In fact, I am reliably informed that the institute has been opposed in principle to the introduction of fees for planning applications. In this case, we believe that a charge should be made because of the extent of the time and effort that might be required by Historic Scotland's listing folk and the need to backfill that in a meaningful way. Charging a reasonable fee that represents the cost of carrying out the work would also mean that only serious requests rather than vexatious ones arose. However, that point is not to be understood as meaning that we believe in charging a fee for everything, as that is not the case.

Christina McKelvie: Finally, I want to explore a bit further Mr Sutton's earlier point about having a review of listing every five or 10 years. What are your views on that and how would it work?

Dave Sutton: That goes back a year and a half or so, to a meeting we attended with Historic Scotland, when my understanding was that it was spending about 60 per cent of its time on individual requests for listing. In my view, that is disproportionate. I understand that Historic Scotland had a case in Edinburgh in which there was a freedom of information request and accusations of collusion with the local authority. In my view, listing needs to be a clear and professional judgment that is based on stated criteria.

I moved up to Scotland a number of years ago, and I find that the listing process here is, shall we say, more political, rather than being an objective assessment. It is important to have clear and objective criteria on the purpose of listing. I would rather put the emphasis on properly managed area reviews. Our area has been reviewed in parts, but some reviews are 15 years old and some are four or five years old. Once the work has been done thoroughly, a requirement for periodic review should mean a lot less work every 10 years or so.

Christina McKelvie: Does the Royal Town Planning Institute have a view on timescales?

Charles Strang: I was tempted to pull Dave Sutton up there, because we are in a place where describing something as "political" might not necessarily be taken to be a bad thing. However, what he says makes sense. There is no point in working towards a five-yearly review of local development plans if we are working with 15 or 20-year-old data on the quality of historic

buildings. There is no firm statement in relation to historic buildings; it rolls forward. The rough rule of thumb in Scotland is that a building can be considered for listed status either after it is 30 years old or after the architect is dead. Obviously, if a list for an area is 20 or 25 years old, it will miss a significant number of buildings.

Some authorities will be able to deal with that and to identify some of the important buildings, but other authorities will not. If the job is worth doing, it is worth doing properly. We have the skills; we just need to put in the manpower and effort to give us the raw data to make sensible plans.

The Convener: Mr Macintosh, has your question on listing been covered?

Ken Macintosh: No. It was for Heads of Planning Scotland. Its written submission makes a point about ecclesiastical exemptions—the concern is about churches and other places of worship.

10:45

Dave Sutton: Ecclesiastical buildings that are in use are exempt from the planning system. They might or might not need listed building consent for external works, but they do not for interior works. For example, a resident wrote to complain about pews being removed—albeit from a modern church, but one in which they were part and parcel of the character. We wrote to the Church of Scotland, but did not even get the courtesy of a reply or acknowledgement. The resident then made a freedom of information request to the council, so we said, "Here's all the information—we've done what we can."

If we delegate the decision on protecting heritage to the ecclesiastical bodies, we need to ask whether they have in place appropriate systems to ensure that they take appropriate heritage conservation advice when they carry out any works. My experience suggests that adequate protections do not appear to be in place. The ecclesiastical exemption adds to the complexity of the planning system, and we need to ask whether there is a clear and obvious benefit from it.

At present the situation is more complex, because there are questions around whether a church is in use, and whether that means the whole church—perhaps the main church is in use but the church hall is not. In the end, it is only about the exterior; some churches are listed because of their fine interiors, but there is no control of that whatever.

Charles Strang: My understanding is that the reason for having an ecclesiastical exemption in the first place is more to do with the role of the church and state in England, and the fact that the monarch is the head of the church; for some reason, that means we enjoy the imposition of the ecclesiastical exemption in Scotland. I do not really understand that, and over the years people have suggested that it is not appropriate.

As with any building, concerns are expressed about how changes occur—how pews or stained glass are removed, for example. The listed building legislation is about managing change, rather than preventing things from happening. Informing change and involving the views of the community seem to be sensible objectives, and I suggest that the ecclesiastical exemption is in truth an anachronism.

Ken Macintosh: Is the exemption in legislation or in guidance?

Charles Strang: I think it is legislative.

Dave Sutton: I think it is legislative.

Ken Macintosh: The Heads of Planning Scotland submission states that bringing places of worship into the listed building system

"would closely fit the modernising planning agenda by simplifying the exceptions."

Are there exemptions or exceptions other than just for churches that are in use?

Charles Strang: I am aware of Crown exemption.

Dave Sutton: That is a complex one. In England, Crown exemption is now being removed from the listed building legislation, but I will pass on the question because we have not had to deal with any Crown buildings in Scotland. I understand that the intention in England is to move in that direction, but Crown exemption is currently the other main exemption.

You asked earlier about ground surfacing. There was a legal case some years ago that means that we would avoid giving a direct answer on whether a change of surface materials needs listed building consent. It affects the character, but that legal case suggested that it would not in itself require a listed building application.

The rule of thumb with listed building applications is whether the proposed change will affect the historic character in any manner. The custom and practice among people who work in the field means that they are quite easily able to interpret how that rule should be applied in what I would regard as a common sense and practical way.

Crown and ecclesiastical buildings, being exempt, are at the edges of the definition of what requires listed building consent, and so are conservation areas. The Shimizu case, which defined what constitutes a minor change, has had

a major adverse impact on conservation areas. In designating a conservation area, the council is expected by you—and the public—to protect it. We do a character assessment and produce a management plan—hopefully within a five to 10-year period—but there is no protection in relation to minor changes.

In some conservation areas, we have a big issue with uPVC windows. We have an article 4 direction and, technically, the change of windows requires permission, but people have not got it. We do not want people to have to redo the windows immediately, but we could do it over 15 years, because uPVC windows are not expected to last longer than that before they have to be replaced. If we take a more sensitive approach, does that take us beyond the five-year or four-year limit for enforcement action? Those are some of the day-to-day issues with which we have to wrestle.

Ken Macintosh: You mentioned the Shimizu case.

Dave Sutton: It was a legal case in London that hinged on the definitions of alterations and what constitutes a minor alteration. In effect, it defined alterations as being substantial—for example, if someone was changing something like 80 per cent of the building.

It used to be that, in conservation areas, if someone took out a window that was set back 4in and then set it flush with the outside, which would have a major effect on the building's character and appearance, the change would be picked up on the basis that it affected the character in any manner. The Shimizu case changed the definition of alterations in conservation areas, so that there is a great deal less protection in relation to minor works in conservation areas.

Historic Scotland's standard answer would be, "Well, you can use an article 4 direction", but that is administratively complex and therefore quite resource intensive. Clearer national guidance is needed on which changes require consent in conservation areas, because it is very often not the big changes, such as the demolition of a wall or a property, but the minor changes to windows, doors and chimneys and the modern accoutrements of life, such as satellite dishes, that mean that, before you know it, the character of a conservation area is gone.

The Convener: That concludes our questions to you today; I thank you for your attendance.

I suspend the committee to allow our witnesses to leave and the next set of witnesses to join us.

10:52

Meeting suspended.

11:02

On resuming—

Children's Hearings (Scotland) Bill: Stage 2

The Convener: Agenda item 3 is the committee's continued stage 2 consideration of the Children's Hearings (Scotland) Bill. I am pleased to welcome to the committee Adam Ingram, the Minister for Children and Early Years, who is joined by a number of officials. In the course of the morning, he may want to change some of them, depending on which group of amendments is being considered.

Section 6—Selection of members of children's hearing

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 6, 7, 81 and 8.

The Minister for Children and Early Years (Adam Ingram): Under the bill, the principal reporter either identifies the need for a children's hearing or is under a duty to set one up. That process triggers the duty on the national convener to select panel members to sit at the hearing that the reporter has arranged. However, the triggering of the national convener's duty is not stated in the bill as drafted, which risks potential confusion about who is responsible for arranging the hearing.

Amendment 5 seeks to put beyond doubt the separation of functions between the principal reporter and national convener with regard to the arranging of children's hearings. Amendments 6 to 8 are minor consequential drafting amendments that clarify that the obligations on the national convener in section 6 apply in relation to the specific hearing that is required to be arranged.

Amendment 81 provides that, in selecting panel members for a particular hearing, the national convener must obtain the agreement of the child's local authority on the suitability of potential members. It gives the council an individual veto on particular panel members sitting on a children's hearing in relation to a specific child. I assume that the intention behind the amendment is to trim down the functions and powers of the national convener—no doubt Elizabeth Smith will clarify her intention shortly—but it is clear to me that the amendment represents a significant danger to the stability of the children's hearings system.

The key function of the national convener is the recruitment, selection, appointment, training and monitoring of panel members, so it is entirely the business of the national convener to ensure that panel members meet high standards of

performance and that local variation and flexibility are supported in a way that does not compromise those standards. At the outcome end of children's hearings, it is the business of councils to implement hearings' decisions.

In the middle of the system is the children's hearing itself. The hearing is the legal tribunal that is charged with making big decisions with significant ramifications for children and their families. It is essential to ensure that the independence and impartiality of the children's hearing—the legal tribunal—is maintained. That is a requirement of article 6 of the European convention on human rights, which states:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

Amendment 81 appears contrary to ECHR principles. If a council has to implement—and pay for—the decision of a children's hearing and that council can also control the make-up of the hearing that takes that decision, the hearing is not an independent and impartial tribunal. I refer committee members to my comments on conflict of interest issues relating to amendments 71 to 74 and on the fundamental and unavoidable need to ensure the system's compliance with human rights legislation. I will not repeat those points, but I stress that amendment 81, above all others that we are debating today, presents the highest risks to the children's hearings system. Given those considerations, I urge the committee to reject the amendment.

If the amendment is supported, we will undoubtedly place the system at risk of early legal challenge; indeed, the bill might be referred to the Supreme Court even before it could be brought into force. It is critical that the local authority, which has a duty to implement decisions that a hearing has made to provide vital support to vulnerable children, cannot have any means of influencing the membership of the hearing that makes such decisions and that has the power to hold the authority to account if it fails to support a child through the compulsory supervision orders on which the hearing has decided.

What the amendment proposes is analogous to allowing a prosecutor to choose the members of a jury that is to hear a case in court or to allow one spouse in a divorce to pick the sheriff who will decide on custody of the children. Rightly, such a move would be unacceptable in those cases. It is just as unacceptable when it is applied to the children's hearings system.

I took on board Liz Smith's comments last week, when she expressed discontent at not having been contacted earlier about the impact of her amendments. Since then, the member and I have discussed those issues; I am grateful to her for making the time to do so. I understand that the concerns that underpin the amendments relate to the powers of the national convener. I am happy to work with Liz Smith to develop amendments for stage 3 that would make significant changes to the involvement of local authorities and children's panel advisory committee volunteers in area support teams established by the national convener. On that basis, I ask Liz Smith not to move amendment 81.

I move amendment 5.

Elizabeth Smith: I thank the minister for his comments. The minister's description of the intention behind amendments 71 and 74, which were considered last week, and amendment 81, which is being considered this week, is quite correct. A number of us, especially in local areas, are concerned about the influence that the national convener will have, at the expense of the local community and local authorities, if too many powers are vested in them. That is the nub of why those amendments were drafted.

I am grateful to the minister for meeting me early yesterday to discuss the implications of amendment 81, because there is obviously a concern about its compliance with the ECHR. For that reason, I have agreed not to move amendment 81. I thank the minister for agreeing to pursue our other concerns in relation to amendments 71 to 74, which are obviously part of the bill as we go to stage 3. I will work with the minister on the issue, because I think that this is the nub of the bill.

Amendment 5 agreed to.

Amendments 6 and 7 moved—[Adam Ingram]—and agreed to.

Amendment 81 not moved.

Amendment 8 moved—[Adam Ingram]—and agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

Section 8—Location of children's hearing

Section 8 agreed to.

The Convener: Amendment 9, in the name of the minister, is grouped with amendments 12, 14 and 15.

Adam Ingram: Section 8 places a duty on the principal reporter in relation to the location of a hearing. The section currently sits in part 1, but part 1 relates to the national convener and children's hearings Scotland, so amendment 9 moves section 8 to part 2, which deals with the functions of the principal reporter and the Scottish Children's Reporter Administration.

Amendments 12, 14 and 15 relate to functions of SCRA and the principal reporter. Section 21 makes provision to ensure the independence of the principal reporter. It provides that SCRA is not authorised to direct or guide the principal reporter in the carrying out of the principal reporter's functions. The purpose of amendment 12 is to further protect the independence of the principal reporter by providing that not only may SCRA not direct or guide the principal reporter but neither may any other person.

Section 17(1)(e) provides the Scottish ministers with an order-making power, subject to affirmative procedure, to specify the manner in which the principal reporter carries out a function or to specify the period within which he or she is to carry out a function. Amendment 14 concerns the relationship between section 21 and section 17(1)(e). It provides that the order-making power in section 17 is not affected by the terms of section 21.

Amendment 15 removes an inappropriate reference to the principal reporter in schedule 4. It clarifies that the persons who are to be consulted when a staff transfer scheme is made jointly by a local authority and children's hearings Scotland are persons employed by the local authority and representatives of any trade union recognised by the local authority.

I move amendment 9.

Amendment 9 agreed to.

Section 9—Provision of advice to children's hearings

11:15

The Convener: Amendment 10, in the name of the minister, is grouped with amendment 65.

Adam Ingram: Amendment 10 is connected to section 78(2), which the committee will consider on subsequent days. Section 78 introduces pre-hearing panels, which are similar to existing business meetings. Pre-hearing panels may convene prior to a children's hearing to deal with particular issues, such as whether the child should be excused or whether a person should be deemed to be a relevant person.

Section 9 currently provides that the national convener may provide advice to children's hearings about any matter arising in connection with the hearings' functions. However, it does not cover the provision of advice to pre-hearing panels, so amendment 10 rectifies that point.

Amendment 65, in Elizabeth Smith's name, suggests changes to section 9 that seek to clarify what constitutes the "legal advice" that the national convener may give to the hearing and an amendment that explicitly prohibits the national convener from influencing the decisions of a hearing. I do not consider the proposed changes in paragraph (a) of the new subsection that the amendment would insert to be an improvement on the current drafting. All three of the elements that it suggests are already covered in section 9(2) by the list of four items on which the national convener can provide advice to children's hearings. However, I fully understand the potential benefits of clarifying the parameters of that advice and I make it clear that there should be no question of the national convener making recommendations on decisions that the hearing could make. It is already implicit that the national convener should not make such recommendations, but I see the merits of considering an amendment to the bill in that regard and know that there are concerns about the national convener's role in the provision of advice.

Given that, I assure the committee that I will revisit that aspect of section 9 with a view to lodging amendments at stage 3 that achieve the objective of Elizabeth Smith's amendment. I am happy to work with her in preparing those amendments and, on that basis, ask her not to move amendment 65.

I move amendment 10.

Elizabeth Smith: Thank you, minister, for your guarantee. My concern is about the definition of "legal advice". The phrase is used only once in the bill but, nonetheless, it is there. There is an important, if perhaps subtle, difference between advice that must be given and that can be given. There is also a definition issue about what ought to be done and what can be done. I would like to explore that because it would not be acceptable if section 9(2) could ever be interpreted as meaning that the national convener could influence the outcome of a decision. It is entirely appropriate that the national convener could state the options—that is, what can be done—but it would not be right for them to stray into casting an opinion.

On the basis that the minister has agreed to work towards that for stage 3, I will not move amendment 65.

Amendment 10 agreed to.

Amendment 65 not moved.

Section 9, as amended, agreed to.

After section 9

The Convener: Amendment 82, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: Amendment 82 is about the provision of advice to children and young people about children's hearings. It is one of a series of

amendments that is designed to reinforce the principle that the needs of the child should be at the centre of the hearings system. I will not repeat the arguments that I made last week other than to remind members about the evidence that we heard from Action for Children Scotland, and about "Where's Kilbrandon Now?—Report and recommendations from the inquiry", in which children and young people said that they did not always feel at the heart of the system, that their views were not always listened to and that they did not understand all the proceedings at children's hearings.

Section 9 outlines the advice that the national convener may give to children's hearings. Amendment 82 extends that provision by replicating the wording but explicitly stating that the national convener may provide that same advice to children and young people. The amendment goes slightly further. It also stipulates that any advice should be

"in a child friendly format."

I refer to the evidence that the committee heard on the issue at stage 1, concerning the difficulty that some children had in understanding the material that they were presented with.

Many members here have knowledge of the criminal justice system. It is well known that, in the criminal justice system as in the children's hearings system, many offenders have severe communication difficulties, with a lack of literacy skills being particularly common. It should not be a surprise to us that when children are faced with a dossier in the written word, some of them will not even look at it, never mind understand it. All of us here share the belief that all young people appearing before a children's panel have the right to understand exactly what they are facing.

I hope that amendment 82 is in keeping with the spirit of the bill, and that it parallels measures that have already been introduced by the Government.

I move amendment 82.

Adam Ingram: I fully support the suggestion that children in the hearings system need to be given information that helps them to understand the process that they are involved in, including their rights within the process and the possible implications of their involvement.

I have concerns, however, that the amendment mixes up the role of the national convener and that of the principal reporter. The national convener will have no direct contact with the children who are referred to hearings. The role of the national convener is to ensure that panel members have the correct range and level of skills needed to make high-quality decisions for the children who are referred to hearings, and that they are properly supported in doing so. There is therefore no route or need for the national convener to have contact with children or to provide the advice as is suggested in amendment 82, and nor should there be. The national convener has no access to a child's information, which is held by the principal reporter.

I remind committee members of the draft bill that was extensively consulted on in June last year. It suggested that the national convener should have a role in supporting children in hearings, through functions around arranging hearings and the provision of a hearings adviser to take a note of proceedings and provide whatever advice the hearing might need. Committee members might recall that a forceful argument was presented to support the view that it was the reporter who should have contact with a child and family during the process of investigation of a referral, and that it was the reporter who should maintain that contact throughout the hearing process. The need for continuity in the main point of contact was strongly argued for, not least by the SCRA, and strong resistance was shown to introducing someone with a different role into a system that is essentially about putting the child at the centre of all proceedings. As committee members know, the draft bill was substantially rewritten to accommodate those strong views.

As I said, I agree that children need support to help them to understand the children's hearings system. We are considering how we make that happen as part of our work with partners on advocacy support, which we will talk about in more detail later.

The procedural rules in section 170 of the bill provide a means of ensuring that a child receives the information that they need about children's hearings. I agree with Ken Macintosh that that information should be provided in a child-friendly format and we will work with partners on that.

I do not believe that amendment 82 is appropriate and it follows that I urge the committee not to agree to it. I ask Ken Macintosh to withdraw the amendment—perhaps on the basis of returning to the issue at stage 3 with a focus on the principal reporter's duties.

Ken Macintosh: I thank the minister for his comments. I particularly appreciate his comments about the different roles of the principal reporter and the national convener. The minister does not envisage direct contact between the convener and children who appear before panels.

One argument, which I tried to make last week, is that we need to put into the institutional framework throughout the children's hearings system the idea that the children's panel works with and for children and is not something that is

done to them. What we are discussing is part of that. If the national convener provides advice, it will help if that advice is available in a child-friendly format for children to access. That is a good principle to follow.

However, I accept the minister's point that we do not expect the national convener to make contact directly with children. With the committee's permission, I would be happy to withdraw the amendment, if the minister agrees to work on how such measures could apply to the principal reporter and possibly to give the guidance that information and advice that stem from the national convener should be accessible in a child-friendly format.

Amendment 82, by agreement, withdrawn.

Section 10—Power to change the National Convener's functions

Amendment 83 not moved.

Section 10 agreed to.

Section 11 agreed to.

After section 11

Amendment 84 moved—[Ken Macintosh].

The Convener: The question is, that amendment 84 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

Against

Allan, Alasdair (Western Isles) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 84 agreed to.

Sections 12 to 16 agreed to.

Schedule 3 agreed to.

11:30

Section 17—Power to change the Principal Reporter's functions

Amendment 11 moved—[Adam Ingram] and agreed to.

Section 17, as amended, agreed to.

Sections 18, 19 and 20 agreed to.

Section 21—Independence of the Principal Reporter

Amendments 12 to 14 moved—[Adam Ingram]—and agreed to.

Section 21, as amended, agreed to.

Sections 22 and 23 agreed to.

Schedule 4—Transfer of staff and property to CHS

Amendment 15 moved—[Adam Ingram]—and agreed to.

Schedule 4, as amended, agreed to.

Section 24—Welfare of the child

The Convener: Amendment 16, in the name of the minister, is grouped with amendment 17.

Adam Ingram: Amendments 16 and 17 relate to pre-hearing panels. Section 24 links decisions and determinations of courts and children's hearings to an overarching welfare principle in relation to the child. As drafted, section 24 will not apply that welfare test to decisions that are taken by a pre-hearing panel. Amendments 16 and 17 will ensure that when pre-hearing panels make a decision, they apply the same welfare test that courts and children's hearings apply.

I move amendment 16.

The Convener: As no member wishes to speak on either of the amendments, I invite the minister to make any wind-up comments.

Adam Ingram: I am happy not to make any.

The Convener: You have chosen not to wind us up, as we seem to be reasonably compliant.

Amendment 16 agreed to.

Amendment 17 moved—[Adam Ingram]—and agreed to.

Section 24, as amended, agreed to.

Section 25 agreed to.

Section 26—Views of the child

Amendments 18 and 19 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 20, in the name of the minister, is grouped with amendments 85, 86 and 63.

Adam Ingram: I welcome the opportunity to speak to the amendments in this group, all of which seek to promote the voice of children in hearings. It is a critical issue, so I hope that the committee will understand my desire to take a few minutes to look at the amendments in some detail.

I will start with amendment 20, which responds to comments by Professor Norrie. By removing the qualification "reasonably" from section 26(3), we can achieve greater consistency with the United Nations Convention on the Rights of the Child by clarifying that the obligation to seek the views of the child will apply

"so far as is practicable and taking account of the age and maturity of the child".

We are yet to hear from Ken Macintosh on his thinking behind amendment 85. For my part, I completely agree that children at hearings should be offered the opportunity to speak to panel members separately from others in the room. That was a specific recommendation from our "The Child at the Centre: Self-evaluation in the Early Years" sub-group, which reported to ministers in the run-up to Christmas, and I believe that the bill as drafted already provides the opportunity.

Section 75 will enable a hearing to exclude relevant persons when it believes that their presence is preventing the hearing from obtaining the views of the child or when it is causing, or is likely to cause, significant distress to the child. Section 75 also provides that the hearing must explain to relevant persons what took place in their absence. However, section 171 provides that the hearing can withhold that information if it believes that disclosing it would be

"significantly against the interests of the child".

At stage 1, concerns about section 171 were raised as to whether that provision encroaches on the position of relevant persons. To address those concerns, we intend to lodge amendments later in stage 2 to help to ensure that children can speak openly to the hearing. I hope that we can define the threshold at which we can take such measures. Given the existing provisions in the bill and the proposed Scottish Government amendments, we do not believe that amendment 85 is required. It is not clear to me what it will add to what we have. I therefore ask Ken Macintosh not to move amendment 85.

Amendments 63 and 86 both respond to an issue that was raised by the committee in its stage 1 report—that there should be a statutory report for hearings containing the views of the child. Our putting the child at the centre of the hearings system, enabling them to properly participate and hearing their voice are very much at the heart of the reforms. The need to do more to make that the reality for all children in the hearings system has been a consistent message that I have heard during our consultation. However, having consulted on the issue recently with our partners on our "Voice of the Child" partner working group, I have not lodged amendments that would specifically require a report containing the views of the child to be provided to the hearing. I reached that view for a number of reasons that I will set out before I outline my proposed solution.

First, in recent discussions with partners, their clear view was that introducing another report for hearings would not be helpful. That is a particularly important point because underpinning the view is the drive to embed the getting it right for every child—or GIRFEC—approach across the country. As members know, GIRFEC promotes a single plan for the child that should include the views of the child and should be provided to the hearing wherever possible. The "Voice of the Child" group agreed that that plan should be used for every child at every hearing.

Secondly, a lot of provision is already in place to facilitate children and young people getting the support that they need and, in particular, having their say in the hearings system. For example, section 16 of the Children (Scotland) Act 1995, which is replicated in section 26 of the bill, provides that hearings and sheriffs must seek and take account of the child's view. Current children's hearings rules provide in great detail for the view of the child to be given in writing at rule 5, and for the hearing to give the child the opportunity to contribute his or her view at rule 15. The SCRA also has a "Having your Say" form to help children and young people put their views across to hearings, and rule 11 of the 1996 rules, which is replicated in section 77 of the bill, provides that a child may be accompanied at a hearing by a "representative" who can speak on their behalf. A safeguarder can also be appointed in certain circumstances, and the safeguarder is expected to act in the best interests of the child.

Taking all that into account, I recognise that GIRFEC is not fully embedded across the country, and I also acknowledge that, for all the existing mechanisms that we have in place, the reality is that children do not always feel that a hearing is about them. They do not always feel able to participate and it is rare that they feel that their views are being heard or genuinely listened to. We need to make sure that the existing provision works more effectively in the future.

With that in mind, I have lodged amendment 63, which delivers a practical solution and is flexible enough to fit with the GIRFEC single-plan approach in the future. Amendment 63 will introduce a new section to part 12, which covers children's hearings generally, and will place a duty on every children's hearing to ask the child if the reports that are presented to the hearing—they are also given to the child—reflect the child's views. Any negative response should lead to discussion of the child's views.

Amendment 63 therefore covers the key issue of whether children are getting an opportunity to express their views in the run up to a children's

hearing, and whether that information is reflected in the papers that are presented to the hearing. Officials have had informal discussions with key partners including the SCRA about the proposed approach, and they see it as being an appropriate and proportionate response.

I considered amendments in this area in considerable detail and decided against proposing a statutory report like that which is proposed in amendment 86. As I have already set out, requiring such a report would go against the GIRFEC single-plan approach, and I believe that it would duplicate existing provisions that provide for the child's views to be given to hearings. I am also concerned that, if it is accepted, amendment 86 could lead to hearings being continued to a later date if the report that is to be presented to the hearing or sheriff is not available when a hearing is coming to a decision. I firmly believe that amendment 63 offers the right way forward.

That said, I do not believe that we can fix this issue through the bill alone. As well as lodging amendment 63, I intend to make procedural rules under section 170 to make it clear that the information that is provided to panel members in advance of hearings should include the child's views. There is, of course, already provision to that end in the existing children's hearings rules, but I will seek to make the provision more explicit in the new rules under section 170. We will also consider how we can use guidance and panel member training to enforce those messages and, of course, the Government will continue to work with partners to take forward the changes to practice and culture that are required.

I hope that the committee will agree with my proposed way forward through amendment 63 and our wider activity. I realise that this is a matter of considerable interest to Margaret Smith and I am happy to work with her to develop proposals for the non-legislative elements. I hope that Ms Smith feels reassured by what I have said and I ask that she not move amendment 86.

I move amendment 20.

Ken Macintosh: I thank the minister for his comments and the amendments that he has lodged today. It is clear that we are all as one on the whole issue, and particularly on the child's views. It is important that the bill does what it can to place the child's views at the centre of the children's hearings system.

I was certainly minded to support amendment 86 in Margaret Smith's name, and the committee talked about the need for a report. However, I also welcome the minister's remarks. Sometimes too many reports that replicate others or that are unnecessary and not entirely focused are floating around. I welcome the amendments that the minister has lodged.

11:45

Amendment 85 has been promoted by a number of children's organisations including Action for Children Scotland, Aberlour, Barnardo's, Children 1st, Quarriers and Children in Scotland. We discussed the issue to which it relates at stage 1 and mentioned it in our report. The amendment is designed to address the key concern that the committee expressed about the fact that some children who appear before the panel are inhibited or intimidated by the presence of certain adults—family members or others. However, the committee recognised that there were confidentiality issues and that the children's panel could not reach a secret agreement, in collusion with the child, without letting the relevant adults know, because that would almost certainly be in breach of the ECHR.

Amendment 85 is designed to address the issue. It tries to put the focus on good practice that would allow the children's panel to hear children's views and to emphasise that relationship, rather than the supposed rights of adults who are present. Such adults have rights, but those should not be primary but secondary to the child's rights in this matter. I do not need to convince members of the need for that emphasis. The phrase "in private" is used to make it clear that the child's conversation with the panel is not confidential or secret—it is simply a way of focusing on that relationship and on the child's needs, rather than on the rights of adults.

That said, section 75 deals with some of the issues and the minister has undertaken to lodge amendments later in stage 2 to address the matter. I recognise that this a tricky area that we want to get right. It is clear from the minister's words this morning that he recognises the problem that I have highlighted, and he sounds willing to address it. I will not move amendment 85.

The Convener: You will be invited to make that clear at a later point.

Margaret Smith (Edinburgh West) (LD): I welcome amendment 20, in the name of the minister, and his comments on that.

I heard what the minister had to say about amendment 85, in the name of Ken Macintosh. In a sense, the panel's ability to hear the child in private is implicit in the bill. The slight difference and nuance, if I may put it that way, with the amendment is that it is about giving the child, rather than the panel, the opportunity to ask for a conversation to be held in private. That is an extra step. I would like the minister to clarify whether he believes that it is already implicit in the bill that the

child should have the opportunity to ask for a conversation to be held in private.

There are similarities between amendments 86 and 63. I thank the minister for his comments this morning, but I am still not wholly satisfied. We had a fairly substantial answer from the minister and I would like to ask a series of questions on it, not all of which I have framed in my head, so I would welcome the chance to take the matter further with him.

Amendment 86 was originally suggested by the Scottish Child Law Centre. The main thinking behind it concerns the need to hear the child's voice. It is designed to pick up on the fact that, although some children are confident and articulate enough to be able to present their views verbally at a hearing if asked, a significant number of the children who are involved in the hearings system are not able to do that. It is intended to find a way of providing something that is fundamentally from the child and separate from all the reports that the professionals—the adults in the scenario—produce. Such a report would be produced in a way that would give the child a greater sense of ownership. That would probably require some assistance from somebody.

The main driver of amendment 86 is not to set up yet another bureaucratic report but to set up a type and style of report that is different from some of the others. Amendment 63 would throw us back into asking a child whether all the reports that were written by professionals—written by adults—really cover their views. Some children may be able to speak to the panel about that and affirm it, but others may be put off by the sheer volume of what is in front of them or the circumstances of being before a panel.

Amendment 86 tries not to suggest something that would put more burdensome bureaucracy before a panel but to propose something in which the child would have a greater sense of ownership and that would give them the sense that their voice was being heard in a slightly different way to how that might be done under the GIRFEC plan or any other formal report.

Ken Macintosh said that he is minded to support me on amendment 86 but, bearing in mind the minister's comments and my genuine attempt to find the best way forward, I am happy not to move it and, following discussions with the minister, will return to the matter at stage 3 if necessary.

Adam Ingram: I thank Ken Macintosh and Margaret Smith for agreeing not to move their amendments.

I confirm to Margaret Smith that section 75 could be triggered by the child, panel members or the safeguarder. I hope that that reassures her.

Amendment 63 is an attempt to carve a way through the bureaucracy and to ask children directly whether they feel that their opinions and views have been taken on board. Having said that, I agree that the current mechanisms—of which there are many—do not necessarily ensure that the child's views are heard. The SCRA is reviewing its "Having Your Say" form, for example, but we are talking about a change of culture or attitude as much as of practice.

I thank Margaret Smith for accepting the offer that I made. I know that the issue is important for other committee members as well, and I am happy to make further recommendations in due course but, for the moment, amendment 63 is the appropriate way forward.

Amendment 20 agreed to.

Amendments 85 and 86 not moved.

Section 26, as amended, agreed to.

After section 26

The Convener: Amendment 220, in the name of Christina McKelvie, is grouped with amendment 87.

Christina McKelvie: I pay tribute to Children 1st, Who Cares? Scotland, Clan Childlaw and Children in Scotland, with which I have worked on amendment 220 and which have promoted the amendment. For me, advocacy is extremely important for anyone in a judicial or quasi-judicial system. We all know that it is important to ensure that the subject of a hearing—the child—understands what is going on, can contribute to the proceedings if she or he so desires and takes as full a part in the hearing as possible, which always leads to a more positive outcome. The hearings should not be about what is done to a child; they should be about helping that child. A strong emphasis on welfare is intrinsic to our hearings system in Scotland.

When a child has difficulty engaging in a hearing, it is vital that advocacy is provided. Advocacy should not be about representing the child, however; rather, it should be about getting the child's views across in a manner that the child wants. That is why I disagree with amendment 87, which is in the name of Ken Macintosh. Advocacy should be about ensuring that the child is able to engage fully. That full engagement is vital.

I move amendment 220.

Ken Macintosh: I thank Christina McKelvie for lodging an amendment on advocacy—an issue that, as I am sure committee members know, is being promoted by nearly all the children's organisations. Those organisations feel strongly about advocacy and have provided strong evidence about its effectiveness in many cases.

Having said that, I will be extremely surprised if Ms McKelvie does not seek to withdraw amendment 220—we will get over that hurdle when we come to it.

Assuming that amendment 220 is withdrawn, amendment 87 is an attractive compromise amendment that was drawn up by our former colleague, Mark Ballard, who is now at Barnado's. It is an especially good compromise because advocacy is important—it works, it is needed and it helps many children in many circumstances. The fear, which I think is shared by most committee members, is that, for the best of reasons, children's panels are in danger of becoming overcrowded with adults and people other than the child. Apart from panel members and the reporter, other relevant persons and legal representatives can be present. In all of that, there is a strong danger that the voice of the child is drowned out.

At stage 1, we were clear that we did not want to overlegalise or overbureaucratise the children's hearings system, and that we wanted to keep it simple. However, it is clear that some children would benefit from having an advocate. Amendment 87 is about trying to get that balance right, which is why it is such a good compromise.

12:00

Amendment 87 is attractive also because it parallels the wording that is used for the appointment of a safeguarder. It places a duty on the children's hearing to "consider appointing an advocate". In other words, it would not be a must—there would not need to be an advocate in every single case. However, it would be a must for the children's hearing to think about whether an advocate was necessary.

Bearing in mind the use of safeguarders in the system—they are not appointed in every case—we can assume that amendment 87 will not overpopulate the children's hearings system with adults drowning out the voice of the child.

For those reasons, and because, like other committee members, I am sympathetic to the arguments and the need for advocacy, amendment 87 is the compromise that I believe we should go for. I move amendment 87.

The Convener: It is not quite time for you to move your amendment. Perhaps by the end of the process everybody will have understood the intricacies of stage 2 procedure.

I should have said this earlier but, while I know that Mr Gibson's mobile device is most certainly not switched on, someone's mobile device is on. I do not have any desire to go round asking to see them all, but I would be grateful if everyone could check. Somebody's device is interfering with the sound system. It is not good enough just to have devices on silent; they need to be switched off.

I invite the minister to respond to the group.

Adam Ingram: I am grateful for the opportunity to respond to amendments 87 and 220. I share the concern of Christina McKelvie and Ken Macintosh that children in the hearings system should have whatever help and support they need to participate in hearings effectively. That is not just a matter of ensuring that they have the chance to have their say in the hearings themselves; they should also be supported throughout their time in the hearings system. The need for effective support is a message that I have heard clearly and consistently during our consultation on the bill.

Many people have called for the provision of advocacy support. However, I have not heard consensus on how that support should be provided. Paid advocates, volunteer advocates, legally trained advocates, a friend or family member as an advocate—I have heard well-argued cases for all those ideas. That is why, when introducing the bill, I decided not to include a right to advocacy support in addition to what the bill already provides to ensure that the voice of the child is heard.

Section 77 replicates provision in the 1995 act to allow a child to bring a representative with them to a hearing. That representative could be someone to speak on behalf of the child, and it could be an advocate. I have already discussed provisions in the bill, and in amendments to it, to ensure that the voice of the child is heard in hearings.

Rather than include provision on advocacy in the bill, I undertook to do further work with partners to consider how best advocacy support can be provided. That work is continuing. The voice of the child sub-group is considering possible ways forward. I am committed to taking further steps in light of that work to improve support for children and young people throughout their time in the hearings system.

Members will understand from what I have said that I do not think that either of the amendments in this group is required. Until I am clear about who will provide such support and how they will do it, placing such a duty in the bill will simply raise expectations that cannot immediately be met. Both the amendments are silent on that point, as they simply require a hearing to secure or appoint an advocate.

It is illustrative that the two amendments are very different. Under Ken Macintosh's amendment 87, the children's hearing would decide whether the child should have an advocate; under Christina McKelvie's amendment 220, the child would decide. The assumption under Christina

McKelvie's amendment is that the child would have an advocate unless they specifically rejected the service. That clearly demonstrates the lack of consensus about how best to provide such support.

To my mind, looking to appoint an advocate during a hearing would be too late. Children and young people need help and support in advance to prepare themselves for the hearing. As we discussed in response to amendment 82, they need a clear understanding of the hearings system, including an understanding of their right to speak at the hearing or to have someone speak on their behalf.

The two amendments raise other questions. Will a hearing be continued to allow the appointment of an advocate if a child does not have one? Will that delay be in the child's best interests? Is having another adult at the hearing in the child's best interests?

Further thought is required about all of that before we put additional duties in the bill. I am committed to doing that work—indeed, it is already under way. Accordingly, I invite Christina McKelvie to withdraw amendment 220 and Ken Macintosh not to move amendment 87.

Christina McKelvie: Much to Ken Macintosh's surprise, I had not actually made up my mind whether to withdraw amendment 220—I wanted to hear the arguments from all sides before making my decision. I have taken on board his comments about the voice of the child being drowned out, and I understand that obvious concern.

It is important that we get these provisions right. I have seen the system working: positive engagement of a child in a hearing can lead to a positive outcome, which is what we want for the children who go through the system. I direct the minister to the project that was run in North Ayrshire, which was very successful. He could perhaps find best practice there on how we can address some of the issues.

I take on board the minister's reassurance that the voice of the child sub-group will consider the lack of consensus that he has spoken about. Conversations that I have had with various organisations about the issue over the past few weeks and months reveal that lack of consensus, together with an understanding that we need to pull something together that works effectively.

I appreciate the fact that advocacy might need to happen a bit earlier in the process. I have seen some good preparatory work involving children's rights workers. We need to draw out all the best practice and come back with some ideas. I am committed to working with children's organisations to generate some input into the sub-group.

On that basis, I wish to withdraw amendment 220, but I hope that the minister's assurances that we can make progress in this area will bring something fruitful in the end. Consensus is important. If the arrangements are flawed to start with, they will be flawed right through the system. We have to work together to ensure that the child has the best outcome.

Amendment 220, by agreement, withdrawn.

Sections 27 and 28 agreed to.

Section 29—Children's hearing: duty to consider appointing safeguarder

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 90, 32, 33, 91, 34, 92 and 64. I draw members' attention to the pre-emption information in the groupings paper.

Adam Ingram: I will start with Government amendment 21. I will then go on to amendment 90, which was lodged by Ken Macintosh for similar reasons. Then I will speak to amendments 32 to 34 and 64, and after that to amendments 91 and 92, which were also lodged by Ken Macintosh and which also relate to the length of the appointment of a safeguarder.

The committee raised concerns about the lack of clarity around the role of the safeguarder. Amendment 21 provides a broad remit for the safeguarder, similar to that in section 41(1)(a) of the 1995 act.

At the same time, Ken Macintosh lodged amendment 90 to provide for the role of a safeguarder. However, his definition has the potential to cause confusion. It is not the safeguarder's role to represent the child in hearings; their sole role is to safeguard the child's interests. Representation is normally by legal representatives or other persons. It would not be unusual for a safeguarder to reach their conclusions without direct contact with a child and to present findings that are in conflict with the views of a child. Therefore, I consider it more appropriate to retain the definition proposed in my amendment 21, which is that used in the 1995 act.

Amendment 64 is consequential and ensures that the definition of "safeguarder" in section 187 reflects the role set out in amendment 21.

The duty on the safeguarder under section 31 is clarified by amendment 32. It puts it beyond doubt that the safeguarder is to attend the hearing wherever "reasonably practicable". For example, it might be that the safeguarder cannot attend "with the child" because the child has been excused from attending the hearing.

Taken together, amendments 33 and 34 clarify that the safeguarder's appointment will end when

the period allowed for an appeal against a relevant decision expires, unless the safeguarder appeals that decision. Where the safeguarder appeals to the Court of Session, the appointment will continue until the court's decision is issued. Such a decision is final.

Amendments 91 and 92, which were lodged by Ken Macintosh, appear to cover the same issues as my amendments 33 and 34. New subsection (3) of section 32, which amendment 92 proposes to insert, concerns the extension of the safeguarder's appointment following an appeal. Section 149 provides for the sheriff to appoint a safeguarder for the appeal process where the safeguarder has decided not to appeal earlier.

New subsection (4) of section 32, which amendment 92 also proposes to insert, seeks to ensure that the safeguarder's appointment will also continue where the sheriff remits the case back to the children's hearing for consideration.

Court-appointed safeguarders and hearings-appointed safeguarders currently have different roles. Every children's hearing must consider the appointment of a safeguarder, including the hearing that reconsiders a case that has been remitted to it from the sheriff court. In reality, we are not sure why a children's hearing would wish to continue automatically a safeguarder's appointment, given that it would have already received reports on the child prior to the appeal process.

I ask Ken Macintosh not to move his amendments 91 and 92, because there is no obvious role for a safeguarder where they have decided not to appeal and have no locus to represent the child.

I take the opportunity to remind the committee of my earlier commitment to consider the role of the safeguarder in sheriff court proceedings in secondary legislation and in consultation with sheriffs, safeguarders and others. On that basis, I also ask Ken Macintosh not to move amendment 90.

I move amendment 21.

Ken Macintosh: My amendments were drawn up by the Law Society following work that was done by others and following stage 1, when the committee flagged up our concern that we were missing an opportunity to clarify the role of the safeguarder.

The definition of the role of the safeguarder in my amendment 90 is slightly different and includes ensuring that

"the views of the child are heard".

I wish that we could have dealt with these amendments after voting on amendment 87, the advocacy amendment.

The purpose of amendment 90 was to clarify, but the minister has lodged a similar amendment that follows the 1995 act, and I am entirely happy that, once we have agreed to the minister's amendment 21, provision will be made in the bill in that regard.

12:15

Amendment 91 paves the way for amendment 92, which does the same job as the minister's amendments, in that they all clarify the safeguarder's position should there be an appeal. However, I would like the minister to clarify one issue, because I did not read his amendments in the same way that he did. What would be the effect of his amendments when an appeal is brought by someone other than a safeguarder? Amendment 92 explains exactly what would happen. If that point is clarified, I will be minded not to move amendments 91 and 92 when the time comes.

Adam Ingram: I will reply to Mr Macintosh's question. The safeguarder would fall out of the process at that point because they had not been minded to appeal.

The role of a safeguarder at court is very complex, which is why we have committed to considering the details through secondary legislation and in consultation with sheriffs, safeguarders and others. Obviously, we will have the opportunity to look at the details once they come through.

Amendments 33 and 34 cover the same ground as amendments 91 and 92. We do not agree on one specific point, which is that a safeguarder should be able to continue in their role through the appeals process as a matter of routine—hence the answer that I gave to Mr Macintosh. However, amendments 33 and 34 address the concerns raised by Professor Norrie and the SCRA about the termination of a safeguarder's appointment.

On that basis, I hope that the committee will agree to the amendments in my name, and I thank Ken Macintosh for agreeing not to move his amendments.

Amendment 21 agreed to.

Section 29, as amended, agreed to.

After section 29

Amendment 87 moved—[Ken Macintosh].

The Convener: The question is, that amendment 87 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

Against

Allan, Alasdair (Western Isles) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
Smith, Elizabeth (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 4, Against 4. There is clearly a draw, so I will use my casting vote in support of amendment 87.

Amendment 87 agreed to.

Section 30—Safeguarders Panels

The Convener: Amendment 22, in the name of the minister, is grouped with amendments 88, 23 to 26, 89, 27 to 31 and 77. Amendments 22 and 88 are direct alternatives.

Adam Ingram: I will speak first to amendments 22 to 29, 30 and 31, which concern a matter that the committee raised in its stage 1 report about the management of safeguarders. I will then speak to amendments 77, 88 and 89, which Ken Macintosh lodged.

The issue of safeguarders and the need for a consistent national approach to their recruitment, payment and monitoring provoked a lot of discussion at stage 1 of the bill.

The committee asked the Government to think again on who should have management responsibility for safeguarders. Having considered the matter carefully, I was happy to lodge the amendments in the group, which I believe address the concerns that were raised.

The amendments remove safeguarders from local authority control and place them in a single national panel that will facilitate the establishment of national standards for the recruitment, training and monitoring of safeguarders. It should be noted that a national panel is simply a panel—in essence, it is a list—of safeguarders. It does not involve the establishment of a new quango.

Scottish ministers will take statutory responsibility for ensuring the effective management of safeguarders, but the service will be delivered under contract or other arrangement by an independent organisation. I firmly believe that national oversight of safeguarders of that sort is a much more proportionate and cost-effective solution than the establishment of a new quango would be. A new quango would involve considerable start-up costs and administrative and corporate services that would be out of all proportion to the small numbers involved. I have discussed the proposal informally with the Scottish Safeguarders Association, members of the children's voluntary sector and the SCRA. They are confident that there are organisations with the capacity and expertise to take on the role. I expect interest in service delivery to come from a few voluntary sector children's organisations.

Amendment 22 provides for the creation of a national panel of safeguarders under the responsibility of Scottish ministers. Amendments 23 to 26, 28, 29 and 31 are consequential on amendment 22 and will make minor drafting changes to section 30 to reflect the fact that safeguarders will be placed in a single national panel and will be removed from local authority control. Amendment 27 adjusts section 30 to reflect the fact that Scottish ministers, and not local authorities, will be responsible for the payment of expenses and allowances to safeguarders.

Amendment 30 adjusts section 30(2) by providing ministers with the power to buy in the safeguarder management service from a source other than the SCRA or children's hearings Scotland. As the committee will be aware from my comments on other non-Government amendments, it is crucial to ensure the separation of functions within the children's hearings system and so to avoid conflicts of interest that might lead to breaches of the ECHR. That is why amendment 30 provides specifically that the safeguarder service cannot be provided by either the SCRA or children's hearings Scotland. It would not be appropriate for them to provide it. This Government takes very seriously the constitutional imperative under the Scotland Act 1998 that all legislation that the Parliament passes should comply with the ECHR.

Having highlighted the advantages of our proposed model for the management of safeguarders, I turn to amendments 77 and 88, which Ken Macintosh lodged and which seek to establish a new body for safeguarders to be overseen by a board. I have explained that the Government's amendments present an effective way of managing efficiently the safeguarder service. Amendments 77 and 88 would create an additional public body—in short, a quango—with a full board. That is simply not required. Taken together, amendments 77 and 88 would create a board that would be the same size as that of children's hearings Scotland. That suggests that the new body would be unnecessarily expensive and completely disproportionate. After all, there are only around 200 safeguarders in Scotland in comparison with the 2,500 panel members that children's hearings Scotland will support. Amendments 77 and 88 work against the model

for managing safeguarders that I have set out and which my amendments provide for. I strongly urge the committee not to support the amendments.

The committee has made clear its determination to prevent the introduction of unnecessary bureaucracy to the system, a point with which I strongly agree. That is particularly relevant when we consider the economic climate in which we are all operating, in which context the creation of another national body seems extravagant. Committee members will know that, quite rightly, even the smallest body that is supported by public funds requires to adhere to robust governance rules. Given the small number of safeguarders and the small proportion of safeguarder appointments, it seems inefficient to suggest that only a national body can deliver a safeguarder service. Also, given its likely workload, the body need only be part time; however, part-time bodies do not have attached to them part-time governance duties. A large part of the industry of such a national body would be focused on the internal operation of the body rather than the operation of the safeguarder service.

I know that the Finance Committee takes its scrutiny role very seriously and presented some very robust challenges to the plans to create children's hearings Scotland. The amendments seem to ignore the reality of our financial constraints and risk raising expectations among safeguarders of what is appropriate and achievable.

I have explained already how I think my amendments will make the necessary improvements in standards and consistency for the safeguarders service. I refer the convener to her comments last week about the views of the Convention of Scottish Local Authorities and draw her attention to the fact that COSLA supports my proposals, as does the Scottish Children's Reporter Administration and other relevant stakeholders. Although the Scottish Safeguarders Association is more attracted to a national body, its representative on our strategic board and implementation working group has confirmed that my proposals are also acceptable, as they will address key concerns. I do not think that a new body for safeguarders needs to be created, which is exactly why I lodged my alternative proposals. I urge Ken Macintosh not to move amendments 77 and 88.

Ken Macintosh's amendment 89 would enable regulations to be made concerning fees to be paid to safeguarders in addition to allowances and expenses. Given that existing legislation refers to the payment of fees, allowances and expenses, I support amendment 89 since it will have the effect of replicating existing provision.

I move amendment 22.

Ken Macintosh: The issue of a national safeguarders body emerged during stage 1 committee proceedings. The committee agreed that there was a missed opportunity to create a national body, which was also a recommendation in the Gill review of courts. I am not entirely sure that I agree that the body would be hugely expensive and onerous, but the minister has come up with an alternative way of proceeding. I am a little uncertain about how his proposal will operate in practice, but I accept the principle that there is already a national body. The minister has committed to get rid of quangos rather than establish them and I accept where he is coming from in that regard. I would welcome any clarification that he can give me on any parallel organisations.

On that basis, I am minded not to move amendment 88 or, indeed, amendment 77, which would simply insert a schedule to implement the amendment 88 proposal.

I am delighted to hear the minister's response to amendment 89. The idea behind it was to tackle the remuneration of safeguarders, which varies throughout the country. By using the word "fees", it seeks to place a duty on ministers to produce regulations and therefore introduce consistency, which I hope will drive up standards across the board.

Adam Ingram: I will answer Ken Macintosh's question about parallel organisations. We are proposing a national list of safeguarders. At the moment, local authorities oversee local lists. That is the same kind of principle and there is no fundamental problem with establishing a panel that is not under the aegis of local authorities. The national panel will be under the aegis of Scottish ministers and we will contract an organisation to provide management of that organisation. I appreciate Mr Macintosh's comments and I would be content if the committee would agree to the amendments.

Amendment 22 agreed to.

Amendment 88 not moved.

Amendments 23 to 26 moved—[Adam Ingram]—and agreed to.

Amendment 89 moved—[Ken Macintosh]—and agreed to.

Amendments 27 to 31 moved—[Adam Ingram]—and agreed to.

Section 30, as amended, agreed to.

After schedule 3

Amendment 77 not moved.

After section 30

Amendment 90 not moved.

Section 31—Functions of safeguarder

Amendment 32 moved—[Adam Ingram]—and agreed to.

Section 31, as amended, agreed to.

Section 32—Termination of appointment of safeguarder appointed by children's hearing

The Convener: Amendment 33, in the name of the minister, was debated with amendment 21. If the amendment is agreed to, I cannot call amendment 91, due to pre-emption.

Amendments 33 and 34 moved—[Adam Ingram]—and agreed to.

Amendment 92 not moved.

Section 32, as amended, agreed to.

The Convener: That is probably an appropriate place for us to conclude our consideration of the Children's Hearings (Scotland) Bill at stage 2 for this week. I thank the minister and his officials for attending the committee. We look forward to their return next week. Members will note in tomorrow's *Business Bulletin* the sections of the bill on which amendments will be called. The opportunity to lodge them will end at 12 noon on Friday.

12:34

Meeting continued in private until 13:08.

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