The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 29 September 2010

Session 3

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

Wednesday 29 September 2010

CONTENTS

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
24th 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:

Lucy Blackburn (Historic Scotland)
Barbara Cummins (Historic Scotland)
Fiona Hyslop (Minister for Culture and External Affairs)
Emma Thomson (Scottish Government Legal Directorate)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 29 September 2010

[The Convener *opened the meeting at 10:03*]

Children's Hearings (Scotland) Bill: Stage 2

The Convener (Karen Whitefield): I open the 24th meeting this year of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

The first item on the agenda is our continued stage 2 consideration of the Children's Hearings (Scotland) Bill. I am pleased that Adam Ingram, the Minister for Children and Early Years, has joined us for that.

Section 33—Child assessment orders

The Convener: We move straight to the first group of amendments. Amendment 35, in the name of the minister, is grouped with amendments 37 to 40, 95 to 97, 42, 99, 47 and 101.

The Minister for Children and Early Years (Adam Ingram): Amendments 35 and 37 concern child assessment orders and child protection orders that authorise the carrying out of an assessment of the child's health or development, or of the way in which the child has been or is being treated or neglected. The amendments apply to section 33, which deals with child assessment orders, and section 35, which deals with child protection orders. Section 177 ensures that nothing in the bill affects the well-established rules concerning the capacity of a child with sufficient understanding to consent to medical treatment under the Age of Legal Capacity (Scotland) Act 1991. Amendments 35 and 37 will insert cross-references to section 177 to ensure that child assessment orders and child protection orders cannot cut across that important principle of a child being able to consent to medical treatment.

I turn to amendments 38 to 40, 42 and 47. Child protection orders—CPOs—include provision for the sheriff to make a range of directions that are designed to ensure a child's immediate safety when it is thought that they are, or are likely to be, at risk of significant harm or neglect. The orders are of an emergency nature and are designed to provide local services with the ability to take quick and decisive action when it is believed that a child is in need of immediate protection.

One direction that a sheriff can make as part of a CPO focuses on the non-disclosure of certain information relating to a child. That is currently described in section 38 as an "information disclosure direction". Following stage 1 consideration of the bill, a suggestion was made that such directions could perhaps be better described as non-disclosure directions, given that their purpose is to ensure non-disclosure, rather than to permit disclosure. That is a more accurate description of the purpose of the direction, so I have lodged amendments 38 to 40, 42 and 47, which, if accepted, will implement that straightforward change. The title of section 38 will have a similar change made to it by way of a printing change, as is standard practice for section titles. None of the amendments will impact on the substantive operation of those directions.

I turn to amendments 95 to 97, 99 and 101, which were lodged by Ken Macintosh. They relate to parental rights and responsibilities directions in the context of child protection orders, and not in fact to parental rights and responsibilities in general. A child protection order does not transfer parental rights and responsibilities to the applicant, which is normally the local authority. It provides for the sheriff to give such direction as might be necessary, for example, when a parent refuses to consent to treatment of the child arising out of any assessment that is authorised by the child protection order.

The amendments were initially suggested by the Law Society of Scotland and, following further consideration in partnership with Scottish Government officials, there is consensus that the proposed changes would not be preferable to what is currently in the bill. That said, the Law Society was keen for us to consider further whether the provisions could be revisited, given its concerns regarding the generality of what is currently included. We have done so, but remain clear that the provisions as drafted represent the best way forward.

When considering section 40, it is important to reflect on the breadth of directions that could be considered by the sheriff at the point at which a parental responsibilities and rights direction is being sought. It would be entirely inappropriate to amend section 40 to limit individuals so that they could apply for only a limited list of actions to be directed in such instances. Importantly, that would not be in the best interests of the child. The Children (Scotland) Act 1995 already clearly sets the parameters on parental rights and responsibilities. To prescribe further in the area is therefore clearly unnecessary, it would offer no benefit and it would significantly limit a sheriff's

ability to make a direction that might be necessary to ensure the welfare of a child.

It is important to note that section 40 is a restatement of sections 58(4) and 58(5) of the 1995 act and is not a new provision that is introduced by the bill. Such directions form part of current practice and we see no reason why their use should not continue. I therefore ask Ken Macintosh not to move amendments 95 to 97, 99 and 101.

I move amendment 35.

Ken Macintosh (Eastwood) (Lab): I support the amendments in the minister's name. They aim to prevent problems in the interpretation of the bill, at least in respect of the term "disclosure".

The effect of amendments 95 to 97, 99 and 101 is to replace the term "parental responsibilities and rights direction" with "medical treatment order" where that reference occurs in sections 40, 45 and 49 of the bill. The minister is correct in saying that the amendments originated from the Law Society of Scotland, which is concerned about a lack of clarity in the language that is used in this regard. I would welcome a further assurance from the minister on his intentions for the provision. The term "parental responsibilities and rights direction" is a clumsy way in which to refer to medical treatment orders and assessments under the Children (Scotland) Act 1995. I refer to sections 58(4) and 58(5) and quote from the latter section, which says that

"a direction under that subsection"—

section 58(4)—

"may be sought in relation to any examination as to the physical or mental state of the child ... any other assessment or interview of the child; or ... any treatment of the child arising out of such an examination or assessment".

As I said, the Law Society of Scotland is concerned that the term "parental responsibilities and rights direction" is a clumsy way of talking about medical treatment orders and assessments. It suggested that it might be better to say that explicitly or use the language of the 1995 act.

Adam Ingram: I suggest that a parental responsibilities and rights direction refers not only to medical treatment and assessment. Such directions need to be flexible to ensure the breadth of actions that may be necessary in meeting a child's needs. A list of actions under a parental responsibilities and rights direction is not included in the bill for the reason that any direction that was not on the list would be excluded. We took the view that that was not in the best interests of the child. I should emphasise that the direction expires when the CPO expires. The provision restates the current provision of the 1995 act. I urge Ken Macintosh not to move his amendments in the group.

Amendment 35 agreed to.

Section 33, as amended, agreed to.

Section 34—Consideration by sheriff

Amendment 36 moved—[Adam Ingram] and agreed to.

Section 34, as amended, agreed to.

Section 35—Child protection orders

Amendment 37 moved—[Adam Ingram]—and agreed to.

Section 35, as amended, agreed to.

Sections 36 and 37 agreed to.

Section 38—Information disclosure directions

Amendments 38 to 40 moved—[Adam Ingram] and agreed to.

Section 38, as amended, agreed to.

Section 39 agreed to.

Section 40—Parental responsibilities and rights directions

Amendments 95 to 97 not moved.

Section 40 agreed to.

Section 41—Notice of child protection order

10:15

The Convener: Amendment 41, in the name of the minister, is grouped with amendments 43, 100 and 44 to 46.

Adam Ingram: The bill defines "relevant person" at section 185, provides for a person to be deemed a relevant person if they have a significant involvement in a child's upbringing and outlines the process for making such a determination. Once deemed relevant person status is granted, that person is treated as a relevant person in certain processes, which are listed in section 80(4). However, the child protection order process is not listed in section 80(4) as one in which relevant person rights apply, as the process applies before a child enters the hearings system. The process for notification of a child protection order is set out in section 41. The notification is carried out by the person who applies for the order, and each relevant person should be notified.

Currently, a person who might meet the test to qualify as a deemed relevant person would not be

entitled to receive notification that a child has been made the subject of a child protection order. The committee raised that issue briefly in the evidence session with officials and it was followed up by Professor Norrie. I am grateful to the committee for drawing our attention to that. Amendment 41 presents a solution in requiring the reporter to identify persons who should be notified of a child protection order. It would be unreasonable to expect the applicant for the CPO to have sufficient knowledge or the ability to make a decision on who may have significant involvement in a child's upbringing, and therefore to be likely to qualify as a deemed relevant person in a future pre-hearing. However, it is likely that the reporter would have such knowledge.

Once a child protection order is granted, it is possible for an application to be made to the sheriff to vary or terminate that order. Among those who may make such an application are the child, relevant persons, the original applicant, the reporter and any such person who is specified in the court rules.

Amendment 43 will allow any person who has or has recently had significant involvement in the child's upbringing also to apply for variation or termination of the order. It will be for the sheriff to determine whether an individual has such an involvement.

Amendment 46 amends section 49, which lists those who have a right to make representations when the court is hearing an application to vary or terminate a child protection order. The amendment requires the sheriff to give the individual whom he considers to have a significant involvement in the child's upbringing the opportunity to make representations before the sheriff makes a decision on the application.

I believe that those amendments address the issue of including all those who are, or may be, relevant persons in the child protection order process.

I turn to amendments 44, 45 and 100. As already mentioned, section 46 of the bill allows for an application for variation or termination of a CPO to be made to the sheriff by certain specified persons. Amendment 100, which Ken Macintosh lodged, would extend the list of persons to refer explicitly to the local authority if it submitted the initial application for the child protection order. However, section 46(1)(c) already serves that purpose by directing that the person who is responsible for the initial CPO application—whether that be the local authority or any other individual—has the right to submit a subsequent application for variation or termination. The reference to "the person" in section 46(1)(c) covers local authorities, so amendment 100 seeks to plug a gap that does not exist. To agree to amendment 100 would simply introduce duplication and confusion in the section. With that in mind, I ask Ken Macintosh not to move the amendment.

When an application for variation or termination is made, section 47 requires certain individuals to be notified. The bill does not require the applicant for the initial CPO to be informed when another person applies for variation or termination. However, such a notification is necessary, especially as the applicant for the initial order must be given the opportunity to make representations to the sheriff on any application for variation or termination. Amendment 44 is a straightforward amendment to include the applicant for the initial order in the list of individuals who are to be notified when any application for variation or termination has been made.

When an application for variation or termination has been made under section 46, the sheriff has a duty to seek representations on the application from the list of specified persons in section 49. That list does not include the individual who applies for variation or termination. We recognise that that person will have made representations in the course of their application, but it would be appropriate to offer them a further explicit opportunity to make representations to the sheriff as part of the sheriff's determination process. We therefore propose amendment 45 which, if agreed to, will include the applicant for variation or termination in the list of individuals from whom representations must be sought as part of the sheriff's determinations.

I move amendment 41.

Ken Macintosh: Amendment 100 is not designed to alter the meaning, content or policy direction of section 46—it would simply make clear its meaning to those who are subject to it. As the minister said, the amendment would include local authorities explicitly. Instead of referring just to "the person who applied", section 46 would include

"the local authority who applied"

for the child protection order.

The minister is right in the sense that "the person" to whom section 46(1)(c) refers includes local authorities for purposes that relate to the welfare of children, but the bill introduces potential confusion, because sections 35 to 37 make a distinction between a person and a local authority applying for a child protection order. Section 36 is entitled

"Consideration by sheriff: application by local authority only".

Amending section 46 would clarify the potential confusion and division that sections 35 to 37 introduce.

Adam Ingram: I point out to Ken Macintosh that the sections that he mentioned—35, 36 and 37—relate to local authorities, reflecting the differences of the tests that we are talking about between local authorities and other persons. The tests that he is talking about are covered elsewhere, as well—I think that it is in section 46. I hope that I have reassured him that local authorities are included in the individuals who are able to make application for variation or termination of a CPO. I therefore urge Ken Macintosh not to move amendment 100.

Amendment 41 agreed to.

Section 41, as amended, agreed to.

Section 42—Obligations of local authority where child to reside

The Convener: Amendment 98, in the name of Ken Macintosh, is grouped with amendments 200, 201, 310, 318 and 105. I invite Mr Macintosh to move amendment 98 and to speak to all the amendments in the group.

Ken Macintosh: Thank you, Presiding Officer—sorry, convener. I promoted you.

The Convener: I am not sure that I would particularly care for that job. Members in the chamber are even more fractious than the committee—and that takes some doing.

Ken Macintosh: Amendment 98 would delete section 42 and amendment 105 would amend schedule 5. The aim is not to alter the policy intention of the bill, but simply to provide a different mechanism. Currently, section 42 talks about the obligations of a local authority and child protection orders, referring to section 17 of the Children (Scotland) Act 1995. The Law Society of Scotland has proposed that a better way of achieving the same objective would be to amend the 1995 act. The Law Society believes that the intention of section 42—I ask the minister to clarify this—is to ensure that all children who are subject to a child protection order enjoy the same protections as a child who is looked after by the local authority. The Law Society has taken the view that a better way in which to ensure that, rather than refer back to the 1995 act, would be to change the definition of a looked-after child so that it includes all children who are subject to a child protection order. In that way, there would be no ambiguity. Currently, there is a little bit of difficulty because section 17 of the 1995 act must be read in conjunction with another part of that act. The Law Society's proposal would make it clearer that all children who are subject to a CPO would be regarded as looked-after children. It is a different, perhaps clearer, way of achieving the same objective.

Amendments 200 and 201 are slightly different, although they also affect the obligations of a local authority. They amend section 118, on recall of grounds determination, which uses a sheriff's decision on

"whether the child will require supervision or guidance."

The Law Society has suggested that, rather than use that phrase, the bill should talk about whether the child will require

"the provision of services by the relevant local authority".

Amendment 201 will then enable the sheriff to make an order

"that the child is to be treated as a child in need for the purposes of section 22 of the 1995 Act."

In the society's view, the current provision is incongruous, as there would be no compulsory supervision order and no statutory structure for monitoring, reviewing or terminating the local authority's obligations. The purpose of the provision is to provide support for a child who ceases to be the subject of a compulsory supervision order as a result of recall by the sheriff following review. The society takes the view that a better way of achieving that would be to make use of the existing structures in the Children (Scotland) Act 1995 by giving the child access to the provisions relating to "children in need" in section 22 of the 1995 act.

I move amendment 98.

10:30

Adam Ingram: The bill places certain duties on local authorities in those instances where a child protection order is made by the sheriff and directs the removal of a child to a place of safety. Section 42 of the bill places the same duties on the authority in respect of the child as would apply if the child were looked after.

There is an important distinction to be made, however. A child who is the subject of a child protection order does not automatically become looked after by the local authority as a result of that order—nor should they. That is clearly not the purpose of such orders. Instead, the authority simply has the same duties in respect of the child as it would if they were looked after. That is the point that Ken Macintosh was making.

Were amendments 98 and 105, prepared by the Law Society of Scotland and lodged by Ken Macintosh, to be agreed to, they could have significant implications for the operation of CPOs. The need for all children who are subject to a child protection order to be considered as looked after by the local authority is one consequence of particularly significant concern.

To illustrate the difficulties of such an approach, we may want to consider a circumstance involving the making of a CPO that directs that a child

should not be removed from a place of safety, such as a hospital. Such an order would be made under section 35(2)(c) of the bill. However, in the bill as drafted, the provisions in section 42 would not be applicable. Were amendments 98 and 105 to be agreed to, the bill would require the child who was the subject of the CPO to be considered looked after by the local authority, irrespective of the fact that the child was not in the authority's care, was already adequately protected and was in the hospital's care. Such an arrangement would be neither appropriate nor workable.

Indeed, such a change would introduce a totally unnecessary flaw to the bill. The purpose of a child protection order is to ensure that fast and effective action can be taken to ensure the immediate safety of a child who is at risk of significant harm, not to identify that a child needs to be looked after by the local authority. Entirely separate arrangements are in place to support the making of such decisions. It is important that we do not confuse the processes.

Throughout the preparation of the bill and its subsequent scrutiny by the Parliament, at no point have stakeholders or practitioners in the field of child protection orders suggested that there is an issue with the provisions in the 1995 act that are comparable with section 42. For that reason, coupled with the concerns that I outlined, we are keen that the existing section 42 be retained. Furthermore, amendment 105 is technically deficient, as it contains cross-references to parts 3 and 4, concerning safeguarders, who do not have any role in child protection orders. On that basis, I ask Ken Macintosh to withdraw amendment 98 and not to move amendment 105.

Although amendments 200 and 201 are not related to CPOs, we are considering them at this point because they relate to local authority obligations. Section 118 and the preceding sections concern the somewhat rare situation in which the sheriff reviews a grounds determination that had been made previously. Section 118 applies where the sheriff decides that the ground for referral was not established and recalls—that is to say, overturns—the grounds determination. In such circumstances, the sheriff must terminate any compulsory supervision order and consider whether the person, if they are still a child, requires "supervision or guidance" by the local authority.

Amendments 200 and 201 would mean that, rather than the provision of supervision or guidance, a child in such circumstances would instead be entitled to the provision of services as a child in need under section 22 of the 1995 act. I do not believe that the changes proposed by amendments 200 and 201 will improve the protection and support available to children. The existing wording of "supervision or guidance" is wider than the proposed formulation of "the provision of services" as supervision or guidance covers service provision but could also go wider.

Section 118 provides a clear route for on-going care of the child in the specific circumstances in which the compulsory supervision order in relation to that child is terminated because the original grounds for referral have been overturned. The section applies only when the person who is the subject of the grounds determination is still a child—amendment 201 does not appear to make that important distinction—and it allows for the sheriff to make an order requiring the local authority to offer the child the supervision or guidance that they require. The proposed amendments instead try to shoehorn the particular circumstances of that child into the pre-existing category of child in need in the 1995 act, to no obvious benefit.

I strongly believe that section 118, as it stands, gives the sheriff more flexibility to consider the needs of the child in the round, and in the particular—and rare—circumstances of a grounds determination being recalled. It follows that I do not support amendments 200 and 201, and I ask Ken Macintosh not to move them.

I will turn now to my amendments in this group—amendments 310 and 318. Amendment 318 proposes the removal of section 135(8). Section 135 is based on sections 73(8)(b) and 73(9) to 73(12) of the 1995 act, and it applies to children's hearings arranged to review a compulsory supervision order in relation to a child.

Section 135(8) as drafted sets out when a local authority will be deemed to have complied with the requirement to provide supervision or guidance to a child. However, after further consideration, I do not think section 135(8) is necessary, because section 135(7) already sets out that the duty on the local authority is to give such supervision and guidance as the child will accept. Therefore, amendment 318 suggests the removal of section 135(8).

Amendment 310 is a consequential amendment that adjusts section 118 so that it also reflects that the duty on the local authority extends to the supervision and guidance that the child will accept. I thank Professor Norrie, who brought the matters to our attention.

I hope that the committee will support amendments 310 and 318.

Ken Macintosh: I thank the minister for his comments. First, the minister is right that the intention of amendments 98 and 105 is to ensure not that the children become looked after by a local authority but that they are treated as if they are looked after. Let me say for the record that

that is what amendments 98 and 105 do. They certainly do not give local authorities powers to look after children; they just give them the power to treat them as if they are looked-after children.

I accept that there has not been a big issue in practice—it certainly has not been drawn to the committee's attention—but the Law Society was concerned about the ambiguity that there is. The intention was to ensure that all children have a clear set of protections in place. With that in mind, the minister has clarified that the provisions, as currently drafted, will achieve that and that there is no need to change the Children (Scotland) Act 1995, bearing in mind the possible ramifications that might ensue.

I am slightly less clear about amendments 200 and 201. The reason for lodging them was that the sheriff could make an order, but there will be no compulsory supervision order or statutory structure in place. I have no particular wish to change the intent or meaning of the section; I simply want to find a better or neater way of expressing things. With that in mind, I do not intend to move amendments 200 and 201. Perhaps if there are further concerns, I can discuss the matter with the minister.

Amendment 98, by agreement, withdrawn.

Section 42 agreed to.

Sections 43 and 44 agreed to.

Section 45—Decision of children's hearing

Amendment 42 moved—[Adam Ingram]—and agreed to.

Amendment 99 not moved.

Section 45, as amended, agreed to.

Section 46—Application for variation or termination

Amendment 43 moved—[Adam Ingram]—and agreed to.

Amendment 100 moved—[Ken Macintosh].

The Convener: The question is, that amendment 100 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)
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)
Smith, Margaret (Edinburgh West) (LD)

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

Amendment 100 disagreed to.

Section 46, as amended, agreed to.

Section 47—Notice of application for variation or termination

Amendment 44 moved—[Adam Ingram]—and agreed to.

Section 47, as amended, agreed to.

Section 48 agreed to.

Section 49—Determination by sheriff

Amendments 45 to 47 moved—[Adam Ingram]—and agreed to.

Amendment 101 not moved.

Section 49, as amended, agreed to.

Section 50—Automatic termination where no attempt to implement order within 24 hours

The Convener: Amendment 102, in the name of Ken Macintosh, is grouped with amendments 103, 104, 48, 53 and 54.

10:45

Ken Macintosh: The amendments in my name are designed to achieve two ends. Section 50 is on the automatic termination of a child protection order where no attempt has been made to implement the order within 24 hours. Amendment 103 would replace the word "attempted" with the expression "made a reasonable effort". Again, that suggestion came from the Law Society. The society's view is that the word "attempt" is too vague and that using the expression "made a reasonable effort" would give better direction to those who would be required to adjudicate the effort that the applicant had made to implement a child protection order.

Amendment 102 is a paving amendment.

Amendment 104 would insert a timescale. Currently, the Law Society is concerned that it is not clear when an order would expire if it is not implemented. The amendment suggests that it should expire within 72 hours. I believe that there was a similar timescale with the previous powers. Since I lodged amendment 104, I have noticed that the minister has lodged several amendments that would put in place a different timescale. The point is that clarification is required on how long temporary orders should be in place, and we should ensure that there is a cut-off point. That

said, I will move the amendments on behalf of the Law Society.

I should draw the committee's attention to the fact that Scotland's Commissioner for Children and Young People is slightly concerned about section 50, and the Law Society's amendments and the minister's amendments to it. Not many cases will be affected—we are talking about a very small number—but they happen. The commissioner is slightly concerned that, by introducing a deadline such as six days, a perverse incentive could be created for a child or family to abscond in the knowledge that the order would fall after six days.

I move amendment 102.

Adam Ingram: As members know, CPOs are emergency orders that allow local services to take steps to ensure the immediate protection of a child who is at significant risk. They are not a long-term solution to issues that may be evident in a child's life, and nor should they be. Consequently, the bill provides for the interaction of short-term CPOs with the longer-term arrangements made through the children's hearings system.

As currently drafted, section 43 requires that a hearing take place on the second working day following the implementation of an order that directs the removal of a child to a place of safety. The purpose of the second working day hearing is to consider whether to continue, vary or terminate the order. If the CPO continues, a further hearing will often take place on the eighth working day following the making of the order to consider compulsory interventions that are designed to offer longer-term care and protection to the child. It is important to note the distinction in the timeframes between the two hearings.

Following stage 1, we held detailed discussions with the Scottish Children's Reporter Administration, in which a number of suggestions to refine the bill were made. In those discussions, issues were raised to do with the lack of a fixed timeframe between the second and eighth-day hearings caused by the different triggers used. Specifically, the SCRA expressed concerns about its ability to undertake the necessary preparatory arrangements in instances in which the period between the second and eighth-day hearings had been condensed as a result of a delay in implementation of the removal of the child to the place of safety.

We have taken those concerns on board. As a result, we propose that, in instances in which a CPO directs the removal of a child, both the second and the eighth-day hearings are linked to the implementation of the order. That will be achieved through amendments 53 and 54 to section 52. It is important to note that no such change is necessary in respect of CPOs that direct the prevention of the removal of a child to a place of safety.

To summarise, agreement to amendments 53 and 54 would result in a replication of existing arrangements. However, a clear consequence of this change to section 52 is the potential for CPOs that direct the removal of a child to a place of safety to run for prolonged periods when there is a delay in their initial implementation. Such delays are few and far between and are normally the result of a child or family absconding. Nevertheless, the potential for such a scenario to be realised is inappropriate. Child protection orders are emergency orders granted by the sheriff in the absence of the child and their parents. Allowing an emergency order such as a CPO to run for a prolonged period is neither acceptable nor appropriate.

Amendment 104, in the name of Ken Macintosh, seeks to address those concerns by introducing a new 72-hour time limit, after which time any child protection order that has not been implemented will fall. While we recognise the clear merits associated with the amendment, we believe that the alternative solution that is offered by amendment 48 provides a more workable alternative. Amendment 48 proposes the introduction of a timeframe of six days after which a CPO would fall if implementation had been attempted but had not been possible. If an unimplemented CPO were to fall, section 54 would provide the police with a power to remove a child to a place of safety where such action was necessary in order to protect the child. At that point, a further assessment of the child's needs could be made and a subsequent CPO may be sought from the sheriff, based on the child's situation at that point. That change will strengthen protection by ensuring that CPOs are robust and based upon an up-to-date assessment of the child's situation. That view is shared by the Association of Chief Police Officers in Scotland and the Association of Directors of Social Work.

With regard to the timeframe, the six-day period has again been identified, in partnership with ACPOS and the ADSW. In particular, the ADSW has identified that a maximum of six days is required in order that all necessary avenues of inquiry can be exhausted when seeking to implement an order in such circumstances. Amendments 48 and 104 share common ground in that CPOs should have a limited lifespan, but I argue that six days is preferable to three in this situation.

Turning to amendment 103, which was also lodged by Ken Macintosh, we believe that the change in wording that is suggested would have no material impact on the way in which the

provision will take effect. It is unnecessary, as any attempt to implement a CPO under section 50 must already be a reasonable attempt. That is implicit; it is not necessary to add the word "reasonable" to the legislation to achieve that.

In light of the above, I ask Ken Macintosh to withdraw amendment 102 and not to move amendments 103 and 104.

Ken Macintosh: I welcome the minister's comments. I am happy to support him on amendments 53 and 54. I welcome, too, the clarification that such cases are few and far between. I am not sure whether there is any way of addressing the children's commissioner's concerns. It is probably preferable to have a timescale.

Amendment 48 addresses exactly the same issue as amendments 102 and 104, which is why I am happy for the minister's amendment to be agreed to.

I was not entirely convinced by what the minister said about amendment 103. If "made a reasonable effort" is implicit in the term "attempted", I do not see why we should not just make it explicit. It is always better, where possible, to use plain English, and "made a reasonable effort" is a better term and more easily understood than "attempted". I will therefore move amendment 103 when the time comes.

Amendment 102, by agreement, withdrawn.

Amendment 103 moved—[Ken Macintosh].

The Convener: The question is, that amendment 103 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)
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)
Smith, Margaret (Edinburgh West) (LD)

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

Amendment 103 disagreed to.

Amendment 104 not moved.

Amendment 48 moved—[Adam Ingram]—and agreed to.

Section 50, as amended, agreed to.

Section 51—Power of Principal Reporter to terminate order

The Convener: Amendment 49, in the name of the minister, is grouped with amendments 50 and 52.

Adam Ingram: Although CPOs are always made by the sheriff, they can be terminated in a number of ways. Section 51 provides the principal reporter with powers to terminate such an order when further information becomes available that would suggest that the conditions for the making of the order are no longer satisfied. That is entirely consistent with current practice. However, under the current arrangements, the power is extended so as to allow the principal reporter to cease specific directions that are included in an order when they are no longer appropriate. Following stage 1, the SCRA suggested that such a power remains both relevant and appropriate and, after consideration, we are in agreement.

Amendments 49, 50 and 52 therefore seek to extend the principal reporter's powers to allow for the ceasing of specific directions made as part of a CPO that are no longer appropriate. In essence, the amendments give the principal reporter some flexibility to vary CPOs in addition to the existing power to terminate them.

I move amendment 49.

Amendment 49 agreed to.

Amendments 50 to 52 moved—[Adam Ingram]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Termination of order after maximum of 8 working days

Amendments 53 and 54 moved—[Adam Ingram]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Application to a justice of the peace

Amendments 55 to 58 moved—[Adam Ingram]—and agreed to.

11:00

The Convener: Amendment 59, in the name of the minister, is grouped with amendment 62.

Adam Ingram: Amendment 59 seeks to extend the principal reporter's power to terminate a child protection order when they believe it is no longer in the child's best interests. The bill currently limits the principal reporter's power to terminate such orders to those instances in which they are satisfied that the conditions for the making of the order are no longer met. If accepted, the

amendment will have the effect of replicating existing arrangements, which is the preference of the Scottish Government and the SCRA.

Amendment 62 replicates the change that is proposed under amendment 59, in that it extends the principal reporter's power to return the child from a place of safety under section 54 when removal is no longer in that child's best interests. In the same way as amendment 59, amendment 62 has the effect of replicating the arrangements that are in place under the 1995 act. Again, the Scottish Government and the SCRA believe that that is a necessary improvement to the provisions.

I move amendment 59.

Amendment 59 agreed to.

Section 53, as amended, agreed to.

Section 54—Constable's power to remove child to place of safety

Amendments 60 to 62 moved—[Adam Ingram]—and agreed to.

Section 54, as amended, agreed.

Sections 55 to 57 agreed to.

The Convener: We need to suspend the meeting briefly to allow for a change of officials. I suggest that this would be a good time to have a very short comfort break of no longer than five minutes.

11:02

Meeting suspended.

11:10

On resuming—

Section 58—Local authority's duty to provide information to Principal Reporter

The Convener: Amendment 106, in the name of the minister, is grouped with amendments 107 and 108.

Adam Ingram: The amendments relate to the duty on local authorities to make inquiries into a child's circumstances and, if necessary, to provide information to the reporter.

The duties under a compulsory supervision order and other orders and warrants are imposed on the "relevant local authority" for the child. The relevant local authority for the child is the local authority for the area in which the child predominantly resides or, if that criterion does not apply, the area to which the child has the closest connection. However, there may be difficulties in establishing the relevant local authority when a child enters the system through, for example, trafficking. Where it is not obvious, local authorities may start to assess whether or not they are the relevant local authority for the child before assessing the needs of the child.

The amendments remove the risk of any delayed investigation by removing the links to the relevant local authority and placing the duty to carry out any necessary investigation on any local authority that considers that a child in its area is in need of protection, guidance, treatment or control and that compulsory intervention is appropriate. I will speak more about the local authority's investigative role in speaking to the next group of my amendments.

I move amendment 106.

Amendment 106 agreed to.

Amendments 107 and 108 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 172, in the name of Ken Macintosh, is grouped with amendments 109, 173, 110 and 115. I draw members' attention to the pre-emption information that is shown in the groupings list. If amendment 172 is agreed to, I will be unable to call amendment 109.

Ken Macintosh: Amendments 172 and 173 are about the threshold at which a local authority, in the case of amendment 172, or a constable, in the case of amendment 173, has a duty to provide information to the principal reporter. As the bill is drafted, the threshold in sections 58 and 59 is when the local authority or constable considers

"that the child is in need of protection, guidance, treatment or control"

and

"that a compulsory supervision order should be made in respect of the child."

The Law Society has suggested that, instead of using those criteria for making a decision, we should use the criteria that the principal reporter must determine on, which are the grounds listed under section 65(2). That would be more concise and give a clearer direction to local authorities and constables, and it would not introduce a new set of criteria.

I move amendment 172.

11:15

Adam Ingram: Concerns were raised at stage 1 about the proposal in section 58 that a child should be referred to the reporter only when it is considered that a compulsory supervision order should be made. Several partners expressed the view that the threshold was too high and that there was potential for overlap with the role of the reporter. The committee referred to those concerns in its stage 1 report. In the light of those concerns, I undertook to consider the issue further and lodge amendments at stage 2. Amendments 109, 110 and 115 seek to reduce the threshold for referral. If agreed to, amendment 109 will require the local authority, in making a referral to the reporter, to consider that it "might" be necessary for a compulsory supervision order to be made in relation to the child. Amendment 110 makes the same change in relation to the police, and amendment 115 makes the same change in relation to other persons.

Ken Macintosh's amendments 172 and 173 are similar in that they, too, seek to reduce the threshold for referral to the reporter. We certainly agree that the threshold that is set out in the bill is too high. However, Ken Macintosh's amendments go quite a bit further than mine, in that—as Mr Macintosh confirmed—they would remove the two conditions for making a referral that are presently enshrined in the 1995 act and which are also set out in the bill; they are

"that the child is in need of protection, guidance, treatment or control"

and that the child might be in need of compulsory measures of supervision.

Amendments 172 and 173 would replace that two-pronged test with a single test: whether any ground for referral exists. That would remove the need for the local authority or police to make any kind of assessment of the need for compulsory measures of supervision in deciding whether to refer a child. I worry that making such a change would lead to a direct increase in the number of inappropriate referrals to the reporter, which would lead to a significant and unnecessary increase in the workload of reporters and cut across the principles of the getting it right for every child approach and the work around early and effective intervention. We have seen a reduction in the number of referrals to the reporter in recent years as a result of the growing practice of multi-agency pre-referral partnerships, which have grown in number under GIRFEC. Children are being helped and supported quickly and effectively without the need for a referral to the reporter.

I reassure the committee that there is no suggestion that children who should be referred are being missed. The number of children actually going to hearings has increased. The SCRA published research in April that found that the pre-referral screening processes are having a positive impact in reducing the number of inappropriate referrals to the reporter. During the consultation on the bill, I frequently heard that reporters and hearings are dealing with increasingly complicated cases. I do not think that we should risk the reporters' ability to handle these cases effectively by introducing a change that would see their workload increase significantly.

The amendments that I have lodged strike the appropriate balance. They support the exercise of professional judgment at a local level; they support the role of the reporter as the gatekeeper to the system; they fit with GIRFEC; and they will ensure that the number of inappropriate referrals to the reporter is kept to a minimum. I hope that Ken Macintosh agrees with me and that he will withdraw amendment 172 and not move amendment 173.

Ken Macintosh: I welcome the minister's remarks and the fact that he, too, lodged amendments to address the need to leave the decision in the hands of the reporter. The amendments that I lodged in the group, which came from the Law Society of Scotland, make it clear that the decision is entirely one for the reporter. It is clear that all information should be passed to the reporter, who will decide on the grounds that a reporter always uses for making such decisions.

I accept that the minister has modified the rather steep threshold that a compulsory supervision order "should" be made. His modification has tilted the decision more towards the reporter. I was tempted to test the committee view, but I will seek leave to withdraw amendment 172 and seek to discuss the matter further with the minister. I wish not to increase the burden of referrals—that is not my desired outcome—but to ensure that the decision rests solely with the reporter. I am not yet clear whether the new set of criteria will do that.

On that basis, I seek leave to withdraw amendment 172.

Amendment 172, by agreement, withdrawn.

Amendment 109 moved—[Adam Ingram]—and agreed to.

Section 58, as amended, agreed to.

Section 59—Constable's duty to provide information to Principal Reporter

Amendment 173 not moved.

Amendment 110 moved—[Adam Ingram]—and agreed to.

Section 59, as amended, agreed to.

Section 60—Court's duty to provide information to Principal Reporter

The Convener: Amendment 111, in the name of the minister, is grouped with amendments 112 to 114 and 126.

Adam Ingram: The amendments in the group relate to sections 60 and 68 of the bill. Those sections provide for circumstances when, in dealing with matters such as divorce, separation or adoption, a court may refer a child to the reporter, if it is satisfied during the course of its proceedings that one or more grounds for referral, except for offence grounds, are established in relation to a child. The grounds do not include offence grounds because all the proceedings that are listed in section 60 are civil family proceedings.

Section 60, as drafted, is based on the 1995 act. Its provisions mean that a court that is dealing with a divorce case, for instance, may establish grounds for the referral of a child on the basis of the proceedings in that divorce case, and without necessarily giving the child or relevant persons an explicit opportunity to make representations in court. What happens is that the sheriff refers the matter to the reporter, who may or may not decide to refer the child to a children's hearing. However, the current legislation and the bill enable a grounds hearing to be bypassed because the sheriff has established the grounds for referral in the context of the court proceedings.

In other types of referral, such as those from the local authority or police, the bill always provides an opportunity for the child to express a view on the grounds for referral in their case. The amendments to section 60 will bring court referrals more into line with those other categories of referral. The result of the amendments will be that when, during the course of other family-type proceedings such as divorce, a sheriff considers that a ground for referral might apply, he or she may refer the matter to the principal reporter. The sheriff will also provide a statement in which they specify which ground might apply to the child and why. The reporter will then investigate the matter in the usual way under section 64 and come to a view as to whether a ground for referral does apply and, if so, whether compulsory supervision of the child is necessary.

It is my view that that process is preferable. I believe that it fits better into the children's hearings system than having to have the sheriff, in the course of—let us say—divorce proceedings, come to a definitive determination as to whether grounds for referral in relation to a particular child apply. The changes to sections 60 and 68 will result in increased usage of the court referral route, which at present under the 1995 act is at very low levels. That will be to the benefit of children. I have therefore lodged the amendments in the group so that section 60 court referrals will be treated more like ordinary referrals, such as those from a local authority or the police, and so that the grounds are put to the child and relevant person at the children's hearing.

Amendments 111 to 114 relate directly to the sheriff's consideration of the grounds for referral in other family proceedings. Amendment 126 is consequential. None of the amendments will interfere with the reporter's gatekeeping role to determine whether to refer the case from the sheriff to the children's hearing.

I move amendment 111.

Amendment 111 agreed to.

Amendments 112 to 114 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 174, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: Again, the amendment was proposed by the Law Society of Scotland. Section 60(5) defines a number of relevant proceedings, including under 60(5)(j),

"proceedings relating to parental responsibilities or parental rights".

The Law Society believes that all proceedings and actions that are taken under section 11 of the 1995 act are covered by that provision. It further believes that any uncertainty would be removed by changing the wording specifically to say that.

I move amendment 174.

Adam Ingram: Amendment 174 is not required. It proposes no change to policy. There is agreement that proceedings relating to parental responsibilities or parental rights should be covered by section 60. Amendment 174 simply proposes a drafting change. If amendment 174 is accepted, it would mean that section 60(5)(j) would refer the reader to section 11 of the Children (Scotland) Act 1995 instead of providing them with a description of the type of proceedings

that are relevant. In order to understand the type of proceedings that are referred to, the reader would be required to look up section 11 of the 1995 act. That would be an unnecessary added complication.

Amendment 174 would also reduce the scope of the provision. For example, it would exclude referrals in proceedings for parental orders under the Human Fertilisation and Embryology Act 2008. Those proceedings would fall within the generality of

"proceedings relating to parental responsibilities or parental rights".

but clearly they would be excluded under the terms of the amendment.

Let us keep the matter in perspective. As I said when we discussed the previous group, only 26 such referrals were made to the SCRA in 2009-10 across all the court proceedings that are identified in section 60. I do not accept that section 60(5)(j) is insufficiently clear as drafted. What we have is fine; indeed, it is clearer to the reader than the wording of the amendment.

I ask Ken Macintosh to seek leave to withdraw amendment 174.

11:30

Ken Macintosh: I welcome the minister's comments. There are a number of other examples of the bill's referring obliquely to what is meant in citing other legislation; however, I prefer plain English. The minister has expanded on the point in suggesting that reference solely to section 11 of the 1995 act would be limiting, although I am not entirely sure how many referrals would be made under the Human Fertilisation and Embryology Act 2008. I was not quite convinced by that argument. Having said that, I prefer plain English and seek agreement to withdraw the amendment.

Amendment 174, by agreement, withdrawn.

Section 60, as amended, agreed to.

Section 61 agreed to.

Section 62—Provision of information from other persons

Amendment 115 moved—[Adam Ingram]—and agreed to.

Section 62, as amended, agreed to.

Section 63 agreed to.

Section 64—Investigation and determination by Principal Reporter

The Convener: Amendment 116, in the name of the minister, is grouped with amendments 117 and amendments 121 to 124. I invite the minister to move amendment 116 and to speak to all the amendments in the group.

Adam Ingram: Section 64 provides that, when information is passed to the principal reporter from any of a list of various sources—for example, when information is received from a local authority—the reporter must consider that information with a view to determining whether the child needs compulsory supervision, and they may pursue further investigation as necessary. That is commonly known as the reporter's gatekeeping role, prior to any referral to the children's hearing. However, there is no scope within the bill for the reporter to investigate a referral from any other source.

On reflection, I feel that the list in section 64, which sets out the statutory sources of information, is useful but may, in practice, be too restrictive. The reporter should be able to investigate whenever they have reason to believe that the child's circumstances are such that they might be in need of

"protection, guidance, treatment or control",

irrespective of the source of that information, which may include the reporter's own files. That is what amendment 117 seeks to achieve. Amendment 116 is a technical consequential amendment.

Amendments 121 and 123 are minor drafting amendments to link more closely the reporter's investigation and determination role with the reporter's decision whether to refer to a children's hearing under sections 66 and 67, respectively.

Amendments 122 and 124 are technical drafting amendments to remove unnecessary wording. They have no effects on sections 66 and 67, respectively.

I move amendment 116.

Amendment 116 agreed to.

Amendment 117 moved—[Adam Ingram]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Meaning of "section 65 ground"

The Convener: Amendment 175, in the name of Ken Macintosh, is grouped with amendments 176, 118, 119, 177 and 120. I invite Mr Macintosh to move amendment 175 and to speak to all the amendments in the group.

Ken Macintosh: The amendments seek to amend two of the grounds on which a principal reporter must determine whether to intervene in the best interests of a child.

One of the most welcome aspects of the bill is the addition of domestic abuse as a ground for intervention in the life of a child and for referral to a children's panel. However, the Law Society has highlighted the fact that including domestic abuse as a separate ground might not be the best way in which to achieve that objective. The Law Society is concerned that domestic abuse is not sufficiently defined and that its inclusion as a separate ground might take the focus away from the child. It would be better to include domestic abuse under section 65(2)(a), which deals with "lack of parental care". That would make it absolutely obvious that domestic abuse was a ground for referral to a children's panel. That would be achieved through amendments 175 and 176.

Amendment 177 would add forced marriage to the list of section 65 grounds. I understand that the Law Society met the Scottish Government to discuss the issue on at least two occasions, and that the Government indicated that one of the reasons for legislating on forced marriage—which it intends to do—is to draw attention to the problem and put a label on it, as it were. The Law Society suggested that, given the Government's intention in the area, it would be helpful to include forced marriage as a ground for referral in the bill. At that time, before the Government intended to legislate on forced marriage, the Government argued that forced marriage could be included in the ground of "lack of parental care" in subsection (2)(a). The difficulty with that would be that it would have to be proved that forced marriage involved a lack of parental care: some parents would argue that they believe in forced marriage because of their parental duties. It would introduce a different argument altogether. The key argument should be about forced marriage, which we agree is wrong, not whether parents have cared for their child. Our saying that the matter is implicit in subsection (2)(a) is introducing a different threshold.

Given that the Government has agreed that forced marriage is an issue that the Parliament and the country should address and that, I believe, we also all agree that it should be a ground for referral by the reporter, I hope that the Government will agree to amendment 177, which is specifically on the subject.

I move amendment 175.

Adam Ingram: I will speak to my amendments 118, 119 and 120 before I speak to Ken Macintosh's amendments.

Amendment 118 seeks to clarify the ground for referral under section 65(2)(g), which is that

"the child has, or is likely to have, a close connection with a person who has been convicted of an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act 2009".

As the provision is currently drafted, there is an unintentional reliance on the person having a sexual offence conviction. Amendment 118 will therefore remove the need for a conviction from the ground for referral and replace it with a reference to the person having committed a sexual offence. That is consistent with other grounds for referral—for example, at subsection (2)(c), with a schedule 1 offence having been "committed".

Amendment 119 relates to section 65(2)(n), which applies when

"the child is not within the control of a relevant person"

and is based on section 52(2)(a) of the 1995 act. Partners were concerned that the change of wording would place more emphasis on the "control" of the relevant person than on the actions of the child, whereas existing legislation, which refers to the child being beyond control, implies that the relevant person cannot control the child as a result of the child's behaviour.

There was no policy intention to widen the scope of this ground of referral. I am therefore keen to reinstate the wording of the 1995 act with the focus remaining on a child who may not respect the boundaries and safeguards that are set by the relevant person.

Amendment 120 provides a means of adding, removing or changing the grounds for referral so that the children's hearings system can respond to any future changing needs without recourse to primary legislation. It allows grounds for referral to be added, removed or changed in the future by order, when there is sufficient evidence to justify statutory provision. Such an order would be subject to affirmative procedure, which is an appropriately high level of parliamentary scrutiny.

Although amendment 120 contains a general power, I am introducing it specifically in response to concerns about forced marriage. I am extremely grateful to Christina McKelvie for raising the issue. The consequences of forced marriage can be absolutely devastating for children and young people and this Government is committed to tackling the issue. As I am sure the committee is aware, forced marriage will be considered and debated soon in Parliament with the introduction of the Forced Marriages (Scotland) Bill. In my view, it is therefore not appropriate to list forced marriage as a ground until that bill has been fully considered by Parliament. The Forced Marriages (Scotland) Bill will contain a definition of forced marriage that the lead committee will scrutinise with the support of evidence that will be drawn from relevant stakeholders through the normal parliamentary process. To introduce to the Children's Hearings (Scotland) Bill a ground concerning forced marriage would require the Forced Marriages (Scotland) Bill to contain a definition of forced

marriage ahead of scrutiny of that bill by colleagues on the lead committee. For that reason, it is not appropriate to put in place a ground for referral on forced marriage through the Children's Hearings (Scotland) Bill.

That said, amendment 120 paves the way for adjusting the grounds for referral to address future emerging needs, not only in the event of the need for a forced-marriage ground but to accommodate other needs that have yet to be identified. It will put in place a mechanism for adapting grounds for referral that current legislation does not provide. I hope that it also demonstrates my commitment to ensuring that the grounds for referral on which a child can be referred to a children's hearing will continue to reflect and respond to the needs of children.

I remind the committee that children and young people who are at risk or who are victims of forced marriage can be referred under two existing grounds in section 65. I refer to the "lack of parental care" ground and the ground in which

"the child's health, safety or development will be seriously adversely affected".

All that said, the committee will not be surprised to hear that I do not support Ken Macintosh's amendment 177, which seeks to introduce a specific new ground for referral that includes the consideration of forced marriage. I believe that my amendment 120 provides the best way forward. It will give Parliament the ability to make changes to the grounds for referral as and when that is appropriate. I ask Ken Macintosh not to move amendment 177.

I turn to amendments 175 and 176, both of which seek to change the domestic abuse grounds for referral and to remove ground 65(2)(f) from the bill—a ground that deals specifically with domestic abuse and which is in the bill because I have taken a lot of time to listen to partners. The bill provision reflects their views and has been widely welcomed as a positive step forward. More is understood these days about domestic abuse and the impacts—both short and long term—that it can have on children and young people. The ground for referral as drafted ensures that any child in an environment of domestic abuse can be referred. I am strongly of the view that the existing ground in the bill affords the child more protection than would the proposals in amendments 175 and 176. It will allow the reporter to make a referral that is based on the connection between the child and the perpetrator of the domestic abuse. Amendments 175 and 176 work together to focus only on the impact of domestic abuse on the child. I do not support that narrowing of the domestic abuse ground. For those reasons, I ask Ken Macintosh to seek leave to withdraw amendment 175 and not to move amendment 176.

11:45

Ken Macintosh: I welcome the minister's comments. I agree with and accept his amendments 118 to 120.

I am not entirely sure whether the minister has addressed the lack of a definition of domestic abuse and the lack of focus on the child because of the undefined term. However, what is more important is including the ground in the bill and ensuring that the provision receives—as, I hope, it will—universal support from the committee and the Parliament. On that basis, I will seek to withdraw amendment 175 and not move amendment 176, although I have slight reservations about the drafting of the provision.

I was not convinced by the minister's arguments on amendment 177. He suggested that we should not accept the ground of forced marriage until Parliament has made up its mind on the issue, but we have every right to make up our minds here and now. I hope that Parliament and the committee agree that forced marriage is unacceptable in today's society in Scotland.

The minister suggests that we should not include forced marriage in the bill and that we should wait for further parliamentary scrutiny. Instead, he suggests that we agree to his amendment 120, which bypasses parliamentary scrutiny, because it does not involve an amending power of the Parliament. That amendment provides for a Government power to introduce subordinate legislation. If we need to return to the issue, we can do so easily in discussion of the bill on forced marriages; we do not necessarily want to introduce a wide-ranging and open-ended power for the Government, or any future Government, to add to or amend the grounds for referral, which form the heart of the bill and the children's hearings system. The Government is taking a broad power to address a specific problem on which we can unite now.

The committee will give a strong signal and a clear message if it agrees to amendment 177, and that forced marriage should be included as a separate ground for referring a child. On that basis, I will move amendment 177.

Amendment 175, by agreement, withdrawn.

Amendment 176 not moved.

Amendments 118 and 119 moved—[Adam Ingram]—and agreed to.

Amendment 177 moved—[Ken Macintosh].

The Convener: The question is, that amendment 177 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, 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, Abstentions 0.

As there is no overall majority, I use my casting vote to support amendment 177.

Amendment 177 agreed to.

Amendment 120 moved—[Adam Ingram].

The Convener: The question is, that amendment 120 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

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

Amendment 120 agreed to.

Section 65, as amended, agreed to.

Section 66—Determination under section 64: no referral to children's hearing

Amendments 121 and 122 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 178, in the name of Ken Macintosh, is grouped with amendment 179.

Ken Macintosh: Amendments 178 and 179 merely restate or preserve the current position. Section 66 covers the principal reporter's power when there is no referral to a children's hearing. Currently, the principal reporter has the discretion to exercise the option of referring a child to a local authority or other agency for the child or his or her family to receive advice, guidance or assistance on a voluntary basis where no referral to a children's hearing is made. The Law Society suggested the amendments on the basis that that is a helpful discretionary power for the reporter to have. There can be referral not just to a local authority, but to, for example, a medical agency that has been set up with the purpose of giving advice to children and families on specific matters. That could bring numerous benefits, as it has in the past. For example, it could prevent delays, prevent local authorities from becoming overburdened, and ensure that children are given the correct advice.

I move amendment 178.

Adam Ingram: I am grateful to Ken Macintosh for lodging amendments 178 and 179, which I support in principle.

The children's hearings system is underpinned by the no-order principle, which means that a child should not be referred to a hearing or placed under compulsory supervision unless that is necessary and in their best interests. For many of those who are referred to the reporter, it is not necessary to go to a hearing, but it may still be appropriate for them to have access to help and support on a voluntary basis.

The 1995 act made provision for the reporter to refer a child for voluntary measures, and section 66 of the bill makes the same provision. However, as Ken Macintosh has highlighted, the bill provides for that voluntary referral to be made only to a local authority. In reality, of course, other agencies have roles to play in supporting those children. Section 21 of the 1995 act enables the local authority to draw on other bodies that are listed to help to support the child and the child's family.

Notwithstanding that, enabling the reporter to refer directly to those other agencies seems to be a sensible approach, and it would reflect current practice. I understand that reporters already refer children directly to agencies such as health agencies when that is appropriate for children. The change would put that approach on a statutory footing.

However, I am not certain that the amendments in the group would have the desired effect. Only local authorities have functions under chapter 1 of part II of the 1995 act, there is no reference to other agencies in the act, and it is not clear from the amendments who or what would be covered by the word "agency". We need to give amendments 178 and 179 some further thought to ensure that things will work as intended. Therefore, I undertake to lodge amendments at stage 3 to make the changes that are envisaged in amendments 178 and 179.

Ken Macintosh: In the light of the minister's comments, I am more than happy to seek to withdraw amendment 178. I thank the minister and look forward to the Government's amendments.

Amendment 178, by agreement, withdrawn.

Amendment 179 not moved.

Section 66, as amended, agreed to.

Section 67—Determination under section 64: referral to children's hearing

Amendments 123 and 124 moved—[Adam Ingram]—and agreed to.

The Convener: I think that we should be able to squeeze in a final group before 12 o'clock. Amendment 125, in the name of the minister, is grouped with amendments 191, 238, 193, 273 to 278, 157, 159 and 165.

Adam Ingram: This group of amendments relates to warrants to secure attendance of a child at a children's hearing or a hearing before the sheriff. As drafted, the bill provides powers for the children's hearings to issue such warrants at particular types of hearings; for example, at a grounds hearing to secure the attendance of a child at a subsequent hearing. However, the bill does not provide a route for the hearing to issue a warrant in between hearings that have not been pre-arranged; for example, at an emergency review hearing or where the need for a warrant arises in between hearings.

Instead of providing more specific powers through amendment provision, which might overcomplicate the hearing's powers, we are seeking to introduce under amendment 159 a general power to allow the reporter to apply to a hearing for a warrant to secure the attendance of the child at any children's hearing, or any hearing before the sheriff under part 10, and for the hearing to grant such a warrant if cause is shown. That would bring the hearing's powers in relation to warrants to secure the attendance of the child at a children's hearing under the bill back into line with the powers that are currently available under the 1995 act, and it will provide a new power to issue a warrant to secure the attendance of the child at the hearing before the sheriff. For example, where the children's hearing granted a warrant to secure the attendance of the child at the grounds hearing, another warrant might be needed to secure the attendance of the child at the proof hearing if the children's hearing considered that the child may not attend without one.

Amendments 125, 157, 165, 191, 193, and 238 are consequential on the creation of the general power under amendment 159 and seek to remove the existing specific powers of the hearing to issue warrants to secure the attendance of the child at the children's hearing and the hearing before the sheriff.

Amendments 273, 276 and 277 seek to eliminate confusion, which was expressed during stage 1, about the duration of a warrant to secure attendance of a child, when the child is first detained in a police station and then perhaps moved to a more appropriate place of safety, by making it clear that the warrant's duration should start from the moment that a child is detained under the warrant. That reflects current policy.

Amendment 274 is consequential on amendment 294, which is scheduled for debate next week, and concerns the sheriff's powers to issue a warrant where a hearing before the sheriff is continued to another day. Amendment 274 seeks to make it clear that the duration of the warrant expires at the beginning of the continued hearing before the sheriff, or 14 days from the child's being detained under it. The warrant's duration reflects the duration of warrants issued by the sheriff as set out in the 1995 act and other parts of the bill.

Amendment 275 is a minor technical amendment that is consequential on amendment 274 and seeks to clarify that the time limit in section 102(4)(b) applies to warrants issued by the sheriff under sections other than section 106(8).

Amendment 278 is a technical amendment that seeks to alter the structure of section 102 and the definition of "relevant proceedings" better to reflect that warrants may be granted by the children's hearing or by the sheriff to secure attendance of a child at any hearing.

I move amendment 125.

Amendment 125 agreed to.

Section 67, as amended, agreed to.

Section 68—Referral following section 60 statement: special procedure

Amendment 126 moved—[Adam Ingram]—and agreed to.

The Convener: That is a very appropriate place to conclude today's stage 2 consideration of the bill. We will return to the matter next week. Members will see from the business bulletin the sections for which amendments are being invited and the deadline, which is this Friday.

I suspend the meeting briefly to allow the Minister for Children and Early Years to leave and the Minister for Culture and External Affairs to join us.

12:00

Meeting suspended.

12:06

On resuming—

Historic Environment (Amendment) (Scotland) Bill

The Convener: I reconvene the meeting. The second item on our agenda is our final evidence-taking session on the Historic Environment (Amendment) (Scotland) Bill.

I am pleased to welcome Fiona Hyslop, the Minister for Culture and External Affairs, to the committee. She is joined by Lucy Blackburn, who is the bill director; Barbara Cummins, who is deputy chief inspector at Historic Scotland; and Emma Thomson, who is the principal legal officer with the Scottish Government. I thank them for attending the committee and thank the minister for her letter in advance of the meeting, which responds to some of the evidence that we have already taken.

Minister, are you keen to make a brief statement before we start?

The Minister for Culture and External Affairs (Fiona Hyslop): Yes, if that is okay. I am pleased to be able to talk to you about the Historic Environment (Amendment) (Scotland) Bill. I will take the opportunity to comment on the overall policy aims that underpin the bill and to touch on some of the provisions in it that achieve those aims.

I stress that we should recognise the importance of our historic environment and its contribution to Scotland. It not only contributes fundamentally to our sense of place and our cultural identity but provides a wide range of employment opportunities, contributes significantly to the national economy and provides the setting for Scotland as an attractive place to invest in, visit, work and live. Only this morning, I was pleased to visit a world heritage education conference that is taking place at New Lanark.

I am keen to ensure that the regulatory authorities have the appropriate legislative tools to help them to manage our rich national asset sustainably. The Government's aims in introducing the bill are threefold. First, we aim to improve the management and protection of our unique historic environment by addressing specific gaps and weaknesses in the current legislative framework that were identified during a year-long stakeholder engagement in 2007. Secondly, we aim to avoid introducing significant burdens or duties on local or central Government, owners of assets, business or members of the public. Thirdly, in the challenging economic climate, we aim to keep the implementation costs low.

The bill will help to achieve those aims by: harmonising aspects of the listing and scheduling systems where possible; harmonising aspects of historic environment legislation with the modernisation of planning; enhancing regulatory authorities' ability to work with developers; enabling Government to work more creatively with partners; improving the capacity of regulatory authorities to deal with urgent threats; increasing the efficiency and effectiveness of deterrents; and clarifying the powers of the Scottish ministers to provide facilities and events at properties that are in their care. The bill is intended to make the existing system more efficient and will result in a much improved heritage protection framework in Scotland.

In response to the committee's call for written evidence and during the recent evidence-gathering sessions, some organisations, while indicating support for the general principles of the bill, raised issues that are not addressed in it or that relate to how one or two provisions might work in practice. I hope to have the opportunity to address some of those issues during the course of the meeting, and I will touch on two of them briefly in this opening address.

Calls have been made for the bill to place a statutory duty on all public bodies to have special regard to the historic environment and for all planning authorities to have access to appropriate information and expert advice on the local historic environment in exercising their duties. Placing statutory duties on local authorities would be at odds with our new way of working with them as expressed through the Scottish Government's concordat with the Convention of Scottish Local Authorities and the single outcome agreement process. It would also place new burdens on planning authorities in a difficult financial climate.

I am confident that there are better and more proportionate means to address the concerns that the Built Environment Forum Scotland expressed, for example by improved partnership working between Historic Scotland and local authorities, the application of sound policy guidance and the development of a robust administrative framework within which the regulatory authorities can better manage the historic environment.

I have also listened to the concerns expressed to the committee about the proposal to introduce a system of certificates of immunity from listing—in particular, the calls that have been made to amend the provision by limiting the types of individuals or organisations that would be eligible to apply for such certificates. One of the underlying aims of the bill is to harmonise historic environment legislation with the planning process where possible, and I am concerned that such an amendment would be at odds with the planning system, in which any

individual or organisation can apply for planning permission regardless of who owns the property in question. However, I am interested to hear the committee's views on that and any specific suggestions that members might have.

I know that the committee will have a number of questions for me, but I hope that that introduction was helpful.

The Convener: It was, minister. I am sure that we will cover some of the points that you referred to in your opening statement.

What happened in Scone in the past couple of days showed the relevance and importance of the bill. If it seemed a little abstract to us over the past few weeks, its relevance has been brought home to us all following that awful accident.

Our attention has been drawn to the modification of defences under section 3. No longer will somebody be able to claim ignorance—that they did not know that something was an historic monument—as a defence. Will you explain why that is important? How confident are you that accurate information is available to everyone to ensure that they all know the importance of a particular part of the historic environment?

Fiona Hyslop: You raise an important point. I suspect that politicians and ministers might like to have the defence of ignorance at certain points, but it is an unusual defence to have and we discussed whether we should remove it completely. The original draft of the bill said that the defence of ignorance was not justifiable in any circumstance, but we received feedback that we should introduce a defence that the accused had taken "all reasonable steps" to find out whether there were any issues with scheduled monuments.

That brings us on to the second part of your question. The change is all very well, but it means that people have to have access to information to be able to take "all reasonable steps" to find out where the issues are. I notice that a number of witnesses have been complimentary about the availability of information, but the issue is how we ensure better access.

If the Parliament passes the bill, we plan to contact all owners of scheduled monuments once it is enacted to remind them that they own a scheduled monument, remind them of their responsibilities and explain what the new law means for them. That would be an initial action as a result of the bill, but there are others. Historic Scotland's website provides access to information, but access is a recurrent theme and it is important that we ensure that information is available.

The defence of ignorance as it currently stands has rarely been used anyway, so section 3 will not result in a big change in practice. However, it makes the legislation similar to that for the marine environment and listed buildings, for which the defence of ignorance is not available.

The Convener: Some of the evidence that the committee has received certainly said that some good and detailed information is available. However, other organisations raised concerns. In particular, the National Trust for Scotland said:

"Many scheduled monuments are 'invisible' to the untrained eye."

Heads of Planning Scotland also raised significant concerns, and was extremely exercised about the matter in the committee last week. How do we get the balance right and ensure that it is not just the historic buildings and monuments that are obvious to us that are protected, and that people know about the ones that are not on everyone's radar?

12:15

Fiona Hyslop: That is an important point. All 8,000-odd owners of scheduled monuments and sites would be directly contacted as a result of the bill. If there were any problems, they would be responsible. The information is already available, so it is a case of increasing awareness of and access to it rather than documenting it. We are working with stakeholder bodies such as the Scottish Rural Property and Business Association to help to raise awareness. We are taking steps to make people aware of existing sites, whether or not they are obvious.

The Convener: What role does the Government envisage for the historic environment records scheme in relation to the issue?

Fiona Hyslop: We will work with COSLA and BEFS, with advice from the Royal Commission on the Ancient and Historical Monuments of Scotland, to manage a short project to provide clear information on the state of local environment records in Scotland and identify priorities for future work. The report will be presented to ministers and COSLA—remember that local authorities also have a great deal of responsibility in this area—around the end of the year. We will do that to ensure that there is better scope for sharing resources and records.

Local development control is important in that area—it is not just about national systems. That is where alignment with the planning system is important. Often, the same body—the local authority—deals with both planning and monuments. Policy statements already exist on records and local authority services in relation to Scottish planning policy. Obviously, one of the central features—although, interestingly, it was not referred to much in witness statements to the committee—is the Scottish historic environment policy, which comprehensively sets out a single

statement of how we should manage not only the historic environment but records in particular. However, we are conscious that we need to improve the records and we are working with the key people to do that.

The Convener: On that issue, are you confident that there will be sufficient resources to allow those records to be kept up to date? Local authorities are some of your key partners in all of this, and they might find it easier not to direct resources to this area when there are currently so many other pressures on their budgets.

Fiona Hyslop: One of the challenges in relation to the historic environment is the sharing of experience, expertise and resources. The historic environment is a strong candidate for cross-council co-operation to identify what resources can be shared in putting together records. The bill will help to pull together, on a more national basis, the various organisations that work on the historic environment. I am keen for that theme to be developed in other areas of heritage and the historic environment. We are aware of the vulnerability of resources—it is an important issue—but, in terms of the expertise in this area, the bill provides an opportunity to save resources by sharing resources.

Margaret Smith (Edinburgh West) (LD): I want to ask about enforcement and stop notices. The Scottish Property Federation raised concerns about temporary stop notices and questioned whether, as such notices could be issued without an enforcement notice, there might be issues about their robustness and consistency. It argued that temporary stop notices should be accompanied by detailed guidance. How will Historic Scotland ensure that temporary stop notices are used consistently?

Fiona Hyslop: It is important that they are used consistently. We should recognise that the bill will align the procedure for stop notices and temporary stop notices with the planning system. On the issue of enforcement, the bill will harmonise other guidance, particularly in relation to listed buildings. We are bringing together enforcement notices and stop notices on scheduled monuments and aligning that process with the one that already exists in the listed building system. I ask my Historic Scotland colleagues to say how they currently manage the use of stop and temporary stop notices for listed buildings to maintain consistency. I expect that to be similar to the process under the bill for scheduled monuments.

Barbara Cummins (Historic Scotland): The powers are not extensively used. They are part of the toolkit that planning authorities have to use for enforcement. Stop notices are very much a last resort and temporary stop notices are an emergency power. They are part of the toolkit—some of the sticks in the system, rather than the carrot of doing things by co-operation. The powers are very much used as a last resort, and that is the intention for scheduled monuments, too. They are used at the final stage, when negotiation and co-operation have failed to work.

Margaret Smith: The Law Society of Scotland raised a couple of points about appeals against enforcement notices. It feels that, because the Scottish Government directorate for planning and environmental appeals has such a great wealth of information and experience on such matters, appeals should be made to it rather than to a sheriff. The Law Society also wants to know why the sheriff would have the power only to agree or disagree with a notice—to uphold or quash it—but not in any way to modify it or to consider ways in which it might be changed.

Fiona Hyslop: It is nice to know that the Law Society has such confidence in the planning appeals process. We are trying to align the procedures. The process is about ensuring that the due legal process is carried out, so the sheriff would not need to have detailed specialist knowledge of historic environment issues. It is about the process of law, rather than the evaluation of the historic environment. I suspect that you are inferring from the planning appeals system, but it is slightly different. In relation to planning applications, detailed knowledge is needed of the application, planning issues and the development that is involved. That is more of an evaluation that involves reporters and other aspects. I believe that there is almost a qualitative evaluation in planning appeals, although I will stand corrected if that is not the case. Under the bill, we are talking about consideration of whether due legal process has been carried out, and the sheriff obviously has responsibility for that. That is the difference. I will just check whether Barbara Cummins is comfortable with that.

Barbara Cummins: I am.

Christina McKelvie (Central Scotland) (SNP): I move on to the two new statutory inventories—one for gardens and designed landscape and one for battlefields. In relation to the gardens inventory, the Historic Houses Association Scotland has raised concerns about its compilation and purpose and about the obligation on and cost for owners, and whether inclusion on the inventory would oblige someone to maintain an area in a particular state.

On battlefields, we received evidence that the issue is fraught with difficulties and that it would be difficult to identify the exact site of some battlefields. The HHAS was concerned that inclusion on the inventory might result in

"unreasonable restriction on land use."

Will you reassure the stakeholders? We have the letter that you gave us this morning, which goes into some detail on that, but will you give reassurance about the purpose of the inventories and say whether inclusion will place an obligation on owners?

Fiona Hyslop: Those are important points. We are trying to clarify what already happens, although the bill aims to extend the areas that the inventory covers. It is important to stress that inclusion on the inventory imposes no additional duties on owners in terms of maintenance, access or requiring consent for works. The bill will allow us to put the existing inventory on a statutory basis without additional cost. That will enable local authorities to pick up any changes to the inventory immediately without having to wait for the periodic updating of the development management regulations, as they do currently.

Returning to the convener's point about record keeping, the inventory involves a just-in-time process, so that it can be referred to at any point. That is particularly relevant for some activities that are covered by the inventory, for example when what is effectively a planning process is involved for a garden design, landscape or battlefield. That is when having a record on the inventory would be helpful for the process.

Your second point was about identifying battleground sites. At the time of the consultation, that was one of the most popular areas for responses. I am not sure whether that reflects the bill as a whole and all its technical aspects, but people feel passionately about the subject, hence the high level of response.

The current Scottish historic environment policy for battlefields, which was published in July 2009, includes the following definition:

"To be included in the Inventory, a site must be of national importance and be capable of definition on a modern map ... Where nationally important sites cannot be adequately mapped, they will not be included in the Inventory."

That provides clarity. If we just think that there is something at a certain place, or if it is vaguely described, that is not helpful to anybody.

On land use, there can be issues in areas where land is being cultivated for agricultural use, which might include ploughing. If there has been regular ploughing on a site for the previous six years, I think it is, nobody will stop the farmer doing that activity there just because the site is on the inventory. Experience will show that ploughing has gone on previously to a certain permitted depth. A commonsense approach is taken to that. The point is to develop a more statutory status for the inventory than has been the case.

Christina McKelvie: Many of my colleagues in Central Scotland could tell you that the battle of Bothwell bridge is still being waged. I can get back to some of my constituents with up-to-date information. Thank you.

Lucy Blackburn (Historic Scotland): The ambition for the battlefields inventory is for the first wave of sites to be out for consultation some time before Christmas, so that the first wave of the inventory is in place around March or April next year. There will be full public consultation. There will be concerns, debates and discussions over what should be covered, and there will be an opportunity for those concerns to be considered properly and transparently.

Christina McKelvie: That is helpful.

Fiona Hyslop: Members are no doubt all considering which battlefields are in their constituencies.

Christina McKelvie: Different battle lines might be drawn up now.

Alasdair Allan (Western Isles) (SNP): I have a question regarding archaeology and the definition of monuments in that context. It has been suggested in written evidence that

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

could be decided to be a monument. Is that definition wide enough to capture all sorts of archaeological remains, or is it too wide? Have you given consideration to questions of definition?

Fiona Hyslop: The bill provides an opportunity for ministers to designate, if they wish to do so. As part of the decision making, the evaluation will lie with ministers, and I hope that you think that we will take a reasonable, commonsense approach. We expect most of the definitions to be in terms of archaeology, and we anticipate that there will be fewer than 10.

In my letter to the committee, I cited some examples that one of your witnesses gave you. It was suggested to you that "human activity" is a wide-ranging definition, but the site must be of real national significance in relation to historical human activity. Even then, it would be up to ministers to determine which areas to designate.

Important archaeological sites are probably underidentified with regard to protection and legislation, which is why we want to include them, although we do not anticipate there being an extensive number of sites. We wish to issue policy guidance to explain to people what we mean. That is not something for the bill—it will be done secondarily—but I am happy to provide it around stage 2, if that would be helpful to the committee.

The Convener: Thank you for that commitment, minister.

12:30

Elizabeth Smith (Mid Scotland and Fife) (Con): Thank you, minister, for your helpful letter regarding the section 25 issue. I note that what you say in the letter clarifies quite a few concerns that witnesses raised.

From a public perception point of view, the key is to ensure that the liability for any damage to property is targeted at the person who caused the damage rather than the owner. How will the bill deal with that specific issue, notwithstanding your comments to clarify some witnesses' concerns? Could you give us some clarification on that central point?

Fiona Hyslop: It is important to reflect that the bill gives responsibility to the owner. I will explain our thinking on that. The main purpose is to improve the quality of buildings that have fallen into disrepair or need urgent works. The issue is what we can do to help to get the works done, rather than who then pays for it.

It is a bit like the situation that people might experience when they purchase a house. If urgent works need to be done, either the owner does them before they sell the property or the price of the works is included in the price that the buyer pays, but the works are done regardless. We are trying to take an approach that will ensure that the works are done, but the liability has to be with the owner and their successors. Either way, the original owner who has not carried out the works will end up paying for them either by reducing the purchase price for the successor or by doing the works themselves before they sell.

Elizabeth Smith: I accept that, minister, and it is absolutely fair. However, are you confident that the bill will address the problem of coming to terms with the person who has caused the problem, especially given the fact that the current situation is a bit more vague?

Fiona Hyslop: That is difficult. How do we get people to repair buildings? That is one of the biggest challenges faced by every single town and city in Scotland. People can be fined and punished for not repairing buildings, but that is not what we are saying here. We are trying to impose on them the liability for expenses for urgent works. It is important that we engage with owners and ensure that they are aware of what they need to do and what their responsibilities are, but we will not necessarily do that through legislation. It would be disproportionate to the scale of the problem if we went round Scotland fining and punishing people for neglecting their homes and buildings, although a great deal of activity needs to take place and improvements need to be made. The bill aims to help the process by ensuring that the liability is such that repairs are more likely to be effected, as opposed to punishing the owner for not doing them in the first place.

Elizabeth Smith: Do you feel that the new legislation will act as a greater deterrent?

Fiona Hyslop: Yes.

Elizabeth Smith: Why do you feel that?

Fiona Hyslop: The idea is to deter owners from allowing their buildings to fall into unnecessary disrepair to the extent that they need urgent works. Owners will be penalised in terms of the financial value of their property when they come to sell it.

Elizabeth Smith: Your letter clarifies the point about the five-year limit for the notice of liability. Some witnesses were concerned about that, although I note your reasons for it. Are you convinced that the five-year limit is appropriate and that people will not try to go up to the limit and then get out of it and leave themselves no longer liable?

Fiona Hyslop: The fact that the notice of liability has to be renewed after five years is important. If the period is indefinite, there is a danger that it will just lie there and nothing will ever be done. The fact that there has to be a reapplication will, I hope, mean better engagement between the relevant authorities and the owner. The authorities will be able to tell the owner that the notice still stands and is to be renewed because the liability still exists. If the notice lasted forever, it could just hang on the wall and no one would pay any attention to it. That is why we think that the five-year limit is appropriate.

Claire Baker (Mid Scotland and Fife) (Lab): Section 18 relates to certificates of immunity. The minister acknowledged in her opening statement that there has been a level of debate around this issue, particularly in relation to hostile third parties, and some organisations have expressed concern. Will the current practice of not processing applications during consideration of a live planning application apply to applications for a certificate of immunity?

Fiona Hyslop: I will ask someone else to give you the details, but Historic Scotland is committed to turning an application around within eight weeks, to ensure that there are no unnecessary hold-ups. I suppose that you are asking whether the processes can run in parallel or whether the period for considering the application for the certificate would be at the front end. The benefit will be to developers—this is an improvement for developers that are looking to do works. The frustration that you might have heard from people

involved in some of these exercises is that they have to hang around to see whether there is any interest if the building is listed, only for people to turn round and say that they are not interested—a great deal of time is lost. I will ask someone else to comment on whether there will be a parallel process or whether the consideration of the application for the certificate will be at the start.

Lucy Blackburn: The current position is that we have a policy of not listing in the face of a live planning application. The intention would be that once certificates are in place, we would no longer need that policy. What we are proposing would be the alternative to it.

The difficulty with our current policy is that we say that we do not normally list in the face of a live planning application, but we cannot give an absolute guarantee that we will never do so. Any developer involved in a planning application will assume that we will probably not list, but, given the way the law is framed, we can never rule that out. If a developer comes to us and asks whether we can guarantee that we will definitely not list during their live planning application, we cannot do so. The certificate will deliberately create a period of absolute certainty. In some cases that might mean that the building is listed, but at least people will know which regime they are in.

Claire Baker: There has been a lot of discussion about whether there is a problem with hostile third parties. It has been suggested that applications be restricted to owners and occupiers, which I think is the situation in England, although there are other differences between the two systems. It has also been proposed that a charge should be applied, which might reduce the risk of vexatious applications. The committee has tried to explore that. I do not think that we have taken a final view on it. We tried to draw out whether the concerns that have been expressed are reasonable. Does the minister have anything to add to what she said about that in her opening statement?

Fiona Hyslop: We do not expect a large number of certificates. A system of certificates has been in place in England for a number of years and there have been seven to nine applications a year. We anticipate that even if there were more than that, Historic Scotland would be comfortable with an estimate of about 20 to 30 a year. I suppose that the issue is whether there is fairness in the system. People might have different views on this, but there was a big debate when the Planning etc (Scotland) Act 2006 went through as to the fairness for third parties and owners and who has the upper hand. On fairness and equity, local communities might want to own their town or village. I was in West Kilbride in Kenny Gibson's constituency over the summer. If a community really wants to take ownership of the town, wants to reinvent itself and wants its high street or other areas to be redeveloped, it might be interested in asking for a certificate of immunity. It could then involve other developers in reinventing or regenerating the town. In that situation, the community would not necessarily own the buildings, unless we are talking about some kind of community buy-out. If you restricted applications for certificates of immunity to the people who own the property or are about to develop them, would you be cutting out other people who have a genuine interest?

There is a genuine debate to be had, and I would be interested to hear the committee's views. The other point is that there might be vexatious applications that are not about development but about ensuring that nothing ever happens, by trying to get everything listed. There are pros and cons to the proposed system, and it would be helpful in due deliberations for stage 1 to set out those pros and cons and whether the committee has a view. It is an important point.

Lucy Blackburn: What we know is that the provision has not been tried in Scotland—it is untested in that sense. It is a new policy, and there is always uncertainty about where to cast the boundaries. We have always been conscious of not wanting to prejudge when the certificate will be useful, which is the main issue. If we limit who can apply, cases may come forward later to which we wish to respond positively but there is a legal barrier to doing so. With such a provision, we are never quite clear what cases might come forward and, as the minister said, in what situations people might find the certificate useful.

It is worth saying that it is and will continue to be the case that any person can ask ministers to consider a building for listing. That has always been a fundamental part of the listing process—part of its democratic base—and it will continue. It is important to bear that in mind—and that people who do not want to use the route in the bill will always have the other avenue. That is the balancing act that we are looking at.

Claire Baker: I think that there was broad support for the certificate. The aim of giving confidence to developers who are looking to take on buildings was recognised but, as Lucy Blackburn said, the flip-side to the system is that if a developer applies for a certificate of immunity and it is refused, it is likely that the building will be listed. There were questions about whether the provision will produce the policy outcomes that it is intended to produce, but I appreciate that it is an untested system and that we will have to wait and see how it operates in practice.

There was a suggestion from some witnesses that, rather than have a certificate system, the

Government could introduce a policy of reviewing listed buildings every four to 10 years, which would provide accurate listed building information for each local authority. Have you thought about alternatives to the certificate?

Fiona Hyslop: In principle we could do that, but it brings us back to the convener's question about resources. Unless we are about to agree in the budget to have additional resources rather than to implement the reduced budget that we expect, I do not think that that system would be feasible. A more cost-effective way of obtaining the end result is by dealing with a more limited number of cases through the route in the bill. If we were to resurvey every 10 to 12 years, we would be contemplating additional expenditure of £1 million to £2 million per year. We think that the bill provides a better route to reaching a solution to help and support development.

Claire Baker: I have a final question. When we took evidence from Lucy Blackburn previously, she said that there were on-going discussions among the Government, the Scottish Property Federation and the Law Society about concerns on the issue. Are those discussions still on-going? Have there been further meetings?

Lucy Blackburn: I will meet the SRPBA tomorrow.

Claire Baker: Thank you.

Ken Macintosh: As the minister mentioned in her opening statement, a number of stakeholders and bodies have suggested that the bill's powers could be enhanced specifically to include a duty on all public bodies to have special regard to Scotland's historic environment and to require local authorities to have access and give regard to appropriate information. From your opening remarks I understand fully that that would be at odds with the relationship with local authorities in the concordat, and I note the point about partnership being preferable. The third argument you deployed was that costs would be involved and that it is disproportionate to place statutory duties at a time of financial restraint, but I do not understand why there would be any costs involved in that proposal.

Fiona Hyslop: It would be difficult to cost, but the implication from the people who argue for the duty of care is that we bring with it a greater policy and resource application to caring for the environment. That is implicit in the arguments that have been made. I do not think that we can judge that in the current circumstances, because it is a bit of an unknown.

On the duty of care for different bodies, we are not talking about just the usual suspects, such as local authorities. The Forestry Commission, for example, is an important partner in the care of historic buildings and sites because monuments might be on its land, and there might be a number of sites on Ministry of Defence land. It is not just a matter for councils; it can be for other bodies, too.

12:45

The important issues are building relationships and the application of expertise. I come back to the point that what is important in Scotland, and what I as minister am keen to facilitate and drive forward, is how we have that sharing of expertise and resources across different areas. It is about sharing expertise and resources not only within council areas but with all these other partners, whether the matter relates to motorways, forestry or the Ministry of Defence.

We are working with all the different bodies and the concern that has been raised has been met with the response that we need to get everybody around the table to establish what effective duty of care would mean not in respect of legislation but in practice. That is probably a more effective approach than having a provision in the bill. There is strong resistance from local government to the imposition of statutory duties in general. You will have come across that in respect of bills that you have dealt with and a number of other issues. Local government is trying to resist as much statutory enforcement from national Government as it can.

Ken Macintosh: I note the broader principle, but I was asking about costs. The minister is suggesting that it is implicit, but it is not implicit in the argument of the organisations who are proposing the duty; they explicitly state that costs should not be involved. Several submissions make that point. I will quote from the submission from the Society of Antiquaries, which states:

> "Scottish Government and local authorities are clearly opposed to any additional burdens and costs ... However, we argue that these provisions do not add any significant burdens to either public bodies or local authorities, since information and expert advice is already available to the local authorities".

In fact, it is a duty that Scotland's public bodies should have regard to in fulfilling the duties that they already have.

My second point relates to ecclesiastical buildings, which you helpfully mention in your letter to the committee. I welcome the point that you make in the letter that the churches and other owners of ecclesiastical buildings would probably strongly object to the current voluntary situation being amended. Did you think about making such a change and consult upon it and decide not to? In other words, has there been any consultation with the churches or any other bodies about bringing ecclesiastical buildings into the listed building system?

Fiona Hyslop: I will ask others to respond in relation to the consultation, because it took place before I became the minister.

Lucy Blackburn: The Government never had a proposal to remove the ecclesiastical exemption so, strictly speaking, we have not consulted because it has never been a proposal; it was introduced by some of the responses to the draft bill. It was considered at that point by ministers and it was not taken forward in the final bill.

We have built a relationship with the ecclesiastical bodies that have major holdings, such as the Church of Scotland, and we meet them periodically to discuss how we can assist them with estate management, because they clearly face significant challenges as they have more buildings than they need. We want to work with them. The approach that we have taken is to encourage them to look at their needs and to come to talk to us so that we can identify which buildings—it will not be all the buildings they wish to vacate, in terms of this part of the agenda—they feel they do not want, so we can help them see ways through, because we can bring in expertise and knowledge about successful projects involving redundant church buildings.

We are committed to reviewing the exemption from the voluntary scheme for external works. We will need to do that quite soon as it is probably overdue for review and it will provide an obvious point at which to talk to the churches about how the voluntary scheme is working.

Fiona Hyslop: I note from my experience in my time as minister that there is a healthy and good relationship with the churches in respect of grants, restorations and so on. The issue is therefore: if something is not broken, why fix it? The review that Lucy Blackburn is talking about will identify whether there are any issues for improvement. I stress that there was not any sort of strong demand or push for a review, but what she has said refers to that.

Your first point was about the duty of care. The concern is to do with harmonisation with other areas. The term “historic environment” is broad; it embraces large parts of older settlements as well as rural locations, which means that any duty to have regard to it could be extremely generous. I know that some of the organisations that have called for that duty have said that there would be no cost attached to it, and I have met people who have been hopeful that it would allow better stewardship of the historic environment. Again, you have to take what you have been given as evidence.

The duty to have regard to the historic environment would have a much greater impact on public bodies than similar duties such as those that are in the Marine (Scotland) Act 2010. We have to be conscious that, just as we are trying to harmonise scheduled monuments provisions with listed monuments provisions and the historic environment with planning aspects, we are also trying to harmonise, as far as possible, environmental protection of the built environment with environmental protection of the non-built environment and the marine environment. That is another argument for keeping the situation as it is just now.

Ken Macintosh: Including in legislation ground surface treatments such as the cobbles in Charlotte Square has been raised a couple of times. Have you thought about extending some sort of statutory or regulatory protection to those areas?

Fiona Hyslop: No, but I would be interested to know whether there are examples of situations that demonstrate that there is a need to do that.

I understand that there is a situation in Kelso that is relevant to this point—I think that it might have been referred to in the letter that was sent to you—but I think that it was an issue before 1993. However, we are not aware of anything more current being raised by Historic Scotland in that regard.

I think that there are concerns about the refusal to list pavements, but I am not sure that there is a strong argument for it. Equally, I am not sure that there is a strong argument against it, either.

Historic Scotland might have other views on pavements.

Lucy Blackburn: We would like to talk to the Royal Town Planning Institute at a later stage in the bill process about the particular cases that have been raised, because we would like to understand the particular situations and what the scale of the issue might be. Listing legislation talks about structures but, until we have had test cases that have failed to go through, it is difficult to see what the problem would be.

Fiona Hyslop: So, our proposal seems to be: if in doubt, leave it out.

Ken Macintosh: The minister suggests that 1993 is a long time ago. In historic environment terms it is yesterday. I am sure that the residents of Kelso still hold a grudge about losing the cobbles.

Fiona Hyslop: If, in evidence to the committee, a strong case has been made for the proposal, it would be helpful if that were included in your report.

Ken Macintosh: We had an interesting discussion about the curtilage of modern buildings and the fact that some modern buildings have no

protected curtilage. I think that that is a discussion to be had before stage 2.

Fiona Hyslop: We will identify with the clerk any such issues that you would like us to come back to you on in relation to your preparation for stage 2.

The Convener: That concludes our questions to you, minister. I am sure that it makes a change for you to get such a warm welcome at the committee.

12:54

Meeting suspended.

12:54

On resuming—

Decision on Taking Business in Private

The Convener: Under agenda item 3, I seek the committee's agreement to take in private our consideration of our draft report on the Historic Environment (Amendment) (Scotland) Bill at future meetings. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Equality Act 2010 (Qualifications Body Regulator and Relevant Qualifications) (Scotland) Regulations 2010 (SSI 2010/315)

Education (Fees and Awards) (Scotland) Amendment Regulations 2010 (SSI 2010/325)

The Convener: Agenda item 4 concerns consideration of subordinate legislation. We have before us two negative instruments. Do members have any comments on the instruments?

Ken Macintosh: I have no objection to either instrument, but I have a difficulty with the drafting of the explanatory note to SSI 2010/315. I defy anyone to read the second sentence of the explanatory note and understand it, even at the third or fourth attempt.

I will read the paragraph, for the record.

"Section 96(6) of the Equality Act 2010 ("the Act") places a duty on qualifications bodies to make reasonable adjustments for disabled people. That duty does not apply in so far as the appropriate regulator specifies provisions, criteria or practices in relation to which the body is not subject, or is subject, but in relation to which such adjustments as the regulator specifies should not be made."

There are at least two double negatives in that second sentence. The fourth paragraph of page 1 of the executive note contains a far clearer explanation of what that sentence means.

Given that this is supposed to be an explanatory note, I would make a plea, in the manner of the Plain English Campaign, for explanatory notes to be written in English.

Alasdair Allan: Or Gaelic.

Ken Macintosh: Indeed.

The Convener: I am sure that the Government's legislation team will take your comments on board. Whether they will be acted on is another matter.

As members have no other comments, we move to formal consideration of the instruments. Does the committee agree that it has no recommendation to make on SSI 2010/315 and SSI 2010/325?

Members *indicated agreement.*

The Convener: The next meeting of the committee will be on Wednesday 6 October.

Meeting closed at 12:57.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by RR Donnelley and is available from:

Scottish Parliament

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

Public Information Service
The Scottish Parliament
Edinburgh EH99 1SP

Telephone: 0131 348 5000
Fòn: 0131 348 5395 (Gàidhlig)
Textphone users may contact us on **0800 092 7100**.
We also welcome calls using the Text Relay service.
Fax: 0131 348 5601
E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders, subscriptions and standing orders
business.edinburgh@blackwell.co.uk

Blackwell's Bookshop

53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Accredited Agents
(see Yellow Pages)

and through other good booksellers

e-format first available
ISBN 978-1-4061-6791-7

Revised e-format available
ISBN 978-0-85758-126-6

Revised e-format ISBN 978-0-85758-126-6