The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 6 October 2010

Session 3

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

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
25th 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)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 2

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 6 October 2010

[The Convener *opened the meeting at 09:31*]

Children's Hearings (Scotland) Bill: Stage 2

The Convener (Karen Whitefield): Good morning. I open the Education, Lifelong Learning and Culture Committee's 25th meeting in 2010. I remind all committee members and all in the public gallery that mobile phones and electronic devices should be switched off during the meeting.

The first agenda item is our fourth day of stage 2 of the Children's Hearings (Scotland) Bill. I am pleased to welcome Adam Ingram, the Minister for Children and Early Years, who returns with his officials.

Section 69—Requirement under Antisocial Behaviour etc (Scotland) Act 2004

The Convener: Amendment 127, in the minister's name, is grouped with amendments 128 to 131, 161, 162, 170 and 171.

The Minister for Children and Early Years (Adam Ingram): This group of amendments relates to referrals from a sheriff under section 12 of the Antisocial Behaviour etc (Scotland) Act 2004 when a child is made subject to an antisocial behaviour order or an interim order. When such a referral is made, the child enters the hearings system without a grounds hearing, as a ground is taken as having been established in the antisocial behaviour proceedings. However, the sheriff is not required to specify any ground for referral. It is not fair that a child or relevant person should come to a children's hearing without knowing the ground on which the child has been referred.

Amendment 171 will amend section 12 of the 2004 act to place a duty on the sheriff, when the child is not already subject to a compulsory supervision order, to provide a section 12 statement that sets out the ground for referral that the sheriff considers applies to the child, why the ground applies and any other information about the child that might be relevant. The amendment also makes clear the reporter's role of arranging a children's hearing.

Amendments 127 to 129, 161, 162 and 170 are consequential on amendment 171.

Amendments 130 and 131 are technical amendments that will clarify the procedure for arranging the children's hearing.

I hope that the committee will support the amendments, which will help to ensure that the child, relevant persons and the children's hearing have as much information as possible about why a children's hearing has been called.

I move amendment 127.

Amendment 127 agreed to.

Amendments 128 to 131 moved—[Adam Ingram]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Case remitted under section 49 of Criminal Procedure (Scotland) Act 1995

The Convener: Amendment 132, in the name of the minister, is grouped with amendments 133 to 137, 306, 163 and 169. I invite the minister to move amendment 132 and to speak to all the amendments in the group.

Adam Ingram: This group of largely technical amendments is intended to clarify how cases that are remitted by the criminal court under section 49 of the Criminal Procedure (Scotland) Act 1995 are to be dealt with by the children's hearings system.

Section 70 should apply when a child is not already subject to a compulsory supervision order. That enables the child's case to enter the system at the correct entry point, which is when the grounds have been established and the hearing is moving to consider whether a compulsory supervision order should be made—a "subsequent hearing" instead of a "grounds hearing". When the child is already subject to a compulsory supervision order at the time of the remit from the criminal court, the child's case should enter the hearings system at the point of a "review hearing". Amendments 132 to 137 and 163 will make the necessary adjustments to the bill to provide for that and will make some other minor changes. There is no change to policy.

Amendment 306 seeks to make it clear that appeal rights within the children's hearings system do not apply when a child has pled guilty to, or been convicted of, a criminal offence. In those circumstances, the appropriate course for appeal should be the criminal proceedings giving rise to the finding of guilt. The amendment will bring the provision back into line with the existing equivalent provision in the Children (Scotland) Act 1995.

Amendment 169 will ensure, for the purpose of section 70, that a young person who is over 16 but under 18 and is not subject to compulsory supervision at the time of remit can be treated as a child within the hearings system until a hearing or

sheriff discharges the referral, a compulsory supervision order is terminated or the child reaches the age of 18. Again, there is no change of policy. I hope that the committee will support the amendments.

I move amendment 132.

Amendment 132 agreed to.

Amendments 133 to 137 moved—[Adam Ingram]—and agreed to.

Section 70, as amended, agreed to.

Section 71 agreed to.

Section 72—Child's duty to attend children's hearing

The Convener: Amendment 138, in the name of the minister, is grouped with amendments 139 to 148, 153, 192, 313, 314, 158, 160,164 and 166. I invite Mr Ingram to move amendment 138 and to speak to all the amendments in the group.

Adam Ingram: This group of amendments relates to attendance at hearings. Amendments 138, 139, 143, 144, 146 and 147 will ensure that the power of a hearing to excuse a child or relevant person from attending the hearing can be exercised at any point during the hearing process. Amendment 144 also seeks to make it clear that every relevant person who has been notified of the hearing must attend the hearing.

The amendments will introduce a general power, so consequential amendments 158, 160, 166 and 192 will remove specific powers that are no longer required.

Amendments 142, 145, 164, 313 and 314 are related technical amendments.

Amendments 140 and 148 respond to a point that was raised by the committee in its stage 1 report, for which I am grateful. When compared to the 1995 act, it was possible to read the bill as creating a higher test for excusal from attendance, which could be seen as changing from a matter of the hearing's opinion to a matter of fact. The amendments will ensure that the test is still a matter of the hearing's opinion rather than of fact.

The bill as drafted allows the hearing to excuse a child from attending when they have been referred on a ground involving the committing of a schedule 1 offence and the child's attendance is not necessary for a fair hearing. That would apply even if the child was the perpetrator of the offence. Amendment 141 means that the child will not be excused if they were the perpetrator but can continue to be excused if they are the victim of, or are in close connection with, someone who has committed a schedule 1 offence.

Amendment 153 will ensure that pre-hearing panels deal with matters in the same way as a children's hearing would in respect of excusing children and relevant persons, and it will insert a provision to clarify the specific conditions that must be satisfied.

I move amendment 138.

Amendment 138 agreed to.

Amendments 139 to 142 moved—[Adam Ingram]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Relevant person's duty to attend children's hearing

Amendments 143 to 148 moved—[Adam Ingram]—and agreed to.

Section 73, as amended, agreed to.

Sections 74 to 76 agreed to.

Section 77—Rights of certain persons to attend children's hearing

The Convener: Amendment 180, in the name of Ken Macintosh, is grouped with amendments 181 and 182.

Ken Macintosh (Eastwood) (Lab): The amendments have been proposed by the Law Society of Scotland and are designed simply for clarification, to improve understanding of the bill and to reinforce the existing policy intention.

Amendment 180 would add a direction to the definition of area support team in schedule 1. The concept of an area support team is new and the reference to it in section 77 is isolated. The addition of a direction to the definition of area support team will make the provision clearer to those who are reading or interpreting the section.

Amendments 181 and 182 are to clarify the right of journalists to attend hearings and what they may report. Amendment 181 provides that section 174, which covers publishing restrictions, should be taken into account as well as section 77(5). Currently, newspaper representatives are admitted to children's hearings, but there are restrictions on publishing in section 174. Those restrictions allow an appropriate balance of rights under articles 8 and 10 of the European convention on human rights. The purpose of amendment 181 is to reinforce those rights in section 77.

09:45

Amendment 182 provides further directions to the chairing member about what he or she needs to explain to a newspaper or press agency representative following a hearing. The current provision is discretionary but, for the avoidance of

doubt, amendment 182 reinforces the fact that the chairing member does not have to disclose all that was said while a newspaper reporter was excluded. It introduces the words:

"where appropriate to do so".

I move amendment 180.

Adam Ingram: Ken Macintosh has raised some interesting issues in lodging his amendments in this group. Section 77 is an important section, listing as it does the persons who have a right to attend a children's hearing.

I am not convinced of the need for amendment 180. Subparagraph 12(1) of schedule 1 uses the form of words "to be known as" when setting up area support teams. That is the conventional way of indicating that there is no need to define the expression in other legislation or, as in this case, in the bill. Although area support teams are a new creature at the moment, they will soon become generally known as people become familiar with the new law, and I do not believe that the additional reference is required. However, I am happy to give a commitment that we will ensure that the explanatory notes for section 77 include a signpost to schedule 1.

It appears that amendment 181 would require a children's hearing to take a view on whether a journalist attending that hearing was likely to breach the publishing restrictions that are set out in section 174. Perhaps Ken Macintosh could confirm whether that is the intention and, if so, perhaps he could confirm whether he thinks that it will be possible or right for the hearing to make such a judgment. On what basis would it be able to make such a judgment? Hearings already have the power to exclude journalists in certain circumstances, and I do not really see what amendment 181 adds to what we already have in the bill, so I ask the committee not to support it.

Although sections 77 and 174 appear to be connected in that both of them concern journalists or reporting, they address quite different purposes, and it would be erroneous to conflate them. The publishing restrictions in section 174 go much wider than the attendance of journalists at, or their exclusion from, children's hearings under section 77. Under section 174 a journalist is prevented from publishing certain details of a children's hearing, such as the child's address or school, even in cases where the journalist attended the hearing. For that reason also, I ask the committee not to support amendment 181.

I welcome amendment 182, however. The hearing's power is already discretionary in relation to providing feedback to journalists on what took place in their absence, and amendment 182 would make the position clearer. I am grateful to Ken Macintosh for lodging that amendment.

Ken Macintosh: I thank the minister for his comments. Amendment 180 was lodged for the purpose of clarification. The minister has explained that he does not feel that it is needed, but he is willing to expand the explanatory notes. I welcome that assurance, and I will seek to withdraw amendment 180 in a moment.

I am not entirely sure that I agree with the minister's interpretation of what amendment 181 will do. I do not think that it does ask the panel to reach a judgment. It is not my intention to introduce any confusion, however; I simply seek to reinforce what is already in the bill. On that basis, I do not intend to move amendment 181.

I welcome the minister's agreement to amendment 182.

Amendment 180, by agreement, withdrawn.

Amendment 181 not moved.

The Convener: I call amendment 182, in the name of Ken Macintosh, which was also debated with amendment 180.

Ken Macintosh: Not moved.

The Convener: The question is—

Ken Macintosh: I beg your pardon. Sorry, convener, I got too carried away. Can I move amendment 182? I was one step behind myself.

The Convener: This is highly irregular and I really do not want to set a precedent but, as the minister was kind enough to offer support for amendment 182 and it has universal backing, I will allow us to go back on this occasion.

Amendment 182 moved—[Ken Macintosh]—and agreed to.

Section 77, as amended, agreed to.

Section 78—Referral of certain matters for pre-hearing determination

The Convener: Amendment 183, in the name of Ken Macintosh, is grouped with amendments 221, 150, 184, 222, 185 to 188, 154, 155, 319, 203, 321 to 324, 204 to 206, 325 to 327 and 216.

Ken Macintosh: It is probably sensible to think of the amendments to which I will speak as being in three separate sub-groups: amendments 183, 184, 187, 203 to 206 are all to clarify the use of the term "deemed as" and replace it with the term "treated as"; amendment 185 addresses an ECHR issue to do with parental rights; and amendments 186 and 188 address the conditions under which the status of a relevant person should be terminated or reviewed.

Amendments 183, 184, 187, 203 to 206 come from the Law Society, which takes the view that the use of language is confusing in this instance. A

person either is, or is not, a relevant person. The hearing would not deem that a person fell within the definition, which is in section 185. Rather, it would decide that a person should be considered a relevant person, notwithstanding that he or she did not fall within the definition. It would be sensible to replace the term "deemed as" with "treated as", which is what it means in that situation.

Amendment 185 would address an issue that the committee will remember from stage 1. The bill will change the criteria that are applied to decide on a relevant person. The Children (Scotland) Act 1995 says that a relevant person is somebody

"who ordinarily ... has charge of, or control over, the child."

In section 80, we replace that with the words

"the individual has a significant involvement"

with the child. The Law Society has concerns that the provision is insufficient to cover all those who have a right to respect for family life and, therefore, could be in breach of article 8 of the ECHR. Furthermore, I believe that a case that will address the issue is currently before the Supreme Court, which may be due to report in October.

The Law Society suggests that, if we were to agree to amendment 185—I should say that amendment 184 is a paving amendment for amendment 185—the panel would have to take account of

"a parent or other person who should, as a result of a family connection with the child, be involved in discussion at the children's hearing".

I believe that the case law on the matter suggests that a blood relative will be taken into account. I suggest that the bill will need to address that important matter before stage 3, so I would welcome the minister's comments on it.

Amendments 186 and 188 address an issue that we highlighted in our stage 1 report and which was brought up by several witnesses to the committee, including our adviser, which is that there is no end point to a person's being deemed to be—I hope that that will soon become "treated as"—a relevant person. In other words, the person could be a relevant person for the duration of the child's life or simply for the duration of the child's appearance before the children's panel.

There was a termination point under the previous system, and amendment 186 would introduce a termination point. I believe that the minister has lodged a similar amendment. At the moment, if a child has a succession of foster parents, for example, the initial foster parent would be the relevant person, and that would not be terminated. The amendment addresses that issue.

I move amendment 183.

The Convener: I point out to members that there is the potential for pre-emption with some amendments in the group.

Adam Ingram: The amendments in the name of Ken Macintosh propose changes to provisions in the bill to do with deemed relevant person status. The amendments relate to complex issues, and I hope that members will forgive me for taking the necessary time to explore those complexities in order to support the committee in making its decisions.

Section 185 sets out criteria that clearly identify those who should gain automatic relevant person status. That is based on a test of legal fact. In addition, section 80 allows those who do not meet that test but have a significant involvement in a child's life to claim that they should be deemed to be the child's relevant person and should be able to access the same rights and duties as those who meet the legal test. It is important to keep those two tests—the factual test and the legal test—separate. I will explain further.

The provisions allow the hearing to accommodate the rights of children—by ensuring that only the right people have rights and duties in association with the child's hearing—and those whose significant relationship with a child may be affected by a decision in a hearing. Under the current legislation, there is a factual test to determine relevant person status, but the process is not clear and is not consistently applied. The provisions in the bill therefore provide a clear, consistent and transparent process for making decisions on relevant person status.

As Mr Macintosh confirmed, amendment 183 centres on the terminology that is used in the bill to describe someone who is deemed to be a relevant person but does not meet the legal test that is set out in section 185. Amendments 183, 184, 187 and 203 to 206 seek to move away from the word "deemed" to the words "treated as". In addition, amendment 216 seeks to add to the definition of "relevant person" by including a person who has received deemed relevant person status.

I confess that I find those amendments at best unnecessary; at worst, they risk causing confusion about the distinction between the criteria that are set out in section 185, which rest on legal status, and those in section 80, which rest on the facts around the relationship with the child in question. In reality, a person who is deemed to be a relevant person will assume the same rights and duties as those who are automatically relevant persons have. In effect, deemed relevant persons are treated as relevant persons. Section 80(4) achieves that. It states:

"the individual is to be treated as a relevant person".

There is a clear and important difference between the two tests. The question whether a person has parental rights and responsibilities in respect of a child should be a matter of legal certainty, whereas the question whether a person is significantly involved in the child's upbringing is a question of fact that should be determined by the hearing, which will be the decision maker on that matter.

10:00

In addition, a relevant person who meets the legal test will not have that status questioned or reviewed, because when their legal status changes, their status as a relevant person automatically changes. A deemed relevant person can continue to be treated as a relevant person only while they still have a significant relationship with the child, and I have lodged amendments to allow a mechanism for that factual test to be reviewed; I will speak to those shortly. I therefore suggest that amendments 183, 184, 187, 203 to 206 and 216 are unnecessary and inappropriate.

Amendment 185 seeks to amend the criteria for those who should be deemed to be the child's relevant person. It proposes a fairly nebulous test for determining which adults should be involved in discussion at a children's hearing. The test turns on whether the individual

"should ... be involved in discussion at the children's hearing".

However, the role of relevant person extends far further than that. A deemed relevant person will assume all the rights and responsibilities of the child's relevant person, not just in discussion at the hearing. I am not clear whether the intention is to add another group of adults who should have the right to attend a hearing and, if so, how far those rights extend. For example, will they extend to the right to accept grounds for referral, gain state-funded legal representation and appeal a decision of a hearing? Perhaps Ken Macintosh will clarify in his comments whether it is the intention to replace the current criteria for gaining deemed relevant person status.

As I said earlier, in developing provisions around relevant person and deemed relevant person status, we must achieve a balance that both allows the hearing to accommodate the rights of children by ensuring that only the right people have rights and duties in association with that child's hearing and allows those whose significant relationship with a child might be affected by a decision of the hearing to be heard. Were the amendments in the name of Ken Macintosh to be accepted, I fear that that balance would be upset and the needs of the child would be lost. That could result in multiple relatives, such as grandparents and siblings, being involved in a hearing, each of whom would have the right to attend and speak but also the duty to attend the hearing, rights of access to all the papers and rights of appeal. Let us not forget that each would also have the right to bring along a representative and to seek state-funded legal representation. A range of conflicting views could be presented and the hearing could become a circus in which the child becomes lost.

The committee knows that section 77(4) sets out a duty on the chair of a hearing to ensure that the number of persons who are present at a hearing at the same time is kept to a minimum. Amendment 185 could fly in the face of a fundamental duty that panel members hold dear.

Ken Macintosh made a point about the ECHR. The provisions in the bill fully address article 8 rights by applying a test that determines that the extent of the relationship is such that article 8 rights are engaged: the significant involvement test. It is appropriate that only those who have such an involvement in the child's life should gain the status of relevant person and all the rights and responsibilities that accompany that status.

On the basis of those arguments, I urge Mr Macintosh not to move amendment 185.

Amendment 186 seeks to put in place provisions that would allow the review of deemed relevant person status. I know, as does the committee, that the current provisions in the bill do not allow for such a review and that there is strong and valid support for making such provision. I am, of course, very supportive of the objective of the amendment, as demonstrated by the amendments in my name. However, amendment 186 lacks detail on the process and mechanisms that need to be put in place to trigger a review and make a fresh determination of whether the test continues to be met. In short, there is no mechanism in the amendment to allow the review to be carried out. Amendment 188 is consequential on amendment 186.

As Ken Macintosh acknowledged, I have lodged amendments on those points. They put in place a process for triggering a review of deemed relevant person status, the means of undertaking that review, and the rights of those affected by the review. In developing the amendments, I again wish to thank the committee for the valuable comments in its stage 1 report. The process for review of a deemed relevant person determination has been carefully developed and is clearly demonstrated in the amendments that I have lodged. I had hoped to share those amendments with Ken Macintosh prior to today's debate, but that did not prove possible. However, I will now talk the committee through the amendments in my name and explain how they provide a well-

thought-out process for reviewing deemed relevant person status.

Amendment 319 allows for a review of deemed relevant person status. It fits with the process in section 80 of determining whether a person should be deemed a relevant person. The test to be met in section 80 is whether an individual has, or has recently had, significant involvement in a child's life. During stage 1, some witnesses raised a point that the significant involvement that was evident in the original determination could be subject to change as the child moves through the hearings process and, in that circumstance, continued deemed relevant person status would not be justified.

Amendment 319 responds to those concerns by providing the hearing with a power to review deemed relevant person status. The trigger for that review process is where a hearing has reviewed a compulsory supervision order and it takes the view that the individual may no longer meet the test. It is anticipated that, during a review hearing, information may emerge that would lead to a hearing taking such a view and, therefore, deciding that the significant involvement test should be reconsidered. The hearing could either review that deemed relevant person status at the end of that hearing or defer the decision to a further hearing that will be constituted only for the purpose of reviewing the deemed relevant person status.

Once a review of deemed relevant person status is triggered, the rights of those who are involved in and potentially affected by the review will mirror those that are in place for the initial deemed relevant person determination in that they can appeal that decision to the sheriff. Subsequent amendments to amendment 319 put in place provisions to facilitate those appeal rights.

Amendment 321 allows for an appeal to the sheriff against a decision that reviews deemed relevant person status. It mirrors the rights that are available to the individual who appeals against the original determination regarding the deemed status.

Amendment 322 removes the safeguarder's right of appeal against a decision of a pre-hearing when it has made a deemed relevant person determination. The original provision that allowed such an appeal has been reviewed. Given that the role of the safeguarder is to safeguard the interests of the child—that has been recognised in our provisions that allow a safeguarder the independent right of appeal against a decision of a hearing—it is not necessary for the safeguarder to have an independent right of appeal against a decision regarding deemed relevant person status.

Amendment 323 is consequential on amendment 322 in that it removes safeguarders from the list of those persons who can jointly appeal against a deemed relevant person determination or a review of that determination. Amendment 324 makes a technical adjustment to section 155 to clarify the powers of the sheriff when he is not satisfied that a decision around the determination of deemed relevant person status or a review of that determination is justified. The sheriff must quash the decision of the hearing.

Amendment 325, which seeks to add a provision to section 155, is also a technical amendment and follows on from the powers of the sheriff on appeal. Under amendment 325, if the sheriff decides that the original determination is not justified and that the individual in question should be a deemed relevant person, that person is considered to be a deemed relevant person in the same way as if the pre-hearing had made that decision, and therefore the same rights and duties will apply.

As that range of amendments provides a more robust and clearer process for reviewing deemed relevant person status, I ask Ken Macintosh not to move amendment 186.

As for the rest of the amendments in my name in this group, amendments 221 and 150 seek to add strength to provisions relating to the determination of deemed relevant person status, and I am grateful to the committee for drawing the need for such amendments to my attention in its stage 1 report. Section 78 makes provision for those who have the right to seek a pre-hearing to determine deemed relevant person status. Those people are the child; the relevant person; the individual in question; and the principal reporter. Amendments 221 and 150 seek to remove the principal reporter's discretion on whether to arrange a pre-hearing panel for a deemed relevant person determination when it has been sought by those other than the individual in question, for example by the child or relevant person. The committee's stage 1 report expressed concern at that element of discretion, and I agree that the principal reporter should be under an obligation to arrange a pre-hearing. As a result, amendment 150 seeks to place a duty on the principal reporter to act on such requests.

Amendment 222 is a technical amendment to section 80(3), which prescribes the test for determining deemed relevant person status, and removes the words

"for the purposes of the children's hearing",

which are unnecessary.

Amendment 154 is consequential on changes to the legal aid provisions, which will be discussed in a later group.

Amendment 155 seeks to make further provision for the rights of those who receive deemed relevant person status and to ensure that they have the right to attend further pre-hearings that have been convened after the relevant person determination is made. It is quite possible that further pre-hearings could be convened prior to a full hearing where decisions around, for example, attendance could be made, and it is important that a deemed relevant person has a statutory right of attendance at them.

Following the committee's stage 1 report, amendments 326 and 327 seek to make additions to the definition of "relevant person", which is the legal test as set out in section 185. I am grateful to the committee for drawing these points to my attention. Amendment 326 seeks to allow for guardians who have parental responsibilities and rights in respect of the child to receive automatic relevant person status, which is a point that the committee raised in its report. As testamentary guardians may assume parental responsibilities and rights under section 7 of the 1995 act, it is right that they should be included, and the amendment seeks to rectify that omission. Finally, amendment 327 seeks to allow for the inclusion of those who have parental responsibilities and rights conferred on them when the court makes a residence order.

I conclude that marathon submission by asking Ken Macintosh to withdraw amendment 183.

The Convener: I thank the minister for those extensive comments on what is a particularly large and complex group of amendments. As no other member wishes to speak, I ask Mr Macintosh to wind up the debate and indicate whether he wishes to press amendment 183.

10:15

Ken Macintosh: I welcome some of the minister's comments. Some were very helpful and others less so—but I will come to that in a moment.

Taking amendments 186 and 188 first, which I lodged with a view to introducing a procedure for terminating deemed relevant person status, I made it clear that the issue was raised in the committee's stage 1 report. Given the raft of amendments that the minister has lodged to address the matter—which I, too, am sorry that we were unable to meet to discuss—I am more than happy to accept that they cover the issue and set out all the procedures in detail. In effect, they repeat the previous process. As a result, I will not move amendments 186 and 188.

On amendments 184 and 185, which seek to address rights under the ECHR, I fully acknowledge that the minister will not accept that the bill as it stands breaches the ECHR. Indeed, if it did, it could not proceed any further. However, I do not accept that amendment 185 will introduce a whole raft of new people to children's panels. As most members will be aware, many adults who have a relationship with their child use and abuse it at a children's panel hearing and often seek legal representation and legal aid to enforce their own parental rights at the expense of the rights of the child. The issue, which has bedevilled many children's panels for many years now, will not go away, because these adults will continue to insist on their parental legal rights—which, I must stress, they have, particularly under the ECHR. As anyone with any experience of a children's panel will tell you, minister, the issue comes up time and again. Although the Supreme Court will deal with the matter soon, I lodged the amendment to ensure that the bill spells out criteria that the children's panel can use to address it. I certainly think that it is better for us to do that than to wait for the Supreme Court judgment.

That said, I accept that the area is very difficult and controversial and that the minister will not accept amendments 184 and 185. As a result, I will not move them today. However, we will need to return to the issue before stage 3, by which time we will, I hope, know the Supreme Court's decision. It is certainly not an issue that we can ignore.

I was particularly disappointed and totally unconvinced by the minister's arguments with regard to the terms "deemed" and "treated as". I have no difficulty with the procedure that is set out in the bill, the criteria that are to be used and, particularly, the fact that section 185 provides the legal basis on which someone is a deemed relevant person. The minister then agreed that section 80 introduces a different set of criteria relating to the panel's decision on the relationship of a person with the child. We therefore agree that there are certain criteria that are matters of fact under which someone becomes a deemed relevant person. However, the question whether someone should share the same rights requires the panel to take another set of decisions. Those are two different sets of decisions, but the minister is arguing that the term "deemed a relevant person" should be used in both. I have to disagree. The key part of the term is "relevant person" and, instead of using that, he is using "deemed a relevant person". The "deemed" element is not as important as the "relevant person" element, which relates to the legal relationship that we are talking about. The "deemed" element relates to section 185, which sets out the criteria for giving an individual deemed relevant person status, whereas section 80 says that the individual should be

"treated as a relevant person".

That is not the same thing, and I believe that the distinction should be spelled out. The minister produced no arguments whatever against that. He simply tried to suggest that the term that matters is "deemed a relevant person" rather than "relevant person". I disagree and I will press amendment 183.

The Convener: The question is, that amendment 183 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 183 disagreed to.

Amendments 221 and 150 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 151, in the name of the minister, is grouped with amendments 343 and 361 to 364.

Adam Ingram: The amendments in this group are fairly technical and will help to clarify the operation of the provisions that deal with secure accommodation.

Amendment 151 will clarify the role of the pre-hearing panel in the provision of state-funded legal representation to the child in connection with secure accommodation. It will make clear that the role of the pre-hearing panel is to determine whether it is likely that a secure accommodation authorisation will be included in any compulsory supervision order that is made by the children's hearing. A decision that such an authorisation is likely will trigger the automatic provision of state-funded legal representation, by the reporter providing the information to the Scottish Legal Aid Board. Amendment 151 will not affect a child's general right to access legal representation.

Amendment 343 is a technical amendment, which will ensure that the duty on the reporter to initiate a review of a compulsory supervision order that includes a secure accommodation authorisation applies only while that authorisation remains in place.

Amendments 361 and 364 meet the commitment that was given to the Subordinate Legislation Committee to make the regulation-making powers in sections 146 and 147 subject to affirmative procedure. The powers relate to the circumstances in which a child may be placed in secure accommodation and to general provision about children who are placed in secure accommodation.

Amendments 362 and 363 are technical amendments to section 147, which will ensure that requirements are placed on the relevant local authority or implementation authority, as appropriate.

I move amendment 151.

Amendment 151 agreed to.

The Convener: Amendment 152, in the name of the minister, is grouped with amendment 167.

Adam Ingram: Section 170 enables the Scottish ministers to make rules about procedural arrangements for children's hearings and pre-hearing panels and, in particular, enables ministers to make provision in connection with, for example, the arrangement of children's hearings, the withholding of documents and representation.

Section 78 sets out a closed list of matters that can be determined by a pre-hearing panel and curtails the reasons for which a reporter may arrange a pre-hearing panel. I do not want to expand the range of matters that a pre-hearing panel will be able to deal with in the foreseeable future, but I want to ensure that there is sufficient flexibility for panels to be able to respond to changing demands of the children's hearings system in future.

Amendments 152 and 167 will therefore provide the necessary flexibility, by way of secondary legislation, to enable further matters to be referred to a pre-hearing panel for determination prior to the children's hearing taking place. The intention is to ensure that such matters can be dealt with prior to a hearing, which will enable the hearing to run more smoothly and efficiently. I ask the committee to support the amendments.

I move amendment 152.

Amendment 152 agreed to.

Amendment 153 moved—[Adam Ingram]—and agreed to.

Section 78, as amended, agreed to.

Section 79 agreed to.

Section 80—Determination of claim that person be deemed a relevant person

Amendment 184 not moved.

Amendment 222 moved—[Adam Ingram]—and agreed to.

Amendments 185 to 188 not moved.

Amendments 154 and 155 moved—[Adam Ingram]—and agreed to.

Section 80, as amended, agreed to.

After section 80

The Convener: Amendment 156, in the name of the minister, is in a group on its own.

Adam Ingram: Section 29 places a duty on children's hearings to consider whether to appoint a safeguarder. Section 78 makes provision for specified matters to be dealt with by pre-hearing panels.

Although the hearing can appoint a safeguarder under section 29, there is no power to appoint a safeguarder at the pre-hearing stage. Such a power is needed, because pre-hearings can be arranged at later stages in the child's case. There might be cases in which a pre-hearing that has been arranged to determine other matters has sufficient information to enable it to make a decision on whether a safeguarder should be appointed. Members will be aware that Professor Norrie raised the issue at stage 1.

Amendment 156 will therefore allow a safeguarder to be appointed by the pre-hearing panel and will ensure that the appointment is thereafter treated as an appointment under section 29.

I move amendment 156.

Amendment 156 agreed to.

Section 81 agreed to.

Section 82—Requirement to establish child's age

The Convener: Amendment 189, in the name of Ken Macintosh, is grouped with amendments 223 and 224.

10:30

Ken Macintosh: Section 82 introduces a requirement on the children's hearing to establish the child's age but appears not to take into account children who are, for whatever reason, unable to declare their age. Amendment 189 would provide an alternative means of determining the child's age.

The minister has lodged amendments that address the same issue. His are slightly preferable to amendment 189. I have to move amendment 189 to allow the group to be debated, but I will withdraw it in favour of the minister's amendments.

I move amendment 189.

The Convener: Thank you for that early indication of your intentions, Mr Macintosh. I am sure that the minister will be mightily relieved to know that you consider his amendments to be better, even before he speaks.

Adam Ingram: I thank Ken Macintosh for raising the point. We had similarly identified the need to ensure that section 82 catered for a case in which the child was too young to speak.

As Ken Macintosh indicated, Government amendments 223 and 224 are superior to his. However, I will go through the issues.

Amendment 223 introduces a new subsection into section 82 to make clear that the chairing member of the hearing need not ask a child their age when it would be inappropriate to ask that question based on the age and maturity of the child. Subsection (4) already provides that the hearing may make a determination of the child's age to cover situations in which the child is unable or unwilling to state their age. Subsections (4) and (5) also cover the situation in which the person makes false declarations as to their age, but amendment 189 does not take account of that possibility.

I also note that amendment 189 moves the determination of age, if any is required, from the hearing as a whole to the chairing member. We should allow the panel as a whole to make that decision.

Amendment 224 is a technical drafting amendment that moves section 82 to part 12 of the bill. The requirement to establish the person's age is a procedural matter that will apply whenever a hearing is held under the bill and, as such, part 12 is the appropriate place for the provision to sit.

Amendment 189, by agreement, withdrawn.

Amendment 223 moved—[Adam Ingram]—and agreed to.

Section 82, as amended, agreed to.

Amendment 224 moved—[Adam Ingram]—and agreed to.

Section 83 agreed to.

Section 84—Grounds to be put to child and relevant person

The Convener: Amendment 225, in the name of the minister, is grouped with amendment 251.

Adam Ingram: This group of amendments deals with grounds hearings. If a child fails to attend the grounds hearing without being excused, grounds cannot be established. As drafted, the bill does not provide for the convening of a further grounds hearing if the child has not been excused

from attendance but fails to attend. Amendment 251 would address the issue by introducing a new section that gives the hearing the option to convene a further grounds hearing when a child has not been excused from attendance but fails to turn up at the grounds hearing. The reporter could arrange a further grounds hearing to give the child another opportunity to accept the grounds for referral before the children's hearing. Amendment 225 is consequential to that.

I move amendment 225.

Amendment 225 agreed to.

The Convener: Amendment 226, in the name of the minister, is grouped with amendments 229, 230, 235, 237, 239, 240, 241, 243, 245, 248, 249, 250, 252, 296 and 300.

Adam Ingram: This group of amendments contains a series of drafting and technical changes to part 9, which deals with children's hearings generally.

Section 84, which is based on section 65 of the 1995 act, places a duty on the chairing member of the hearing to explain to the child and each relevant person the grounds for referral and to inquire whether those grounds are accepted by the parties. A statement of grounds may contain more than one ground for referral. Section 93, which is also based on section 65 of the 1995 act, sets out the procedure for the grounds hearing when a child or relevant person present at the hearing is unable to understand the grounds for referral and so can neither accept nor deny them.

The amendments ensure that the obligation on the chairing member to explain the grounds for referral applies only to the child and the relevant persons who actually attend the hearing. They also clarify that the chairing member's duty to explain the child's duty to attend the hearing before the sheriff applies

"in so far as is reasonably practicable."

Finally, they clarify that the hearing may proceed in the absence of a relevant person who does not attend or who has been excused from attending.

Amendment 229 relates to procedure after the grounds have been accepted and clarifies that acceptance of grounds means acceptance of each ground by the child and each relevant person present and that a hearing may proceed in the absence of a relevant person who has been excused from attendance.

Amendments 230, 235 and 239 deal with the subsequent stages of the children's hearing depending on the outcome of the chairing member's inquiry about the acceptance or denial of each of the grounds for referral and seek to make it clear that each ground must be accepted, or not, by the child and each relevant person.

Amendment 237 relates to procedure after the grounds have been accepted and clarifies that acceptance of grounds means acceptance of each ground by the child and each relevant person present and that a hearing may proceed in the absence of a relevant person who has been excused from attendance.

Amendments 240 and 241 are consequential amendments that delete sections 91 and 92, which are no longer required as a result of amendment 239.

Amendment 243 clarifies that the obligation on the chairing member to explain the grounds in the statement of grounds applies only to the child and to those relevant persons who actually attend the hearing, ensuring that the hearing may proceed in the absence of a relevant person who does not attend or who has been excused from attending.

Section 93(2)(b) provides that the hearing can discharge the referral to the extent that it relates to the ground and proceed under sections 85 to 90 in relation to any other grounds that a child or relevant person may have understood and accepted. The paragraph simply states the powers that are open to the hearing under the other sections and, as a result, amendment 245 removes unnecessary wording.

Amendment 248, which inserts a new subsection into section 93, applies where the hearing directs the reporter to make an application to the sheriff for a proof hearing and the child has not understood the grounds for referral. It follows that the child might not also understand the explanation provided by the chairing member about the child's duty to attend the hearing before the sheriff. Amendment 248 relieves the chairing member of an absolute duty to provide an explanation to the child in such circumstances by qualifying the duty with the term

"in so far as is reasonably practicable".

The remaining amendments are consequential.

I move amendment 226.

Amendment 226 agreed to.

The Convener: Amendment 227, in the name of the minister, is grouped with amendments 228, 231 to 234, 236, 242, 244, 246, 247, 255 to 258, 261, 262, 264, 268 to 270, 272, 279, 280, 282, 286 to 288, 295, 299, 301, 312, 338, 342, 316 and 328.

Adam Ingram: These are minor technical and drafting amendments. None alters the policy set out in the bill. Members will be relieved to hear that I do not propose to talk about any of them in

great detail; instead, I will summarise their overall purpose.

Amendments 233, 231, 234, 261, 262, 264, 268, 269, 279, 312 and 338 move sections of the bill to more appropriate areas within their respective parts or remove sections that would otherwise lead to duplication.

Amendments 242, 244, 246, 247, 255, 256, 257, 258, 272, 286, 287, 288, 295 and 301 clarify the wording in existing provisions.

Finally, amendments 270, 227, 228, 232, 236, 280, 316, 328, 282, 299 and 342 are minor drafting amendments that simplify existing provisions as far as possible and achieve consistency across the bill.

I move amendment 227.

Amendment 227 agreed to.

Amendment 228 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 190, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: Section 84 relates to and lays down conditions on the grounds to be put to the child and relevant person. Amendment 190 adds another condition, which is that the members of a children's hearing must

"satisfy themselves that where the child has sufficient capacity, that they have had sufficient opportunity to form a view, to understand the grounds for referral and to obtain appropriate advice and support if they wish such advice and support."

It also suggests that

"If the Chairing Member is not so satisfied the Hearing must consider whether they should exercise their power under section 87(1) below."

As all members will agree, children's participation in the hearings system is essential. Amendment 190 would help to ensure that the child is sufficiently prepared for the hearing and is thus able to exercise his or her right to a view, as stated in section 26. That in turn will ensure that the hearings system is even more compliant with article 12 of the United Nations Convention on the Rights of the Child.

I move amendment 190.

Adam Ingram: Although I understand the motives behind amendment 190, I do not believe that its proposed changes are necessary or desirable. Section 84, which is based on section 65(4) of the 1995 act, places a duty on the chairing member of the hearing to explain to the child and each relevant person the grounds for referral and to inquire whether those grounds are accepted. Amendment 190 does not add anything to that, and it would not be right to continue a hearing in the circumstances provided for in the amendment.

10:45

It is implicit in section 84 that the chair must not simply read out the grounds but must explain what those grounds mean and check that the child and relevant persons understand them. More than that, it is accepted and normal practice for the chair to do so. The role of the chairing member is clear. It is beholden on them to ensure that the child understands the grounds and can decide whether to accept them. That might take a little time, but it is an integral part of a hearing and it should remain so. It would not be right for a hearing to defer a decision by saying to the child, "You don't understand, come back later"; it is for the hearing to help the child understand. The bill already provides for when a child is unable to understand the explanation that is given to him or her—section 93 provides that a hearing must direct the principal reporter to refer the case to the sheriff to determine whether the ground is established.

The third element of amendment 190 relates to the hearing considering whether the child has been able to access the help and support they need in advance of the hearing. We have discussed that issue a few times at stage 2. During the discussion of Ken Macintosh's amendment 82, I agreed to do further work to ensure that children and young people receive the information they need about hearings in a child-friendly format. Clearly, I expect that to include information about the acceptance of grounds for referral and the implications of that acceptance. It follows that I do not believe that amendment 190 is required and I ask Ken Macintosh to withdraw it.

Ken Macintosh: The Law Society proposed amendment 190, and it was designed to be helpful by making more explicit what is already implicit in good practice in the children's panel system. However, I also accept that several other amendments have been passed already—and work is on-going—to make sure that the child's view is central. On that basis, I seek leave to withdraw amendment 190.

Amendment 190, by agreement, withdrawn.

Section 84, as amended, agreed to.

Section 85—Grounds accepted: powers of grounds hearing

Amendment 229 moved—[Adam Ingram]—and agreed to.

Section 85, as amended, agreed to.

Section 86—Some grounds accepted

Amendments 230 to 232 moved—[Adam Ingram]—and agreed to.

Section 86, as amended, agreed to.

Section 87—Accepted grounds: consideration by hearing

Amendment 233 moved—[Adam Ingram]—and agreed to.

Section 88—Powers of grounds hearing on deferral

Amendment 234 moved—[Adam Ingram]—and agreed to.

Amendments 191 and 192 moved—[Adam Ingram]—and agreed to.

Section 88, as amended, agreed to.

Section 89—Some grounds not accepted: application to sheriff or discharge

Amendments 235 to 238 moved—[Adam Ingram]—and agreed to.

Amendment 193 moved—[Adam Ingram]—and agreed to.

Section 89, as amended, agreed to.

After section 89

The Convener: Amendment 194, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: Amendment 194 is a probing amendment that has been proposed by the Law Society. I will explain its concern.

Amendment 194 would create a mechanism by which matters that could form the basis for section 65 grounds but have not been formally established could still be taken into account, but not in such a way that would unfairly prejudice any person against whom allegations of behaviour that might form the basis for section 65 grounds are or would be made. My view is that grounds should be established and accepted, but the Law Society believes that, as currently drafted, the bill does not address the problem as posed by the case of O v Rae in 1993. The hearing has a dilemma when information is presented that has an impact on what is to be done to serve the welfare of the child, but which also reflects adversely on a parent and has not been made the subject of grounds of referral. That means that there will have been no finding on the basis of evidence about the allegations against the parent. The Law Society believes that it is only a matter of time before this becomes an issue under the ECHR, and it refers to the case of Sanchez Cardenas v Norway from 2007. The various interests would be held in balance by the amendment.

I move amendment 194.

Adam Ingram: I have serious concerns about amendment 194 and the impact that it would have on the hearings system if it became law. I know that the Scottish Children's Reporter Administration shares my view, so I strongly urge the committee not to accept it.

How children's hearings deal with the totality of information available to them goes to the heart of the hearings system. Hearings are entitled to take into account all relevant factors when determining what is in the best interests of children, and they should do that in a fair and open way. What matters is whether the information is relevant to what course of action should be taken in the child's best interests.

Hearings are not therefore limited to a narrow consideration of the grounds alone, but are entitled to ask for and consider information across a wide range and from a variety of people.

The grounds for referral are central to the discussion of the child's case. They are always relevant and must be considered, but many additional factors might well be relevant to a decision about what compulsory measures, if any, are in the child's best interests. Although the grounds for referral are central to the hearing's consideration of a case, they are not necessarily central to the disposal. That means that hearings could base a decision on the basis of alleged or disputed facts that have not been established in a court of law. However, the hearing does have the power to resolve disputes of fact, such as how often the child attends school or whether the parents have co-operated with social workers. It rests with the hearing to resolve those disputes by assessing the credibility of the statements that have been made.

The key point is that resolution of the dispute is less important than identifying the child's needs. All participants will receive papers about the hearing that might contain information that does not relate to the grounds for referral. If a disagreement needs to be resolved, that can best be achieved in the non-adversarial climate of the hearing, in which every participant is able to express their views freely and to challenge the views of others. A key role of the hearing is to listen to the views of all those who are present, particularly the child's views, and we have already discussed the various measures that are in place to help it to do that.

If a parent or child refutes certain information or allegations, the hearing has to take those views into account, along with all others. It is, of course, possible that a dispute in itself could give rise to

concerns about the environment that the child is in.

It is best not to be too prescriptive on the matter. A balance needs to be struck, and I firmly believe that the children's hearing that has heard all the representations and has all the information before it is best placed to strike that balance and take decisions that are based on the best interests of the child. If the decision of a hearing is thought to be wrong by any of the parties to it—the child, any relevant person or the safeguarder—or if it takes into account information that is not relevant, that decision can be appealed to a sheriff on that basis.

The system would break down pretty quickly if every dispute of fact that could influence the hearing's decision was to be sent to the sheriff for a proof hearing. It would make the hearing a completely different kind of forum by diluting its role as the key decision maker and giving more power to the sheriff. It would also lead to an increase in appeals, grounds hearings and the need for, and appointment of, legal representatives. That does not sit well with the Kilbrandon principles.

Amendment 194 would also have an unhelpful impact on the role of the reporter. I have already said that the SCRA shares our concerns about it. It would allow children and relevant persons to instigate consideration of a ground for referral. That would cut across the obligation on the reporter to seek the establishment of any new grounds for referral. Reporters are well aware that, if a hearing considers something that should in fact have been a new ground for referral, the decision that it reaches is likely to be appealable.

Amendment 194 would curtail the hearing's flexibility and build delay into the system. It would risk frivolous challenges by a child or parent who wanted to delay the making of a compulsory supervision order simply by arguing that new information had been taken into account. Building in delay in that way is not in the best interests of children, nor would it help the effective operation of the system.

It follows that I do not support amendment 194. The proposals that it contains are too blunt to deal with the issue effectively and raise significant concerns about the way hearings would be able to operate—in particular, how they would be able to approach decision making. The ability to take into account the wider information about the child's circumstances and to respond to the child's changing needs and circumstances—perhaps over a period of years—would be significantly affected. That does not mean that what hearings take into consideration is, or should be, unconstrained, but the proposals in the amendment are neither necessary nor appropriate.

I ask that Ken Macintosh withdraw amendment 194.

Ken Macintosh: I thank the minister for clarifying an issue that the Law Society thought was important. I totally agree with him and seek leave to withdraw my amendment.

Amendment 194, by agreement, withdrawn.

Section 90—Non-acceptance of grounds: application to sheriff or discharge

Amendment 239 moved—[Adam Ingram]—and agreed to.

Section 90, as amended, agreed to.

The Convener: This is an appropriate point to stop for a short comfort break.

10:59

Meeting suspended.

11:10

On resuming—

Section 91—Direction under section 90: duty of chairing member

The Convener: Amendment 195, in the name of Kenneth Macintosh, is grouped with amendments 196, 197 and 199.

Ken Macintosh: The amendments in the group, along with several others, were proposed by the Law Society of Scotland. Members will not be surprised to hear that, given that the amendments are to do with legal aid and legal representation.

Under section 91, the duty of the chairing member is to

"explain the purpose of the application to the child"

and to

"inform the child that the child is obliged to attend the hearing".

Amendment 195 would require the chairing member to inform the child of his or her right to legal advice, thereby simply making explicit what I think is already implicit and good practice.

Amendment 196 relates to section 97, "Meaning of 'compulsory supervision order'", which refers to movement restriction conditions. The Law Society suggested that if a movement restriction condition is being considered, a child should be given independent legal advice. It argued that such a condition represents a significant restriction on a child's liberty and should be imposed only if a child and his or her representatives have full knowledge

of the consequences of the condition. The society also thought that further legal advice would be necessary in such circumstances, to comply with UNCRC article 37(d), and suggested that the approach is currently recognised but requires to be continued under the new statutory regime.

Amendment 197 is similar and would require a child to be provided with independent legal advice if a secure accommodation authorisation were being considered. The Law Society said that such an authorisation represents a significant restriction on a child's liberty and should be imposed only if the child has full knowledge of the consequences of the authorisation. I understand that it is current practice to provide independent legal advice in such circumstances and that, whether or not amendment 197 is agreed to, children will always be given such advice. Like amendment 195, amendment 197 would make explicit what I think is already implicit and good practice.

Amendment 199 would delete subsection (4) of section 107, which is about representation at a hearing of an application in relation to section 65 grounds. Subsection (4) provides:

"A person representing the child or relevant person at the hearing need not be a solicitor or advocate."

Members will not be surprised to hear that it is the Law Society's view that it is of the utmost importance that a solicitor and only a solicitor is permitted to represent a child or relevant person at any children's hearing—[*Interruption*.] I note my colleagues' interesting reaction to the Law Society's view.

The Law Society also argued that there needs to be greater clarity in section 107, which it thinks intends not that there should be lay representation of a child at a hearing of the application, but that anyone should be able to stand in for the child at the hearing. However, that is not the impression that subsection (4) gives. I will welcome clarification on the point.

I move amendment 195.

11:15

Adam Ingram: Overall the amendments in the group do not add value to the provisions in the bill. They are unnecessary and potentially confusing, and I will explain my reasons for that view as I talk through each of them.

Amendment 196 seeks to place on a hearing a duty to ensure that a child has received legal advice when a compulsory supervision order includes a movement restriction condition. In reality, it would mean that a movement restriction condition could be imposed only after the provision of independent legal advice.

I have two points to make in response to that proposal. First, unlike a secure accommodation authorisation, a movement restriction condition is not a deprivation but a restriction of a child's liberty. It is not a punitive measure from the hearing—no disposal of a hearing is punitive—but a decision that is taken, as with all the hearing's decisions, in a child's best interests. Consideration of such a measure must follow a robust set of criteria laid out in detail in section 97. Automatic state-funded legal representation is not necessary in situations where a movement restriction condition is being considered, because it does not constitute a deprivation of liberty.

Secondly, a child can already access independent legal advice for any aspect of a hearing, not just when a movement restriction condition is being considered. Given that a scheme already exists to provide assistance by way of advice before and after a hearing, and although I appreciate Ken Macintosh's intentions, I oppose amendment 196 on the grounds that it is unnecessary and ask that he does not move it.

Amendment 197 is similar to amendment 196 in that it seeks to include a duty on a hearing to ensure that a child has accessed legal advice in the event of a secure accommodation authorisation. I draw the committee's attention to provisions in section 178 that clearly set out a process under which a child who is likely to be facing a secure accommodation authorisation never does so without legal representation. Indeed, that has been the situation in the children's hearings system since 2002.

The amendment is totally unnecessary. The members of a hearing will be able to see very clearly whether a legal representative is present at a hearing at which a secure accommodation authorisation is being either considered or reviewed. Why oblige them to check whether legal advice has been received when the child has a legal representative in the room with him or her?

There is no point to amendment 197; it simply seeks to do what section 178 already does. It is sufficient to do something once in legislation. In fact, amendment 197 would serve only to confuse things, as it would not be clear whether legal advice was being given under it or if legal representation was being provided under section 178. On that basis, I ask Ken Macintosh not to move the amendment.

Amendment 195 seeks to include a duty on the hearing to check that legal advice had been given as part of the duties that are outlined in section 91. As the committee will see, amendment 240, in my name, seeks to remove section 91. I am very open to the suggestion that the duty proposed in amendment 195 be included in the procedural rules that I expect will be developed to replace the

content of section 91, and therefore ask Ken Macintosh to withdraw the amendment.

Amendment 199 relates to section 107, which sets out a child and relevant person's right of choice as to who should represent them at a proof hearing in the sheriff court and states that representation need not be legally qualified. The intention behind section 107 is to provide the child and relevant person with a right to be supported by a person of their choice in a sheriff court and provides that representative with a right of audience even if they are not legally qualified. The right is already available to a child and relevant person under section 68(4) of the 1995 act.

I understand that amendment 199 is driven by the Law Society, which feels that only those who are legally qualified should represent a child or relevant person in a proof hearing, therefore removing their right to choose. Of course the Law Society would take that view, but our responsibility is to take a wider perspective in determining legislative provisions. Accepting the amendment would mean, for example, that a child who had received advocacy support for and in a hearing could not continue to have that representation at a proof hearing. Given Ken Macintosh's interest in a child's right to advocacy, I find it surprising that he now appears to support amendments that would remove that right in a sheriff court.

The provisions in section 107 do not remove a child or relevant person's right to legal representation. Instead, they provide a right of choice and ensure that, when a child or relevant person chooses an alternative representative, the representative can play a full part in proceedings. It is vital that the right of choice continues and that those who exercise it are not disadvantaged as a result.

I ask Ken Macintosh not to move amendment 199.

Ken Macintosh: I thank the minister for his remarks. These issues are important; after all, the subject of legal representation at a children's hearing came up many times at stage 1 and it is important that, in addition to the private discussions that we have had about what would go into our stage 1 report, we have at stage 2 a formal discussion of these matters. I agreed to lodge the amendments on behalf of the Law Society but perhaps the society now wishes that they had a more enthusiastic advocate because I am not entirely sure that I did them justice. In any case, the minister should not read into the fact that I have lodged and spoken to these amendments evidence of my support for all of them. The amendment that I was keen on and with which I thought there was no difficulty was amendment 195, but given the minister's agreement to include it in procedural rules, which I welcome, I seek leave to withdraw it.

Amendment 195, by agreement, withdrawn.

Amendment 240 moved—[Adam Ingram]—and agreed to.

Section 92—Direction under section 90: powers of grounds hearing

Amendment 241 moved—[Adam Ingram]—and agreed to.

Section 93—Child or relevant person unable to understand grounds

Amendments 242 to 248 moved—[Adam Ingram]—and agreed to.

Section 93, as amended, agreed to.

Section 94—Direction under section 93: duty of chairing member

Amendment 249 moved—[Adam Ingram]—and agreed to.

Section 95—Direction under section 93: powers of grounds hearing

Amendment 250 moved—[Adam Ingram]—and agreed to.

After section 95

Amendment 251 moved—[Adam Ingram]—and agreed to.

Section 96—Children's hearing to consider need for further interim compulsory supervision order

Amendment 252 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 253, in the name of the minister, is grouped with amendment 254.

Adam Ingram: Amendments 253 and 254 deal with interim compulsory supervision orders, which replace a raft of complex place-of-safety warrants and introduce greater flexibility for the child, by allowing a child to remain at home under interim measures of supervision rather than be taken to a place of safety. The policy has been well received by practitioners and partners.

Amendment 254 relates to the conditions that must exist before a children's hearing may make a further interim compulsory supervision order. The making of a first interim order, which is normally made at a grounds hearing, is subject to a test that focuses on the urgent needs of the child.

Section 96 applies when a grounds hearing has directed the principal reporter to make an

application to the sheriff for a proof hearing. It enables the principal reporter to arrange a children's hearing, to determine whether to make a further interim order because the first order, which may last for only 22 days, is due to expire before the sheriff is able to make a disposal at the proof hearing. The approach is similar to current arrangements for place-of-safety warrants.

If an interim order is already in force, the necessary safeguards that were put in place for the child under the order will have removed the urgency from the child's situation. Therefore, the urgency test is no longer required for further continuous interim orders. Instead, the hearing must focus on whether there is a need to make a further interim compulsory supervision order. Amendment 254 will insert the appropriate test into section 96.

Amendment 253 is a drafting amendment, which will ensure that further interim orders may be made by the children's hearing if an order has been made by the grounds hearing and is due to reach the 22-day limit prior to the disposal by the sheriff. There is no change to policy.

I move amendment 253.

Amendment 253 agreed to.

Amendments 254 and 255 moved—[Adam Ingram]—and agreed to.

Section 96, as amended, agreed to.

Section 97—Meaning of "compulsory supervision order"

The Convener: Amendment 369, in the name of Ken Macintosh, is in a group on its own.

11:30

Ken Macintosh: Amendment 369 was suggested by the Convention of Scottish Local Authorities. The proposed approach has received support from Scotland's Commissioner for Children and Young People and from the Association of Directors of Social Work. I think that all those organisations have provided a briefing to members.

The issue, which emerged at stage 1, is whether the duty of implementing the findings of a children's hearing should fall solely on a local authority. The local authorities' strong view is that it should be made more explicit that health boards and other agencies should share those responsibilities and duties.

Section 97 says:

"In this Act, 'compulsory supervision order', in relation to a child, means an order—

(a) including any of the measures mentioned in subsection (2),

(b) specifying a local authority ..."

Amendment 369 would add to that:

"(ii) a health board, or

(iii) another agency,".

To be fair, COSLA wished to remove the reference to a local authority and insert "the appropriate body", but amendment 369 captures the principle that the local authority will be the lead body, but health boards and other bodies will also have a duty and responsibility to co-operate. In the era of the getting it right for every child approach, in which we are trying to establish the principles of shared responsibility and good practice among all public authorities, it is particularly important that we make that explicit in the bill.

I move amendment 369.

Adam Ingram: I do not recognise the assertion that amendment 369 would remove lead authority from local authorities. It would put all agencies on an equal footing. I understand why Mr Macintosh thinks that the amendment would be helpful, but it is neither helpful nor necessary. I fully support the drive to encourage better joined-up working. The GIRFEC approach is key to all our work that is aimed at improving outcomes for children and young people, but all partners have a role to play in providing the help and support they need.

I do not believe that amendment 369 would bring positive improvements to the operation of the children's hearings system, nor do I believe that it would secure better outcomes for children and young people who are in the system. Since the start of the hearings system, local authorities have had a duty to give effect to supervision requirements. Section 71 of the 1995 act provides for that, and similar provision has been made at section 138 of the bill.

Responsibility falls on local authorities for the good reasons that they have wide-ranging statutory obligations to support children and families that are in need, and that the majority of the help and support services that children and young people need are services or resources that local authorities provide to the wider community. The duty on local authorities to give effect to supervision is a collective one that is imposed on the authority as a whole, not on individual departments or units within the authority. Social work clearly has the key role, but other departments such as education, housing and sometimes recreation and leisure have a part to play, too.

Supervision requirements often contain measures such as a child having regular contact with a social worker, attending a particular group

or project, residing in a particular residential establishment, or attending a particular school. Relatively few need health input, and when they do, it is likely to be complementary to, rather than instead of, other support and services that are provided by the local authority. That help should be part of an integrated plan of action in which agencies work together. Amendment 369 would add nothing to that way of multi-agency working.

Passing lead responsibility to another will do little to improve outcomes if all the agencies concerned are not working together to deliver the help and support that children need. In fact, I am concerned that amendment 369 would have the opposite effect. It would run the risk of local authorities considering that they have a diminished role, or even no role, in respect of some children and, therefore, the risk that those children do not get the help and support they need.

In reality, some supervision requirements might not specify a role for others, but authorities might choose to involve them. For example, they might provide specialised voluntary sector support for young people who offend. Giving effect to supervision in a way that best meets the child's needs is rightly a decision for the local authority. It is important that progress in improving outcomes can be measured, which is the purpose of the child's plan.

When supervision requirements include services for the child that the local authority does not provide, section 21 of the 1995 act provides that the local authority may request help in carrying out its duty from another local authority, a health board or any other person authorised by Scottish ministers. Any such request must be complied with, unless it runs counter to existing statutory duties and functions. Those arrangements have generally worked well and we see no reason to change them.

It is unclear from amendment 369 how health boards or other agencies would be able to require assistance from another body, such as the local authority, if they needed assistance to fully implement the compulsory supervision requirement. It is important to have clear plans for improving outcomes that can be measured and charting progress to ensure that all the relevant needs are being addressed. That is why we are promoting the GIRFEC approach, which will bring about real change in practice on the ground rather than piecemeal statutory change.

It is instructive to look at the experience of the GIRFEC Highland pathfinder. Although health, the police and other agencies have played a full role in the establishment and operation of GIRFEC in Highland—all children come to hearings with a single, integrated child's plan—it still falls to the local authority to implement supervision. That is not for historical or dogmatic reasons, but because the local authority provides the services, directly or indirectly, to which children and young people need access.

To further support the adoption of GIRFEC by health boards across Scotland, the Scottish Government wrote to all chief executives in August to remind them of their GIRFEC responsibilities. The letter also asked them to use their influence with other services and agencies locally to drive forward the GIRFEC agenda and to identify a senior manager with specific responsibility for GIRFEC.

Given all that, I cannot support amendment 369, and I see little that is positive in the changes that it proposes. The reality is that, for all but a few cases, the local authority should be the "implementation authority."

Will Ken Macintosh expand on what his amendment means by "another agency"? That term is not defined in law, but it would need to be if such an agency were to take on statutory duties as proposed by amendment 369. Would the focus be on the voluntary sector, or is there an expectation that others, such as the police, would be included?

I would also welcome Ken Macintosh's thoughts on how a duty on other agencies, particularly the voluntary sector, would work in practice. The voluntary sector usually provides support to children and young people under contract or arrangement with the local authority, to help the authority to comply with its statutory duties. How would the cost of implementation be met if the statutory duty fell on the voluntary body? Surely it makes sense to leave the duty on the authority, which can buy in the required support to help it meet the needs of children.

Is it right, or proportionate, to give a health board or other agency a statutory duty in such circumstances, when it would not be able to provide the necessary services and, in most cases, would have to request assistance from the local authority but would have no power to require the local authority's co-operation to implement the order? How would implementation of those duties be paid for?

Agreeing to amendment 369 as drafted would also have significant policy implications and incur technical difficulties, because it would impact upon provisions relating to secure accommodation authorisations, compulsory supervision orders and interim orders, medical orders and warrants, all of which give a role to the implementation authority. It would also have an impact on applications for permanence orders and adoption placements.

I heard Ken Macintosh describe the thinking behind the amendment. Is there something else

that he has not said? It is clear from COSLA's evidence at stage 1 that it considers it unfair that the enforcement power covers only local authorities, which can result in their being held to account for the non-implementation of supervision requirements. COSLA argued that the power should also cover health services and other agencies.

Changing the definition of the implementation authority, as the amendment proposes, would mean that health boards and other agencies could also be subject to the enforcement power. However, as I have said, even if the amendment were to be agreed to, it is highly likely that few—if any—health boards or other agencies would end up being defined as an implementation authority. The Scottish Government is clear that health boards should be held to account, but I firmly believe that that can be done in more effective ways than through the amendment's rather blunt attempt to secure accountability by the back door.

Amendment 369 is unnecessary. It would make no practical difference to who implements the vast majority of compulsory supervision orders—that will still be done by the local authority—and it would not drive forward multi-agency working. I ask Ken Macintosh to withdraw amendment 369.

Ken Macintosh: There is no reason that I did not give for lodging the amendment. The minister is aware of the local authorities' motivation, but that is certainly not my motivation. In fact, I wonder whether any other motivation lies behind his comments. I know that he discussed earlier with his health colleagues seeking permission to impose duties or other ways to address the same issue, which I believe was considered to be tricky.

I think that the committee agrees that the GIRFEC agenda is essential. Our public authorities should not defend their territory, but help each of us and our children as citizens. There are reasons why local authorities require a little extra statutory backing for the duty on other public bodies to co-operate. However, I have no wish whatever to remove the lead responsibility from local authorities. I am conscious of the danger that responsibility could be diminished or evaded, as the minister said.

I ask the minister to think again before stage 3 about whether we can do anything else to address the situation, which I am sure that we will discuss with COSLA and others. On that basis, I seek leave to withdraw amendment 369.

Amendment 369, by agreement, withdrawn.

Amendments 256 and 257 moved—[Adam Ingram]—and agreed to.

Amendment 196 not moved.

Amendment 258 moved—[Adam Ingram]—and agreed to.

Amendment 197 not moved.

11:45

The Convener: Amendment 259, in the name of the minister, is grouped with amendments 260 and 317.

Adam Ingram: The amendments in the group will make drafting changes to clarify the life cycle of a compulsory supervision order. There will be no change to policy.

Section 97(7)(a) provides for compulsory supervision orders to have a maximum lifespan of one year. Section 135 enables an order to be reviewed, varied or continued. A continuation of an order on review can include extending it beyond its original expiry date. The intention is for such an order to be capable of being continued many times, right up until the child reaches 18, in some cases. The maximum period of each continuation is 12 months. Amendments 259, 260 and 317 are intended to clarify the bill in that regard.

Amendment 259 will amend section 97 to provide that where an order has not been continued it will have effect until either the day a year after the day on which it was made or until the child turns 18.

Amendment 260 will make separate provision for the duration of continued orders. A continued order will have effect until the end of the period for which it was last continued or until the child turns 18.

Amendment 317 will place a cap on orders that are continued by a review hearing and clarifies that an order may not be continued for a period that exceeds one year.

I move amendment 259.

Amendment 259 agreed to.

Amendment 260 moved—[Adam Ingram]—and agreed to.

Section 97, as amended, agreed to.

Amendment 261 moved—[Adam Ingram]—and agreed to.

Section 98—Meaning of "movement restriction condition"

Section 98 agreed to.

Amendment 262 moved—[Adam Ingram]—and agreed to.

Section 99—Meaning of "secure accommodation authorisation"

The Convener: Amendment 263, in the name of the minister, is grouped with amendment 267.

Adam Ingram: Amendments 263 and 267 relate to secure accommodation authorisations in the context of interim compulsory supervision orders and the requirement to specify a named residential establishment.

A secure accommodation authorisation may exist only as part of an underlying order, for example a compulsory supervision order or an interim compulsory supervision order. It has no life of its own. Where a secure accommodation authorisation forms part of a compulsory supervision order, good practice demonstrates that in almost all cases a suitable residential establishment has been established for the child, normally as part of a child's single plan. Amendment 263 applies only to interim orders.

Where a secure accommodation authorisation forms part of an interim order, for example because a child needs to reside in a place of safety in urgent circumstances, it is often not possible to engage in the normal planning process and immediately to identify a residential establishment. Therefore, amendment 263 will remove the requirement to specify a residential establishment in a secure accommodation authorisation that is part of an interim order. The approach will reinstate the vital flexibility to be able to place a child in an unnamed establishment at short notice, which reflects current policy and practice with regard to place-of-safety warrants.

Amendment 267 will make a consequential amendment to section 100.

I move amendment 263.

The Convener: Does any member wish to speak in the debate?

Members: No.

The Convener: In that case, minister, am I right to assume that you have nothing further to add?

Adam Ingram: You are right, convener.

The Convener: I am sure that you are not going to say that very often.

Amendment 263 agreed to.

Section 99, as amended, agreed to.

Amendment 264 moved—[Adam Ingram]—and agreed to.

Section 100—Meaning of "interim compulsory supervision order"

The Convener: Amendment 265, in the name of the minister, is grouped with amendments 332, 333, 283, 284 and 302 to 304.

Adam Ingram: The amendments in the group provide clarity on the duration of interim compulsory supervision orders and will insert some new procedures into the bill. Amendment 265 will make a minor drafting change to remove unnecessary wording. Amendment 284 will introduce a new section to make it clear that a sheriff may extend interim orders as many times as he or she considers appropriate. That reflects the position in the 1995 act. Amendment 283 is consequential on amendment 284.

Amendment 302 provides a more efficient procedure in section 111, which applies when there is an application for proof but, because there is a change in circumstances or new information comes to light, the reporter no longer considers that a compulsory supervision order should be made in relation to the child. Currently, the reporter must withdraw the application for proof and at the same time terminate the order or warrant. However, I believe that it would be in the best interests of the child for any order or warrant that is in force to terminate automatically on application to the sheriff. Amendment 302 will therefore remove the duty on the reporter to terminate any order or warrant and provides instead for orders automatically to cease to have effect when the application is lodged by the reporter.

Amendments 332 and 333 will make drafting amendments to more accurately reflect when an interim order ceases to have effect during proceedings before the sheriff. There is no change to policy. Amendments 303 and 304 are consequential on amendments 332 and 333.

I move amendment 265.

Amendment 265 agreed to.

Amendments 332 and 267 moved—[Adam Ingram]—and agreed to.

Section 100, as amended, agreed to.

Amendment 268 moved—[Adam Ingram]—and agreed to.

Section 101—Meaning of "medical examination order"

The Convener: Amendment 198, in the name of Ken Macintosh, is in a group on its own. If amendment 198 is agreed to, I will be unable to call amendment 269, because it will have been pre-empted. I point that out because the pre-emption is not highlighted in the groupings.

Ken Macintosh: Amendment 198 is a probing amendment—again, one that has been promoted by the Law Society of Scotland. Its effect would be to delete section 101, which is on the meaning of "medical examination order". The Law Society has taken the view that that section duplicates the

basic supervision requirement provisions in section 97 and is therefore unnecessary.

I move amendment 198.

Adam Ingram: Section 101 of the bill, which is based on section 69 of the 1995 act, sets out the meaning of "medical examination order". Medical examination orders and compulsory supervision orders share some common components, and I suspect that that was the impetus behind amendment 198.

A medical examination order is a short-term measure—it can last no more than 22 days—that is designed to enable an investigation of the child's circumstances in order to inform the children's hearing as to the appropriate disposal of the child's case. It is available only to allow the children's hearing to make further investigation into a child's circumstances before a compulsory supervision order is made. It informs the decision-making process in respect of what the child needs. A child may, for example, be required to reside in an assessment centre, attend an educational psychologist or be subject to a medical examination before the hearing can fully assess the child's circumstances and decide the best compulsory supervision measures for the child. Its purpose is to inform the children's hearing as to whether a compulsory supervision order is, in fact, necessary and, if so, what measures it should contain.

A compulsory supervision order should be made only when a hearing has all the information that it needs. That may include information that has been gathered in response to a medical examination order.

A child may be made the subject of an interim compulsory supervision order because the hearing is satisfied that the child is in need of interim supervision measures for protection, guidance, treatment or control before it can make a substantive disposal pending further investigation. That type of investigation would normally involve the hearing seeking further reports or background information. However, where a child is made the subject of a medical examination order, the child is not necessarily in need of interim supervision, and further investigation in that context means that the child must be subject to a medical examination before the necessary reports can be compiled for the hearing.

Another clear distinction is that medical examination orders can be made by the children's hearing, but not by the sheriff. A sheriff cannot make a medical examination order, because he has no locus to make further investigations. That investigative role remains solely with children's hearings.

The effect of amendment 198 would be to remove the definition of "medical examination order". The power of the hearing to make an order would remain, but the power would not be informed—or, more important, curtailed—by the current definition, which would be removed. Each hearing would therefore be able to determine what measures to include and the duration of the order. That result would clearly not be in the child's best interests.

Medical examination orders are enshrined in current practice as a separate entity, and there was no other opposition through the stage 1 process to the inclusion of those orders as currently drafted in the bill.

I urge Ken Macintosh to seek to withdraw amendment 198.

Ken Macintosh: I thank the minister for his explanation. I am conscious that there was no evidence on the matter earlier, and the minister has outlined concerns about medical examinations being needed before compulsory supervision orders. On that basis, I seek to withdraw amendment 198.

Amendment 198, by agreement, withdrawn.

Section 101 agreed to.

Amendment 269 moved—[Adam Ingram]—and agreed to.

Section 102—Meaning of "warrant to secure attendance"

Amendment 270 moved—[Adam Ingram]—and agreed to.

12:00

The Convener: Amendment 271, in the name of the minister, is grouped with amendments 331, 217 and 218.

Adam Ingram: During stage 1, I listened to various concerns that partners raised about detaining a child in a police station prior to the arrangement of a children's hearing. Clearly, we want to minimise the holding of children in police stations, particularly when they are being held there only for reasons of safety.

The bill as drafted reflects existing legislation, and I am reassured that good practice already exists to make every effort to ensure that a child is detained in a police cell only as a last resort, where no alternative place of safety can be found. For example, where a child is detained under a warrant to secure attendance, a children's hearing is normally held on the same day.

The bill proposes new powers under section 71 that will remove the need for a child to be detained

while the reporter carries out further investigations. When a child is detained by the police and it has been decided that the criminal proceedings will not be taken, section 71 gives the reporter the ability, where appropriate, to direct the immediate release of the child from police custody while the reporter investigates whether compulsory measures of supervision are necessary for the child.

Although I am reassured about the good practice in relation to this policy, I lodged amendment 331, which seeks to enshrine that good practice in legislation. The amendment seeks to put it beyond doubt that a child may be kept in a police station only as a last resort, where no alternative place of safety is available. Subsection (3) of the new section that amendment 331 will insert makes it clear that steps must be taken to identify a place of safety that is not a police station and to transfer the child to it as soon as is reasonably practicable.

Ken Macintosh's amendments 217 and 218 appear to have a similar objective to my amendment 331. However, their effect would be to restrict the use of police stations to circumstances when a child is detained by the police. That means that the option of keeping a child in a police station on the direction of the reporter in emergency child-welfare situations would no longer be available. Although that is a provision of last resort, it can be crucial in, for example, the period before a child protection order is sought or where warrants to secure the attendance of a child at a hearing are necessary because the child is likely otherwise to abscond. The current policy of detaining a child in a police station only as a last resort until a more suitable place of safety can be found would no longer be an option.

Amendments 217 and 218 would—probably unintentionally—remove the means of protecting a child in various high-risk circumstances. I hope that my amendment 331 gives Ken Macintosh some reassurance. I ask him not to move amendments 217 and 218, which would significantly reduce the protection that is currently available to children through existing legislation.

Amendment 271 is a technical amendment to section 102, which sets out the meaning of "warrant to secure attendance." It will have no impact on policy.

I move amendment 271.

Ken Macintosh: I thank the minister for his comments and his amendments 271 and 331. Amendments 217 and 218 were designed with the same intention as amendment 331, which was to ensure that children are held in police stations only as a last resort. The amendments referred to section 43(4) of the Criminal Procedure (Scotland) Act 1995. However, I think that it is preferable to have the intention spelt out in the bill, as amendment 331 will do. I am content not to move amendments 217 and 218.

The Convener: That is a helpful indication of what will happen when we get to that point, Mr Macintosh.

Margaret Smith (Edinburgh West) (LD): The comments of Kenneth Macintosh and the minister echo the view of the committee that this is something that we would only want to happen in the last resort. A lot of what the minister has said is welcome in terms of good practice. Could the minister indicate how often the provision is called on to be used?

The Convener: Procedurally, this is not an opportunity for the minister to respond. However, if he has an indication of those numbers, I will allow him to come in at this point.

Adam Ingram: I do not have that information to hand, but I will try to acquire it and will inform the committee in due course.

The Convener: We look forward to that. I hope that finding it does not cause too much trouble.

Minister, would you like to wind up the debate on this grouping?

Adam Ingram: Given the consensus on the issue, I have nothing further to say.

Amendment 271 agreed to.

Amendments 272 to 278 moved—[Adam Ingram]—and agreed to.

Section 102, as amended, agreed to.

Amendment 279 moved—[Adam Ingram]—and agreed to.

Section 103—Application for extension or variation of interim compulsory supervision order

Amendments 280, 333, 282 and 283 moved—[Adam Ingram]—and agreed to.

Section 103, as amended, agreed to.

After section 103

Amendment 284 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 285, in the name of the minister, is grouped with amendment 305.

Adam Ingram: Amendment 285 introduces a new power for the sheriff to make an interim compulsory supervision order during a proof hearing, where that proof hearing needs to be continued to another day.

That is intended to plug a gap where the children's hearing may not have made an interim order but the sheriff is satisfied that such an order is necessary for the protection, guidance, treatment or control of the child. We do not expect the power to be used often, but it is necessary, perhaps, where more evidence might come to light during the proof proceedings.

Amendment 305 will reinstate the provisions in section 68(12) of the 1995 act in relation to place of safety warrants. When a sheriff makes an interim order that specifies that a child must reside in a place of safety away from home, the subsequent children's hearing must be arranged to consider the case within three days. I feel it is in the child's best interest to convene the hearing without delay.

I move amendment 285.

Amendment 285 agreed to.

Section 104—Hearing of application

Amendment 286 moved—[Adam Ingram]—and agreed to.

Section 104, as amended, agreed to.

Section 105—Jurisdiction and standard of proof: offence ground

Amendment 287 moved—[Adam Ingram]—and agreed to.

Section 105, as amended, agreed to.

Section 106—Child's duty to attend hearing unless excused

Amendment 288 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 289, in the name of the minister, is grouped with amendments 290 to 294 and 307.

Adam Ingram: These amendments relate to section 106 and the child's duty to appear before the sheriff to establish grounds for referral.

The committee may recall that amendment 159, which was debated last week, seeks a general power for the hearing to issue a warrant to secure the attendance of the child. This included securing the child's attendance at the hearing before the sheriff to establish grounds. Amendments 292 and 293 are consequential to amendment 159 and adjust section 106 to remove a specific power that is no longer required as a result of the new general power.

Although the general power provides the means to secure the child's attendance at the proof hearing, the sheriff would still not have the power to issue such a warrant should the proof hearing need to be continued and there was any reason to believe that the child might not attend the continued hearing. Therefore, amendment 294 ensures that, where a proof hearing needs to be continued, the sheriff has the power to grant a further warrant to secure the attendance of the child, if required.

Amendment 307 adds a new section to the bill that places the child under the same obligations and provides the same right to attend the review hearing arranged under section 115(2) as in relation to the original hearing to establish grounds.

Amendment 290 makes a similar change at section 106(3), in relation to a proof hearing before the sheriff, to the change made to section 72(3)(a) by amendment 141, debated earlier with the third grouping. The amendment would mean that a child would not be excused from attending a proof hearing if they were the perpetrator of a schedule 1 offence. A child could, however, continue to be excused if they were the victim of, or were in close connection with someone who has committed, a schedule 1 offence.

Amendments 289 and 291 remove incorrect references to rules under section 170. That is because those rules can be made only in relation to the procedure of children's hearings and not court proceedings.

I move amendment 289.

Amendment 289 agreed to.

Amendments 290 to 294 moved—[Adam Ingram]—and agreed to.

Section 106, as amended, agreed to.

Section 107—Child and relevant person: representation at hearing

Amendment 295 moved—[Adam Ingram]—and agreed to.

Amendment 199 not moved.

Section 107, as amended, agreed to.

Section 108 agreed to.

Section 109—Application by virtue of section 89 or 90: ground accepted before determination

Amendment 296 moved—[Adam Ingram]—and agreed to.

12:15

The Convener: Amendment 334, in the name of the minister, is grouped with amendment 335.

Adam Ingram: Amendments 334 and 335 are technical amendments that address issues that

were raised in annex F of the committee's stage 1 report.

Section 109 provides that when the child and the relevant persons who were present at the grounds hearing accept the grounds, the sheriff may dispose of the application to establish the grounds without hearing evidence. Section 110 makes similar provision when all the relevant persons who were at the grounds hearing accept the grounds.

However, even though relevant persons may not have been at the grounds hearing for various reasons, they may attend the hearing before the sheriff. If they are at the hearing before the sheriff, there is no reason why they should not be able to accept or reject the grounds.

Therefore, amendments 334 and 335 seek to amend sections 109 and 110 to provide that the sheriff may dispose of an application to establish the grounds without hearing evidence. That will apply when the child and the relevant persons present at the hearing before the sheriff accept the grounds and when the relevant persons present at the hearing before the sheriff accept the grounds.

I move amendment 334.

Amendment 334 agreed to.

Section 109, as amended, agreed to.

Section 110—Application by virtue of section 93: ground accepted by relevant person before determination

Amendments 335 and 299 moved—[Adam Ingram]—and agreed to.

Section 110, as amended, agreed to.

Section 111—Withdrawal of application: termination of orders etc by Principal Reporter

Amendments 300 to 302 moved—[Adam Ingram]—and agreed to.

Section 111, as amended, agreed to.

Section 112—Determination: grounds not established

Amendments 303 and 304 moved—[Adam Ingram]—and agreed to.

Section 112, as amended, agreed to.

Section 113—Determination: ground established

Amendment 305 moved—[Adam Ingram]—and agreed to.

Section 113, as amended, agreed to.

Section 114—Application for review of grounds determination

Amendment 306 moved—[Adam Ingram]—and agreed to.

Section 114, as amended, agreed to.

Section 115 agreed to.

After section 115

Amendment 307 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 308, in the name of the minister, is in a group on its own.

Adam Ingram: Amendment 308 will help to ensure that children and relevant persons have the right to be represented at hearings before the sheriff by a person of their choice. Under section 107, a child and a relevant person have the right to be represented at a grounds hearing before the sheriff by another person who may or may not be a solicitor or advocate.

Amendment 308 introduces a new section to provide for the same right to representation for a child and a relevant person attending a hearing before a sheriff under section 115, which deals with the review of a grounds determination. The amendment also takes account of the fact that the person to whom the review relates might no longer be a child by the time that the hearing takes place.

I move amendment 308.

Amendment 308 agreed to.

Section 116 agreed to.

Section 117—Recall of grounds determination: sheriff's power to refer other grounds to children's hearing

The Convener: Amendment 309, in the name of the minister, is grouped with amendments 311, 315, 344 to 353 and 320.

Adam Ingram: The amendments propose a number of minor changes to provisions dealing with reviews of compulsory supervision orders.

Amendment 309 proposes a minor change to section 117. The section deals with the power of the sheriff, in reviewing a grounds determination in respect of a child, to find that other grounds for referral are established and to call for a children's hearing to consider them. The proposed amendment will ensure that a further hearing is arranged only when the person is still a child. That reflects current policy.

Amendment 311 is a minor drafting change to make section 119 consistent with section 117, as both sections relate to identical powers of the sheriff.

Amendment 315 amends section 133, which applies when reviews of compulsory supervision orders are to be carried out. The amendment proposes the addition of references in section 133 to review hearings to be arranged following the sheriff's review of the grounds determination under sections 117, 119 and 140 to ensure that the reporter can also request reports for those types of review hearings.

Amendment 320 is a minor drafting change. It clarifies the obligation of the children's hearing to ensure that a further review of the compulsory supervision order takes place when the hearing has directed the national convener to give notice of an intended application to the court to enforce the local authority's duty to implement the order.

Section 134 concerns duties on children's hearings when a review is required under section 127. Section 134(3), as drafted, states that the hearing must prepare the report

"regardless of any other action"

that it takes. That provision is based on section 73(13) of the 1995 act. It was included to ensure that, even when the compulsory supervision order had been terminated, the report would still be prepared. However, given the fact that subsection (2) contains a similar provision, to prevent unnecessary duplication I think that subsection (3) is no longer required. Amendment 350 therefore deletes section 134(3).

Section 134(2) states:

"The children's hearing that carries out the review must prepare a report".

I have considered further which hearing should prepare the report if the matter is continued to a subsequent review hearing and have concluded that the natural point at which the duty should arise is on disposal of the review under section 135(3). Amendment 349 adjusts section 134 accordingly.

Amendment 349 also seeks to ensure that the report will be for the benefit of both the local authority and any court hearing an adoption or permanence order application as required by the Adoption Agencies (Scotland) Regulations 2009.

Amendment 351 clarifies the circumstances in which the court must have regard to the report that is made under section 134 as when it is considering an application for an adoption or permanence order. Amendment 352 is consequential to amendment 351.

After reviewing the structure of part 13, I think that section 134 could be better placed. Amendment 353 moves it to the end of that part of the bill.

Amendments 344 to 346 and 348 make drafting and consequential changes to ensure that the duty to provide reports to a review hearing is imposed on the "implementation authority" rather than the

"relevant local authority for the child".

Amendment 347 seeks to enable the reporter to request bespoke reports from the local authority for the review hearing either in relation to the child generally or in relation to any particular matter relating to the child that the reporter may specify. It also makes clear that the implementation authority may include in the reports that are required under section 133 information that is given to the authority by another person. That mirrors provisions for reports in relation to grounds hearings.

I move amendment 309.

Amendment 309 agreed to.

Section 117, as amended, agreed to.

Section 118—Recall of grounds determination: sheriff's powers where no section 65 grounds accepted or established

Amendments 200 and 201 not moved.

Amendment 310 moved—[Adam Ingram]—and agreed to.

Section 118, as amended, agreed to.

Section 119—New section 65 ground established: sheriff to refer to children's hearing

Amendment 311 moved—[Adam Ingram]—and agreed to.

Section 119, as amended, agreed to.

Section 120—Children's hearing following deferral or proceedings under Part 10

Amendments 312 to 314 moved—[Adam Ingram]—and agreed to.

Section 120, as amended, agreed to.

Section 121—Powers of children's hearing on deferral under section 120

Amendments 157 and 158 moved—[Adam Ingram]—and agreed to.

Section 121, as amended, agreed to.

Section 122—Subsequent children's hearing: new grounds

Amendment 338 moved—[Adam Ingram]—and agreed to.

Before section 123

Amendment 63 moved—[Adam Ingram]—and agreed to.

Amendment 159 moved—[Adam Ingram]—and agreed to.

The Convener: This is an appropriate point at which to break. We have had a lengthy session. I am grateful to the minister and his officials for their attendance. We will return to the bill after the October recess.

12:31

Meeting continued in private until 12:44.

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