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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 15 September 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
22nd 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:

Aileen Campbell (South of Scotland) (SNP)
Adam Ingram (Minister for Children and Early Years)

THE FOLLOWING GAVE EVIDENCE:

Simon Gilmour (Built Environment Forum Scotland)
Alexander Hay (Historic Houses Association for Scotland)
Terry Levinthal (National Trust for Scotland)
Eila Macqueen (Archaeology Scotland)
Diana Murray (Royal Commission on the Ancient and Historical Monuments of Scotland)
Alison Polson (Scottish Rural Property Business Association)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 15 September 2010

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

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

The Convener (Karen Whitefield): Good morning. I open the 22nd meeting of the Education, Lifelong Learning and Culture Committee in 2010. I remind all those present, including visitors to the committee, that mobile phones and BlackBerrys should be switched off for the duration of the committee's deliberations today.

Agenda item 1 is our second evidence-taking session on the Historic Environment (Amendment) (Scotland) Bill. I am pleased to welcome Eila Macqueen, the director of Archaeology Scotland; Simon Gilmour, a trustee of the Built Environment Forum Scotland and convener of its bill task force; Alexander Hay, the chairman of the Historic Houses Association for Scotland; Terry Levinthal, the director of conservation at the National Trust for Scotland; Diana Murray, the chief executive of the Royal Commission on the Ancient and Historical Monuments of Scotland; and Alison Polson, a member of the planning group at the Scottish Rural Property and Business Association. I thank you all for attending the committee today and for providing written submissions in advance. We are not going to ask you to make opening statements, not least because we would be here for ever. Your views will be explored when the committee asks questions.

I will start by asking about the recovery of grants. What do you think about the principle of giving grants and the mechanism for recovering them that is in the bill?

Alexander Hay (Historic Houses Association for Scotland): We have no objection to grants being recovered if the conditions attached to them have not been fulfilled. My personal view is that grants are not now appropriate for private owners. It would be wonderful to have grants, but some of the conditions that are imposed on private owners are so burdensome that very few owners whose properties are not already open to the public will take them up. We would prefer there to be a time limit for the recovery of the grants but, if the conditions cannot be fulfilled, it is perfectly reasonable for them to be recovered.

Our main worry in a lot of cases is that houses in private hands are not always worth a great deal of money and that the grant will sometimes not find its way into the value of the house. It is a slightly convoluted explanation, but the value of houses nowadays is going down quite fast, especially if they are not in particularly good condition. If a house has to be sold, there may not be that much money in it.

The Convener: The purpose of the grants is not to improve the value of the properties but to secure the property for the future because it has some historic merit.

Alexander Hay: That is the idea.

The Convener: Given that it is public money, the consideration should not be the value of the property but whether losing the property will have a detrimental effect on our understanding of a particular period in history and why the property was built.

Alexander Hay: It is difficult to give examples. I am not aware of many private owners who have taken grants from Historic Scotland in recent times, for exactly the reasons that I have mentioned. We fully accept that less money is available and that, if an owner takes public money, there must be a public benefit. We do not expect to get anything for nothing. However, I am not aware of houses in private hands that have accepted money. A number of our members are charitable trusts, which find it easier than private owners do to get grants.

Simon Gilmour (Built Environment Forum Scotland): The Built Environment Forum Scotland believes that grants are an important resource and that the provisions in the bill are entirely proportionate—we are happy with them as they stand. However, we are not legal experts, so we defer to others on the exact wording of how grants will be reclaimed after the sale of a house or other events. We are happy to support the provisions in principle.

The Historic Houses Association for Scotland is a member of BEFS. In discussions that take place within BEFS, we recognise some of the issues that Alex Hay has raised about the conditions that are placed on grant giving. There is an argument to be made about whether we could streamline those conditions and make them easier or more suited to the 21st century and how we as a nation expect to support, protect and manage our historic environment for future generations.

The Convener: Have there been discussions with the Scottish Government about how you can make that possible? We do not want a situation to arise in which, in circumstances in which it is deemed to be in the public interest to protect a building, we do not have a system of grant making

that is open, transparent and easily understood by everyone. Discussions must have taken place to ensure that that process is of equal value and worth both to the Scottish Government or the agencies that give out money and to those who own the properties.

Simon Gilmour: The bill highlights the issues and provides us with an opportunity to have discussions with the Scottish Government. The door is open both ways. Some of the issues were bubbling under the surface and had not really been brought to the fore or into the forum's domain, but now they have. From now on, the way is open to have such discussions. The bill is bringing issues to the fore, so it has been useful in itself.

Alasdair Allan (Western Isles) (SNP): Both Mr Hay and Mr Gilmour mentioned that Historic Scotland imposes conditions that deter owners from applying for grants. Can Mr Hay give examples of such conditions and indicate what he and Mr Gilmour would like to see changed?

Alexander Hay: I was not saying that I want the conditions to be changed, because I fully understand that Historic Scotland is acting in the public interest and that there must be public benefit; I was just explaining why owners have not applied for grants. I have not been involved in grant applications for some time, for reasons that I will outline.

When Historic Scotland provides a grant for improvement works, normally it dictates how those works should be done, which usually means that they are more expensive than the owner originally intended. Historic Scotland can also insist that a programme of works be carried out over a period of, perhaps, 15 years, but it cannot guarantee that the programme will be grant funded.

There is also the issue of open access. I do not know whether you appreciate just how expensive it can be to set up a house to give open access, because of other subsidiary regulations. Fire regulations are a particularly emotive issue for our members, and I am delighted that Historic Scotland has produced a document in conjunction with the Scottish fire services about the implementation of fire regulations in what they call traditional buildings. We are appreciative of that work, which is helpful to our members.

Another important issue is the requirement under the Disability Discrimination Act 1995 to create disabled access to these houses, which is often difficult and can be expensive. Also, there are the added security problems of having unfettered access on certain days. That is the sort of thing that deters our members. If your house is already open to the public—as the houses of a number of our members are—the issue is not so great. However, getting to the position in which you can have members of the public coming around is expensive. We appreciate that little money is available these days, but the money that is available under grants does not make the work worth while.

What I have just said should be understood to be a personal view of mine, rather than necessarily being the view off the HHA, but it represents the basis of the problem.

Elizabeth Smith (Mid Scotland and Fife) (Con): I would like to draw your attention to the reliability of the information that we have and to the accessibility of that—quite a few of your submissions suggested that we have some issues with that. First, how accurate is the information that we have about our scheduled monuments, listed buildings and conservation areas? That seems to be quite a controversial issue.

Diana Murray (Royal Commission on the Ancient and Historical Monuments of Scotland): The information that we have about archaeological monuments and historic buildings has been gathered over more than a hundred years. That information is collected through desk-based research, gathering together collections, excavation and field survey, and our knowledge is, therefore, changing all the time.

With regard to the information that has to be put together to ensure that the legislation on planning and—in terms of this bill—sites of national importance is properly applied, the evidence has to be drawn on and scrutinised carefully to ensure that buildings and archaeological sites are of national importance before they go through the scheduling and listing process. That does not mean that, in future, knowledge will not change or information will not come to light that will inform the situation. We are talking about using the best evidence that is available at the time when things are listed or scheduled and ensuring that there is a permanent record and that that knowledge can be added to whenever. That is the role of the Royal Commission on the Ancient and Historical Monuments of Scotland, of local authority archaeologists, who have much more contact on the ground, in many cases, and of staff at Historic Scotland, who have to be well aware of the latest knowledge that is available.

The commission believes that it is incredibly important that that information is online and available for everyone to use and that it is the best knowledge that is available. We are working with the local authorities and Historic Scotland to integrate that information in a way that is much easier for the public to understand and for professionals to use.

Elizabeth Smith: Having information available online is fine for people who have access to the internet. What is your organisation doing with local authorities to promote the dissemination of that knowledge?

Diana Murray: The information is primarily available online. There are other ways of making information available, of course, and information is published in various forms, but the easiest way in which to make knowledge available—especially with regard to e-planning and so on—is to publish it online, where it can be accessed through local libraries and so on. We have been working with local authorities for a number of years to try to collate that information. We exchange information between national and local records to make it much more easily available. We have done a study in conjunction with local authority archaeologists and Historic Scotland to see whether we can develop a better and much more efficient arrangement for the future.

10:15

Terry Levinthal (National Trust for Scotland): The knowledge of heritage assets is very much at the fore with the National Trust for Scotland. It is less about the completeness of the knowledge base, because the knowledge base is there, than it is about the ability to interpret and analyse that information, which requires you to have the relevant knowledge, skill and competence. The fact that the trust has been a member of the Built Environment Forum Scotland task force means that the issue has been thought about consistently. It is about having access to suitable professionals to help all parties—the development industry, the public and the Scottish ministers or local planning authority as the ultimate decision taker—to understand that information. The presentation of just the core data does not get you to a good place; you need the knowledge behind the data to help you to deal with them.

Eila Macqueen (Archaeology Scotland): I want to point out the role of local societies and groups in gathering knowledge and information. A number of groups are recording sites and artefacts across the country, such as the Biggar Archaeology Group, which has been surveying the upper Clydesdale area and has discovered about 500 new sites. About 20 per cent of the sites that Historic Scotland is now scheduling were found as a result of the group's work. It is not alone: groups the length and breadth of Scotland are now engaged in activities to record and disseminate such information. At our community archaeology conference last year, we had more than 20 groups sharing information with the wider public, which can be found in "Community Archaeology in Scotland 2009", which is available from us and from East Lothian Council. The group has strong links with the local authority archaeologists, local museums, the RCAHMS Scotland's rural past project, and the shorewatch project. The volunteers and professionals in the historic environment work together closely to try to boost their level of knowledge.

Margaret Smith (Edinburgh West) (LD): Before I ask my question, I associate myself completely with the previous comments. As somebody who represents Cramond, I know that the volunteers who have been involved with the discovery of the Roman baths and everything that has gone on since then in Cramond have done fantastic work over the past decades—indeed, this year is the 50th anniversary of the Cramond Association.

Do any of the witnesses have particular concerns about the operation of enforcement notices? You might have seen our exchanges with Historic Scotland on a number of issues last week. I asked it that question and we got assurances and examples of what "urgent threat" meant, which is an issue that the Scottish Property Federation raised.

Terry Levinthal: Wearing another hat, as a chairman of a planning committee—in the Loch Lomond and the Trossachs National Park Authority—I can say that the enhanced toolkit that is available in the bill is extremely welcome. However, it has to be noted that many of the tools that are used for enforcement lie outside the bill—you might go to local government or building control legislation, depending on what you are doing. It is a question of understanding how all that operates.

There are a number of hurdles for any decision taker in enforcement. A potential consequence of taking action is that compensation will have to be paid. That is why, in a planning context, stop notices have not been used as much as they could have been. The introduction of a temporary stop notice has been positive. The approach that is taken is crucial. In the context of the bill and the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, many of the enforcement actions that can be taken are available only in the case of unoccupied listed buildings. That is stated expressly in the 1997 act. In the case of an unoccupied listed building, you could not apply for an urgent work notice and would need to rely on other legislative procedures as well. That is just how it works.

Margaret Smith: The Law Society of Scotland is concerned about works that might be executed in the vicinity of a scheduled monument. You have just talked about a planning toolkit. Do you think that the planning system that is in operation, in its interpretation and the enforcement work that is

undertaken, is adequate to protect scheduled monuments?

Terry Levinthal: The National Trust for Scotland has a number of monuments across the piece. The issue that you are addressing concerns the knowledge that we have already discussed—people's understanding of when something may or may not have a direct impact on a monument. Having a direct impact on a monument is when there is an impact on its setting or context. That is where you need to have a dialogue with somebody who can help you to understand that.

Margaret Smith: In general, is the planning system assisting people with that? I am thinking of people who do not own the monument but who are close neighbours or whose property is part of the context of the monument. Are the information and assistance available to people to ensure that they get it right?

Terry Levinthal: Provision is extremely patchy across all the planning authorities. It should be noted that any works affecting a scheduled monument are not a planning matter but a matter directly for Scottish ministers, although many planning authorities have developed policies that seek to protect the context of monuments. It comes back to the knowledge and information base, and it is extremely helpful to have access to the online resources that the royal commission has been talking about. It could also be helpful to have people who could interpret what the policies mean on the ground and guide people through the management of those processes.

Alasdair Allan: Let us turn to the proposed inventories of gardens, designed landscapes and battlefields, on which we heard evidence last week. The Historic Houses Association has concerns about the inclusion of inventories. What are those concerns?

Alexander Hay: We are very happy with the inventory of gardens. In fact, I have already received a letter from Historic Scotland, saying that it has conducted its survey and will let us know what the results are. Our concern is about the conditions and responsibilities that will be placed on the owners. Gardens are different from houses in that they are organic and evolve; they change. We do not want to get to the stage that we have to apply to change the azalea bulbs. I do not think that that will happen; our concern is just about the purpose of the inventory. If it is just to record what is there, that is fine—we have no qualms about that at all.

Alasdair Allan: You have touched on this in your answer, but is your mind put at ease by the evidence that we heard from the witnesses from Historic Scotland? When I asked them about the inventory, they said that they envisage no burdens at all for a garden's owners other than in the fact that the place will be registered. Are you reassured by that?

Alexander Hay: I think that we are reassured. The situation is the same for battlefields. What are the planning restrictions in that regard? Battlefields do not really come under the HHA's remit, but—

Alison Polson (Scottish Rural Property Business Association): They are ours.

Alexander Hay: Yes, they are yours.

Alison Polson: SRPBA members are concerned about what is done with the inventories. It becomes a development management issue—what size of area will be included in an inventory and what is the effect of inclusion in an inventory when our members want to do other things there? What protection is afforded as a result of inclusion? Furthermore, people are not exactly sure where certain battles took place, so very large areas can be involved. The question is what will be inventoried and what that will mean for the people who own and use the land.

Diana Murray: The role of the royal commission is to create inventories. I did not put this in my evidence, but the usage of the term "inventory" in this context can get a bit muddled. My understanding of the term "inventory" is that it is a list of known sites. In terms of the inventories of historic gardens and battlefields that are of national importance, I think that there should be an inventory of all sites held by RCAHMS. That is where the knowledge and information should be. What is then chosen to be of national interest is an issue for Historic Scotland, which should draw its selection from the inventory. Part of the confusion is to do with whether statutory restrictions apply to anything on the list. It would be helpful if RCAHMS and Historic Scotland clarified the terminology between us, so that we can make it clear to the public what we are talking about.

Alasdair Allan: Alison Polson just raised the question of how to define battlefields, including their area. There is also the issue of disputes over whether a battle ever took place in an area. What are the panel's views?

Alison Polson: The SRPBA's concern is that normal land management practices should be allowed to continue and should not be affected.

Terry Levinthal: Obviously, the National Trust for Scotland owns an awful lot of battlefields and designed landscapes. As the policy memorandum makes clear, there is existing provision for designed landscapes under regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, which requires a consultation process involving Scottish ministers for any significant

proposals that affect such landscapes. My understanding of the bill is that it imposes a duty that does not exist at present to maintain an inventory of designed landscapes and battlefields. Fundamentally, this is about a responsibility to understand the resource and publicise the inventory. Again, the policy memorandum makes it clear that there is no change over and above regulation 15. Perhaps it can be viewed as a means of creating an opportunity to have a dialogue if necessary.

Simon Gilmour: When the concept of making an inventory of battlefields was raised, which must be at least two or three years ago, the Built Environment Forum Scotland held a one-day workshop with Historic Scotland so that all the parties who might be affected by the proposals could discuss the issues. One express aim of the day was to decide how a battlefield might be defined. We see the workshop as the beginning of the process and feel that we are now at the intermediate stage where we get an idea of the definition. How to physically define a battlefield is an academic discussion. It needs to be held transparently and openly with wide discussion among all the parties who may be involved and with expert advice on hand. There are experts out there who know a lot about battlefields; they know how to decide on definitions and so forth. We need to draw on their expert advice.

Christina McKelvie (Central Scotland) (SNP): I turn your attention to section 14, on "Meaning of 'monument'". What are your views on the expanded definition of "monument"?

10:30

Simon Gilmour: I will start on a positive note. We whole-heartedly welcome the expanded definition, in that it will allow the Scottish ministers and Historic Scotland to protect monuments that were previously not eligible for protection because they were quite ephemeral. The sites that are envisaged include some of the potentially most important in Scotland, such as the site of the first human settlement or intrusion into Scotland, perhaps 10,000 years ago. Such remains are very fragile and are currently difficult to protect.

We understand that there are concerns about the broad nature of the terminology that is used in the bill, but we point out that the Marine (Scotland) Act 2010 uses a similar definition for historic assets under the water. There should be no difference between what happens under the water and what happens on land in relation to the historic environment—we are trying to protect and manage all the historic environment and all man-made works.

Alison Polson: The SRPBA's view is that expanding the definition is akin to using a shovel when a spoon would do. The definition is very broad indeed. It could almost be argued that the whole of Scotland could be considered to be a

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

that should be protected in the national interest, if the additional requirement is that it is in the national interest that such sites be protected. Let me give an example on a smaller scale. After tomorrow, Bellahouston park will contain much evidence of "previous human activity". Will it be in the national interest that the park should appear on a schedule of monuments in future?

A very wide definition is a problem for people who own and use land, because they do not know what will happen and whether there will be interest in the land being protected in some way. The need for certainty is behind our concern.

There is also a dislocation between the activity and the national interest. For example, if Prince William decides to bring Kate back to his university roots and propose to her in a ploughed field in Fife, will the field become something that it would be in the national interest to list as a monument? The furrows from ploughing are the signs of human activity, but the national interest aspect of the matter is dissociated from that. At the end of the day, we could drive a cart and horses through the principle behind the approach.

A criteria-based approach has been taken in other legislation and policy. There would be no difficulty in having a generalisation and then criteria that show what is covered, which could be added to through guidance. The SRPBA's objection to the width of the definition is about the operability of the approach.

Simon Gilmour: I suppose that this is not the place to have a debate about the issue, but I point out that although overarching legislation allows almost anything to be scheduled, the Scottish ministers do not schedule everything willy-nilly. A set of criteria is laid out in "Scottish Historic Environment Policy", against which ministers must measure an asset before it is scheduled. Not everything will be scheduled.

The devil will be in the detail. If the bill is enacted in its current form, the guidance that follows will be essential. The guidance will provide peace of mind for landowners and others who are slightly worried about the open nature of the provision.

Christina McKelvie: Have the witnesses' organisations been consulted by Government officials on what should be included in that guidance?

Simon Gilmour: We have had brief discussions with them about it and they have said that full guidance will be produced. We would like further discussions, especially on exactly what sort of sites we are talking about and would envisage being protected under the bill.

Christina McKelvie: That is a nice lead-in to my next question. Should consideration be given to covering historic road and footpath surfaces? That issue has come through in evidence, so I would not mind hearing your opinions on it.

Terry Levinthal: It should simply be noted that, in England, the listing of historic surfaces and footpaths is considered and done. It is a policy issue.

Simon Gilmour: I simply draw the committee's attention to the fact that, were such sites to be scheduled, they would still have to be judged against the stringent criteria—significance, national importance and so forth—before any consideration was given to protecting them.

Christina McKelvie: Historic Scotland said in its evidence that such sites are already covered. Is that your understanding?

Terry Levinthal: In bits, yes. The Corrieyairack pass, for example, is a scheduled monument and a number of other parts of military roads are scheduled, so the practice is undertaken, but that is done against firm criteria. The issue is not to do with the legislative side of the matter but the accuracy and transparency of the policy guidance that sits behind it.

Christina McKelvie: So it comes back to guidance again.

Terry Levinthal: Indeed it does.

Claire Baker (Mid Scotland and Fife) (Lab): I will ask about section 18, which introduces a new power to issue certificates of immunity from listing. It is intended to provide developers with some assurances if they wish to take on an historic property.

The proposal is that anyone could apply for a certificate of immunity, but concerns have been raised about hostile third parties trying to use the system to slow up a development that was under way. Do any of the witnesses have examples or experience of that? Is it a reasonable concern?

Terry Levinthal: I hesitate to say this but, in a past life, I advised many community groups to use that tactic. The potential exists for it to be used, but it should be noted that, with many sites, evidence of value comes forth only once somebody starts to take an active interest in the site and people actively begin to examine it. We learn more as we begin to think about something and it is obvious that, if we are not thinking about it, we will learn less.

It should also be noted that, under the existing English legislation, only parties who have planning consent or have applied for it can apply for a certificate of immunity. That is where the English sit the issue of the developer not being wrong footed when he gets into the game of trying to do something.

The nature of any system that is open for use is that people may choose to use it for reasons for which it was not intended. That is the nature of being open and transparent.

Claire Baker: Is it necessary to introduce the certificate of immunity? Communities can already exercise some power and influence because, as has been explained, they can apply for a building to be listed. That is open to everyone, so does section 18 change the situation much?

Terry Levinthal: The certificate's introduction provides a useful opportunity. The Scottish ministers, through Historic Scotland, operate a policy that they will not list or consider listing if there is a live planning application for a site. There are sound reasons for that and it is not an unreasonable policy position, but there are times when we may wish to list.

If a certificate of immunity system is in place, the regulator can say, "Under the legislation, you have a mechanism available to you to put up a barrier at any time." I made the point that sometimes knowledge comes up only when you are actively engaged in something. In many ways, the introduction of a certificate of immunity system provides a very helpful tool for the Scottish ministers in compiling the list of buildings of architectural and historic merit, because it removes that time gate or allows it to be managed differently.

Claire Baker: Does Alison Polson have any comments? The Scottish Rural Property Business Association sought clarity about what would happen if there was a group of buildings and whether there would have to be a certificate for each individual building. Have you had any clarity on those issues?

Alison Polson: We have concerns about various aspects of the proposal. If the application can be made by "any person", it is very broad. It is akin to the planning system, in that anybody can put in a planning application. However, in the planning system the views of owners and people with an interest are taken into account as the application goes through. It is a permissive system; it looks to enable people to do something. The proposed system is the other way round. The application process may be enabling if you get a certificate of immunity, but if any person can apply

for a certificate, the role of someone with an interest in the property is not clear from the legislation. That is why we are interested in what would happen with a group of buildings, and what rights of appeal would exist or what integration there would be. The owners and people with an interest could have obligations at the end of the day, yet they would not be included in the proposed system.

Section 18 is very short. I know that we are talking about principles at the moment and, in principle, a certificate of immunity sounds like it could aid developers if the application was successful. However, I think that we are all aware of the problems that could be caused as a result of the way in which the section is currently worded, particularly the use of the phrase "any person". I think that it would be possible to define the people who could apply for a certificate of immunity as those who have an interest in the building—a personal interest, for example, in the missives, if someone was thinking of purchasing it. As happens with planning permission, the contract would be conditional on something being obtained. It would be possible to define the interest in that way.

It would also be possible to specify whether a certificate would apply to a group of buildings, which is how some listings are done, or one building. What you get from a listing is protection of not only the building itself but the setting of the building. If you apply for a certificate of immunity and it is not granted, it appears likely that you would effectively achieve a listing. That may therefore inhibit people from dealing with not only a physical building but the much larger area round about it. When you are trying to attract foreign or institutional investment in a large site, the investors want certainty. If there is a chance of getting a certificate of immunity, those investors will probably look for one. If someone other than the people who are interested in what happens on the land in that immediate area has started the process for some other reason, there could be problems.

10:45

Kenneth Gibson (Cunninghame North) (SNP): Let us turn to section 25, on liability for expenses for urgent work. Section 25 permits notice of liability for expenses for urgent work to be registered in the property register for five years. However, in its written submission, Glasgow City Council expresses disappointment that the notice will expire after five years, stating that it believes that it would be beneficial if the burden were preserved until such expenses had been recovered. That request is echoed in the written submission from Heads of Planning Scotland, which believes that, otherwise, owners will be encouraged to procrastinate in order to avoid repaying any costs. What are the panel's views on the issue?

Alexander Hay: The Historic Houses Association is here to persuade our members not to let their properties get into a neglected state—I hope that very few are in that position. I am not aware that any of our members has had urgent works carried out, the cost of which needs to be recovered. As I said in my first answer, our main worry is that, if a property has to be sold to recover the cost of work that has been carried out, the owner might be left out of pocket. It is a long way down the line before properties get into that state. Obviously, such situations exist, but I have not personally come across them.

Terry Levinthal: The National Trust for Scotland does not have a position on the issue. However, to help the committee, I will give an example of the kind of situation that I think that Glasgow City Council and Heads of Planning Scotland have in mind.

Angus Council was keen to take action to prevent the further deterioration of a category A-listed Playfair building—the name escapes me at the moment, for which I apologise; I will remember it as soon as I leave. The owner was transferring the property to a series of shell companies globally and the council had to chase him for the money. Eventually, it got him surrounded, so to speak, in a shell company that was based in Vancouver. If somebody wants to avoid repaying the grant, there are all sorts of mechanisms available to them to do so.

If the ultimate aim of the provision is to enable a planning authority to take action to prevent the decay of our built heritage, the bill should not put a time gate on recovery of the grant, given the hurdles that the authority might have to get over. It is also an issue for the Scottish ministers. I am sure that you are well aware of the case of Mavisbank house and the fictitious people everywhere who were supposed to own part of it. Given the enormous difficulty in that case, had there been such a time gate, the positive actions that were taken would not have been possible.

Ultimately, the question is, what is the purpose of the bill? I would argue that it is a very positive one. It is about taking action when action is required. Does it really matter whether it takes five years or six years?

Ken Macintosh (Eastwood) (Lab): Mr Gilmour, the Built Environment Forum Scotland has suggested that the bill could go further than it currently does. You propose that a duty be placed on all public bodies to

"protect, enhance and have special regard to Scotland's historic environment in fulfilling their duties".

Furthermore, you ask ministers to

"ensure that planning authorities have access and give special regard to appropriate information".

Why do you think that there is a need for that? Do other panel members support the argument that the bill could go further than it currently does?

Simon Gilmour: That is laid out in our written submission, and I shall summarise the two elements.

First, we feel that the bill offers the opportunity to give a legislative context to Scottish ministers' existing historic environment policy with regard to public bodies, and to widen the concept of what those public bodies are. A whole chapter—chapter 5—of "Scottish Historic Environment Policy" is dedicated to what ministers expect public bodies to do with regard to the historic environment in undertaking their duties. However, there is no legislative bottom line, context or backbone to that policy, so in some respects, our first ask is simply a request for context to be provided. I do not know how to put it without sounding like we want to put a burden on anyone, because we do not. The idea is that public bodies should already be undertaking what we suggest, in line with Scottish ministers' views.

Our second ask comes back to something that Terry Levinthal laid out earlier: the provision of expert advice to the planning process within local authorities as a bottom line. We hear a lot about front-line services—what needs to be protected and what does not—and, if the historic environment has a front-line service, that is it.

The day-to-day decisions on changes that might happen to our historic environment are made through the planning process. The bill is generally about material that is already designated, but that forms a very small percentage of our wider historic environment and we ask that it somehow be ensured that specialist advice is at the heart of planning decisions. We have no particular preference for how that is done; we simply want to ensure that advice is provided and maintained, particularly in the period of public service cuts that we are about to go into. Because historic environment advice, as opposed to planning advice, is not a statutory necessity for local authorities, it could end up being severely diminished in future, to the detriment of our historic environment.

Alison Polson: The SRPBA has not canvassed its members on the issue. I suspect that some would support the introduction of a duty and some would not. The only other helpful comment that we can make is that our members recognise, as they have done in connection with other legislation, that with the responsibility of power comes duties. If public authorities are to have extensive powers, duties should go with them.

Diana Murray: I am not fundamentally convinced that it is helpful to put such a duty into the bill, although I thoroughly support what Simon Gilmour said.

Lucy Blackburn mentioned leadership through policy in her evidence. That is a much better way of achieving what the BEFS proposes, and we should do it better in the future than we have done in the past. It comes down to working together and the single outcome agreements with local authorities. It would not be helpful to put additional legislative burdens on local authorities now, but that is not to say that they do not have a responsibility to do what the BEFS asks, both as a result of guidance and by working together.

It is essential that there be someone at the local level with the knowledge, expertise and ability to give advice in the planning process. I thoroughly support that, but I do not believe that it would be helpful to do it through legislation.

Terry Levinthal: The National Trust supports the BEFS position on the matter, being a member of the forum. The committee should be aware that about 20 per cent of all planning applications that are made in Scotland involve a listed building. You can see in the volume that is involved the need for knowledge and specialism.

With my planning authority hat on, I am conscious that there are no proposals for a key performance indicator on historic environment management in the current planning monitoring system for reporting information on a planning authority's performance to the directorate for the built environment. As I understand it, there are discussions between Historic Scotland and local authorities on rolling out the concordat with individual planning authorities. That is an extremely welcome way of managing the process and could tie into an SOA, but a national indicator to enable us to understand what people were doing could be a useful barometer and might help.

There are duties elsewhere in the wider context. There is a duty on authorities to plan for biodiversity, so there is precedent for thinking about such a duty.

Alexander Hay: The HHA is quite neutral on the issue. Our members are encouraged to have a care for their properties anyway, and I presume that they would wish to care for them. The houses were built to be lived in and we wish that to continue. Although the National Trust and Historic Scotland do a good job in looking after their properties, we feel that the best way of maintaining properties is through their being lived in and used. Our members would say that the

fewer people who were looking over their shoulder, the better, although that is the way of the world—we think that we have got enough people telling us what we can and cannot do.

We are, however, neutral on the issue. If the duty is there, it is there; if it is not, that does not worry us.

Ken Macintosh: The vast majority of sites in Scotland are unscheduled. Does the bill go far enough in offering protection to those sites, which are still of historic value and importance to Scotland?

Diana Murray: That comes back to the original premise that we need to build an inventory of knowledge and information. There are 290,000 unique records in our record and some 265,000 in local authority records. Many of those are records of the same sites but with different information. About 5 per cent of archaeological sites are protected and a much higher percentage of buildings are protected.

It is often difficult to match the criteria for protection to archaeological sites, as people sometimes find them difficult to see and it is often difficult to estimate their national value. However, that does not mean that they are not of value. Local authority archaeologists do a very good job in helping to protect many sites that are unscheduled but which are of importance in the local context. Without them, it would be hard to protect the number of sites that we protect, which are not just the scheduled monuments. If you asked any archaeologist or architectural historian, they would say that they would like to preserve many more sites, but we must be realistic and recognise that other things have to be done.

One of the biggest protections for archaeological and historic environment heritage in Scotland is ensuring that everybody understands what they have on their doorstep. It is hugely beneficial if they appreciate and understand the historic environment that they live in. I do not think that we really appreciate what we have in Scotland. The other day, I was talking to someone from Singapore who was absolutely astonished that the historic environment in Scotland is managed—she thought that it was just there. When I told her what I and my colleagues do, she was absolutely amazed. We have what we have in Scotland because over the years we have had legislation and people have paid attention to our historic environment. The historic environment is really good for tourism and for people's sense and understanding of place. It is important for our identity and the identify of Scotland.

No, there is not enough protection of our historic environment. On the other hand, we must keep a balance. Getting people to understand it, enjoy it, see it—a lot of people do not see it because they do not know that it is there—and recognise the value of it is the best way to get it protected.

Simon Gilmour: The simple answer to your question whether the bill protects the 81 per cent of the historic environment that is not designated is no, because it amends three pieces of legislation that deal only with designated assets. One of the reasons why the BEF is making its second ask in particular and seeking an additional amendment is that it could provide not only that protection but the ability to manage the resource better at the front line through the planning process.

11:00

Eila Macqueen: Archaeology Scotland fully supports the BEF's two asks and is 100 per cent behind the need for additional legislation. Although we applaud Historic Scotland's work in talking to local authorities and influencing hearts and minds, the fact is that we are facing stringent cuts, and we feel that we have to take a firmer line on protecting our historic environment.

It is not easy to measure what might be lost, simply because we do not know what is there, but I can give a couple of examples that highlight the importance of having local advice. Not too far from here at the Huly hill bronze age site, on which the City of Edinburgh Council's archaeologist had placed some conditions, they discovered an iron age chariot burial, the first of its kind in Scotland and, indeed, one of the most significant finds of recent years. If a local authority archaeologist had not been in post, that could well have been lost to the nation or irretrievably damaged.

Another example is the site at Allasdale, which features on VisitScotland's Western Isles archaeology trail. Although the site is very interesting, the local authority curator probably would have preferred visitors to be directed to somewhere else because the kists there are eroding in the sand. We must ensure that we have that kind of joined-up thinking between the local and national aspects.

Alison Polson: As I have said, the SRPBA is concerned about the definition used in the bill. Although we fully support attempts to make people understand what is to be protected, the fact is that once something has been scheduled it is very difficult to do anything not only with it but with the adjoining land, which can be a large area. We need to know what Historic Scotland wants to protect, but at the moment the definition is so wide that it could well take in vast swathes, if not the whole of Scotland.

Ken Macintosh: The NTS's submission notes that the bill does not contain sufficient

"deterrents in terms of fines for owners who damage or demolish unlisted buildings".

Is there any support for such a move?

Terry Levinthal: That issue sits more within conservation area management, which is outwith the scope of the bill. I should also say that the NTS fully supports the bill's provisions, and from discussions with Historic Scotland and others I think that such conservation area management issues, which are slightly different, should be covered at another time.

Since you ask, though, I should point out that there are mechanisms for changing or carrying out works to a listed building, but if someone actually demolishes an unlisted building in a conservation area—and we should remember that the conservation area designation covers townscape management—there is very little recourse to action. I am quite comfortable to take that conversation offline, because many other issues come into it.

As for your specific question about the undesignated elements of the assets, I think that pragmatism requires us to draw the line somewhere. Nothing prevents any planning authority introducing through its development plan a policy to manage, protect and conserve that which is beyond the designated list. Indeed, Scottish Borders Council once had a policy stating an expectation that anything on its sites and monuments record would be properly managed. There are other ways of meeting that objective that do not require legislation.

The Convener: That concludes the committee's questions. I thank the witnesses very much for their attendance and suspend the meeting briefly to allow them to leave.

11:05

Meeting suspended.

11:07

On resuming—

Subordinate Legislation

Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment (No 2) Rules 2010 (SSI 2010/274)

Additional Support for Learning (Co-ordinated Support Plan and Dispute Resolution) (Scotland) Amendment Regulations 2010 (SSI 2010/275)

Additional Support for Learning (Appropriate Agencies and Sources of Information) (Scotland) Amendment of Commencement Dates Order 2010 (SSI 2010/276)

Education (Treatment of Student Loans on Sequestration) (Scotland) Regulations 2010 (SSI 2010/300)

The Convener: The second item on the agenda is consideration of four negative Scottish statutory instruments. The first three instruments revise the coming into force dates for five instruments relating to additional support for learning that were considered by the committee on 12 May 2010. The Subordinate Legislation Committee has drawn them to the Parliament's attention as they breach the rule under standing orders holding that instruments cannot come into force until 21 days have passed since their lodging. However, the Subordinate Legislation Committee found the Scottish Government's reasons for the breach to be satisfactory and had no other comments to draw to our attention. The Scottish Government's letter to the Presiding Officer explaining the deviation from good practice has also been included for our consideration. The fourth instrument makes provision for student loans and bankruptcy.

I invite members' comments on any of the instruments.

Ken Macintosh: Presiding Officer—I mean, chair. Or convener. I have given you a promotion.

When I learned that the implementation dates of the instruments were to be changed, I was—to put it mildly—curious. I am not a cynic—

Alasdair Allan: You are.

Ken Macintosh: No, I am not, but I have to say that I am slightly cynical about why this is happening.

I can understand why local authorities might want to defer implementation, but I am still slightly worried. The parental representatives on the implementation group appear to agree with the move, but I am not clear whether they were excited about the idea or whether they felt that, as part of the group, they should agree. I wonder whether the committee could ask the minister who is on the implementation group—particularly who the parental representatives are—and whether it is still working. I am pretty sure that most of the parents in my area are not happy about the delay in implementation, even though it is only a matter of months. After all, there is quite a difference between introducing measures at the start of the school term and introducing them during the school term, because most parents exercise their rights at the start of the year and do not want to disrupt their child's education halfway through. The delay makes a difference to their access to the modest new rights that are included in the instruments.

The Convener: As the minister is not here, is the committee content to write to Mr Ingram seeking clarification on the membership of the implementation group and whether it continues to meet?

Members *indicated agreement.*

The Convener: As members have no other comments, we move to formal consideration of the instruments. Does the committee agree that it has no recommendation to make on SSI 2010/274, SSI 2010/275, SSI 2010/276 and SSI 2010/300?

Members *indicated agreement.*

The Convener: I suspend the meeting for a short comfort break and to allow our officials to advise the minister and his officials that he should come to committee for our next agenda item.

11:12

Meeting suspended.

11:24

On resuming—

Children's Hearings (Scotland) Bill: Stage 2

The Convener: The third and final item on our agenda is stage 2 consideration of the Children's Hearings (Scotland) Bill. I am pleased to welcome Adam Ingram, the Minister for Children and Early Years, who is a regular visitor to the committee. He is joined by some of his officials, who are equally regular visitors.

Section 1—The National Convener

The Convener: Amendment 68, in the name of Ken Macintosh, is grouped with amendments 69 and 70.

Ken Macintosh: Amendments 68 to 70, along with other amendments that I will speak to later, are about ensuring that we listen to and hear the views of the child. They have been proposed by children's organisations, including Action for Children Scotland, Aberlour, Barnardo's Scotland, Children 1st and Quarriers. I believe that Scotland's Commissioner for Children and Young People has written in support of the principle of ensuring that the children's hearings system is amended to take greater account of the views of children. I hope that committee members and the minister will be sympathetic to the general principle, and I assume that children's panel members will be.

Evidence was presented to the committee that we need to do more to develop a listening culture at the heart of the new children's hearings system. Action for Children Scotland, in preparing its evidence to the committee, undertook a survey in which one issue that emerged was the need to ensure that the new system listens to the views of the child. Furthermore, several young people who took part in the "Where's Kilbrandon Now?" event, which was a follow-up to the "Where's Kilbrandon Now?" report of 2004, highlighted that they felt that their views were not listened to, never mind acted on. In fact, that was one of the main pieces of evidence that was heard that day.

Amendments 68 to 70 would put in place a number of procedures. The idea is to create a culture in the new children's hearings system—to institutionalise, as it were, in the system the culture and attitudes that will allow everybody who participates to listen to the views of the child. Amendment 68 states that, before appointing a national convener, ministers must consult children and young people. Amendment 69 simply defines children and young people in a way that is consistent with previous definitions. When the new

organisation is up and running, subsequent appointments of the national convener will be made by the children's hearings system itself. Amendment 70 would ensure that children and young people are consulted on such appointments.

The amendments are part of a group of amendments that are designed to ensure that the panels, which we know are set up with the best interests of children at heart, do more to listen to and take account of the views of those young people.

I move amendment 68.

Elizabeth Smith: I put it on record that the principle of the amendments—to allow an increased contribution from children—is absolutely right. However, I ask Mr Macintosh to explain in his summing up how children could be involved in the appointment process for the national convener. Is he confident that children would have a sufficient level of comprehension about the technicalities of what could be a fairly complex process? I take nothing away from the principle, as I think that it is right, and I will support Mr Macintosh's other amendments, but I have a slight concern about amendment 68.

11:30

Margaret Smith: I echo what Liz Smith has just said. In principle, I am happy with the amendments. Along with other committee members, I was involved in the selection of the children's commissioner, and we involved children in that. I know that that involvement is valuable, but I also know that it is difficult to get it right. I wonder whether Mr Macintosh can give us more information about how he sees that being dealt with, especially given the complexities of the role of the national convener and the different relationships involved in that.

The Minister for Children and Early Years (Adam Ingram): I am grateful to Ken Macintosh for raising these issues and for lodging amendments 68 to 70.

I want to involve children and young people in the recruitment of the national convener, and we are already making plans for that. Such involvement was a specific recommendation of our implementation working group. We are working with partners who have considerable experience of doing that kind of work in order to include children and young people in a way that is appropriate and positive for them and that is in keeping with public appointment procedures. That is a clear commitment and work is already under way. I do not, therefore, believe that primary legislation is needed to make that happen effectively, either for the appointment of the first national convener by ministers or for subsequent appointments that fall to children's hearings Scotland.

As Margaret Smith rightly says, children and young people have been successfully involved in the recruitment of both of our children's commissioners without the need for primary legislation. However, we should remember that the commissioner has far more direct involvement with children, from day to day, than the national convener will have. I would also be happy to explore with the Scottish Children's Reporter Administration how we can involve children and young people in the process of recruiting the principal reporter. In looking to involve children and young people in the recruitment process, our intention is to include children who are currently in the system and those who are older and have now left the system.

I do not, however, believe that including a new definition of children and young people in primary legislation would be helpful. Section 184 already defines a child in relation to the hearings system, and I believe that having a second definition would only cause confusion. It would also set a dangerous precedent when we come to debate in later sessions—as we no doubt will—whether all under-18s should be dealt with through the hearings system, whether they are referred on welfare grounds or on offence grounds.

I hope that, in the light of my commitment to involve children and young people in the recruitment of the national convener, Ken Macintosh will feel able to withdraw amendment 68 and not move amendments 69 and 70.

The Convener: Mr Macintosh, I ask you to wind up and to indicate whether you wish to press or withdraw amendment 68.

Ken Macintosh: It is clear that those who have contributed to the debate—and, by the sound of it, those who have not—have some sympathy and support at least for the principle behind my amendments. I am not surprised by that, as we have discussed the matter over a period of time and are of one view on the importance of the children's hearings system and the need to listen to the views of children. I am pleased that that principle is accepted; it is simply a case of how much we need to build it into statute.

On Liz Smith's and Margaret Smith's point about principle versus practice, the amendments are not specific because there is no one way of listening to the views of a child or of taking those views into account in the appointment of the national convener. There could be several ways of doing those things—Margaret Smith suggested one from her own experience and the minister is clearly considering other examples.

There is a difference between making it a statutory duty and dictating how it is done. We can learn from our experience—we may involve children in appointing the national convener using one method but find that we want to change and modify that slightly in the light of experience. It will be up to the minister to do that. It is important that, throughout the bill, there are a number of points at which it is a statutory duty to involve children and young people in various functions. Institutionalising those procedures will affect the whole culture of the organisation. We may not need to agree to all of the amendments, but we should select and pick at a few of them, to ensure that we have entrenched the principle of involvement in the new children's hearings system.

The minister said that he is sympathetic to the amendments but does not think that legislation is needed. It is not an absolute must, but it would be helpful if some of the amendments that I will move this morning are accepted. The appointment of the national convener is a good issue on which to legislate. We want a national convener not just to be sympathetic to children but to be able to communicate with them. That will become apparent if we involve children and young people in the convener's appointment.

The minister suggested that at least some of the children and young people involved should have experience of the children's hearings system. That is quite important, certainly for the reference group. It will be particularly beneficial if the children and young people involved have been through the system and have experience of it.

The minister made a specific point about the definition in amendment 69, but I am not sure that I accept it. The definition is included in the amendment to make it consistent with other legislation and is taken from the Commissioner for Children and Young People (Scotland) Act 2003. It refers to the children and young people whom we need to listen to and draw on, as opposed to those whom the bill refers to, who are in the system. It is important that we refer to the 2003 act and that the Parliament is consistent with itself.

I will press amendment 68.

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. I am required to use my casting vote. I vote in support of amendment 68.

Amendment 68 agreed to.

Amendment 69 moved—[Kenneth Macintosh].

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. Once again, there is no overall majority, so I will use my casting vote in support of amendment 69.

Amendment 69 agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

Schedule 1—Children's Hearings Scotland

Amendment 70 moved—[Ken Macintosh].

The Convener: The question is, that amendment 70 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

Abstentions

Smith, Elizabeth (Mid Scotland and Fife) (Con)

Amendment 70 agreed to.

The Convener: Amendment 1, in the name of the minister, is grouped with amendment 2.

Adam Ingram: The purpose of amendment 1 is to clarify that the national convener can delegate the function of selecting panel members for hearings, otherwise known as rota management, to area support teams. That is provided for by paragraph 13 of the schedule. However, paragraph 10 purported to prohibit the delegation of the function. Those two provisions were therefore in conflict with each other, so amendment 1 will remedy that by removing the prohibition from paragraph 10.

Amendment 2 will remove unnecessary duplication of provision from paragraph 13, which occurs between that paragraph and paragraph 10. Paragraph 10, which makes provision in relation to the delegation of the national convener's functions, already provides a general prohibition on delegation by the national convener of the functions of appointment and reappointment of panel members. It is therefore not necessary to repeat the prohibition in paragraph 13, which sets out the functions that the national convener may delegate to the area support teams.

I move amendment 1.

Amendment 1 agreed to.

The Convener: Amendment 71, in the name of Elizabeth Smith, is grouped with amendments 72, 73 and 74.

Elizabeth Smith: The debate about reform of the children's hearings system has interesting and challenging dimensions to it, not least of which has been the differences of opinion among stakeholder groups. There are also—dare I say it?—different opinions within those stakeholder groups. However, there is one common thread among the vast majority of the interested parties, which is that we must do nothing to impair or undermine the principle of local delivery and its accountability.

The main challenge is to provide a national framework of standards—I think that we all agree on that—and to marry that with a system that is largely deliverable efficiently at local level. For me, that is very much the spirit of Kilbrandon. We need to ensure that the balance is tipped in favour of that local accountability. I believe that the Scottish Government, and indeed all parties in the Parliament, wish to retain and enhance that spirit of Kilbrandon. However, for me, that aspiration, and indeed the need for the success of the whole bill, will be driven by the balance between the role of the new office of national convener and that of local authorities.

Amendments 71 to 74, and amendment 81 later, are designed to place more autonomy within local authorities, to ensure that there are clear lines of accountability, and to remove the incompatibility of the national convener fulfilling both a figurehead role for delivery of the service and providing direction, leadership, training, recruitment support and so on. In particular, in order better to reflect the diverse needs of different parts of Scotland, the local area support teams need the organisational emphasis to lie much more with them than with a national convener. It would be a great pity to create what I see as being a rather large bureaucratic sledgehammer to crack what is, in effect, a relatively small nut. Do we really need an overhaul of the entire system which, but for a few flaws round its edges, works reasonably well? There is undoubtedly a need for a national convener to put in place and uphold professional standards within the children's hearings system, but having listened carefully and extensively to the opinions of key stakeholders, I seriously question the desire to make the administrative role much more central rather than local.

I move amendment 71.

11:45

Ken Macintosh: I support amendments 71 to 74, in Liz Smith's name. If she had not lodged them I would have lodged similar amendments.

The committee mulled over the issue throughout stage 1. It is a question of achieving a balance between the appointment and functions of the new national convener and maintenance of the local connection that is crucial to implementation of the children's hearings system. I am conscious that we do not want to establish a national convener only to ensure that they have no powers, but the approach in the amendments in the group would not do that and would get the balance right.

I echo Liz Smith when I say that although there are problems with the children's hearings system, it is not true to say that the system does not work. Some local authorities and local areas work very well; some work less well. There is no obvious reasoning to support the idea that a national approach will automatically improve the system in the areas in which it works less well. National standards, which will remain with the national convener, will be important in the context of driving up standards. However, in the context of working practice, the national convener will need to work with the best practice that exists in local authorities.

Amendments 71 to 74 strike the right balance. They would allow local authorities to appoint, run and support area support teams in a way that would be more recognisable to the local panel members who have been lobbying most members of the committee to keep the local connection. There would be a great deal of continuity, rather

than the radical change that the minister proposed. I support the amendments in Liz Smith's name.

Christina McKelvie: I do not support the amendments in the group. I am particularly concerned about amendments 71, 72 and 74. I am also concerned about amendment 81.

Amendment 71 is internally inconsistent. Proposed new paragraph 12(1) of schedule 1 provides that

"Each local authority must establish and maintain for the area covered by it for the purposes of this paragraph a committee to be known as an area support team."

That leaves no room for manoeuvre for local authorities. However, proposed new paragraph 12(2), which is perhaps intended as a modifier, says that

"Area support teams may consist of more than one constituent authority",

although new paragraph 12(1) would disallow that.

Combined with amendment 71, amendment 72 would remove the imperative from the bill. The bill says that the national convener "must" set up the support team and that councils "may" nominate members. If amendments 72 and 71 were agreed to, the council would have to set up the team but would not have to nominate anyone to it. It would be possible to have a team that had no members.

I am also concerned that no dispute resolution mechanism is provided for in any of the amendments, although it is envisaged that local authorities would have to come to an agreement on area support teams. That creates the possibility that the hearings system would become bogged down in local authority squabbles instead of moving forward for children.

If amendment 74 were agreed to, when local authorities failed to do the job that the national convener's post was created to do—which would have been denied to the national convener under the other amendments in the group—the national convener would need to step in and do the job anyway. The whole process would be a waste of time.

May I talk about amendment 81 now?

The Convener: No, you must stick to the amendments in the group. We will come on to amendment 81 later.

Christina McKelvie: Okay. Given my comments about amendments 71, 72 and 74, I am concerned that the approach would mire the system in local authority squabbles and create a situation in which we might have teams that had no members. The approach would confuse rather than clarify the position. I do not support amendments 71 to 74.

Alasdair Allan: My main concern about the amendments relates to the European convention on human rights. It will be interesting to hear the minister's view, but I have grave reservations about the amendments. For all the good intentions that are behind them, I have reservations about giving interested parties in what were formerly tribunals a say in the expenses that are paid to people who serve on children's panels and a say in their training. To use the courts as an analogy, it would be like giving people a say in the appointment of juries. It is only wise that the committee considers whether such measures would pass the test of the European convention on human rights, but I am not sure whether we have done that.

I appreciate that that puts us into uncharted territory, but I would not like the committee to agree to any amendments that would put the bill into constitutional difficulties, for want of a better phrase. If a bill that is passed fails the ECHR test, a range of constitutional complications come into play. My feeling is that, given the amount of time that we have spent on the bill, people who represent the children who are seen by children's panels would not like to see us manufacture a constitutional problem.

I respect Elizabeth Smith's right to move her amendments, but I have to give my own view, which is that it would be better if she did not do so.

Kenneth Gibson: I echo the sentiments of Christina McKelvie and Alasdair Allan. In speaking to her amendments, Liz Smith said that she does not want the bill to impair or undermine local accountability. My concern is that her amendments would ensure that the bureaucratic sledgehammer that she talked about would come through in the bill—that is, assuming that it was able to get through the ECHR minefield that Alasdair Allan mentioned.

The effect of the amendments would be that the national convener would be obliged to provide support from the centre to try to avoid ECHR issues. In effect, the national convener would bypass the area support teams. That centralisation of support would be more expensive and bureaucratic and it is the exact opposite of what I think Liz Smith is trying to achieve. I ask her whether she accepts that there is an ECHR problem with the amendments and, if so, whether it would not be better for her to not press them and for the committee to get legal advice. If that advice suggested that there was no ECHR difficulty, the amendments could be relodged at stage 3. However, it would be dangerous for the committee to agree to the amendments at stage 2.

Margaret Smith: I speak in support of Liz Smith's amendments. The central issue throughout our consideration of the bill has been

how we raise national standards while having local delivery and accountability and creating a fairer and more equitable level of support for panel members throughout Scotland. In effect, the question has been how we can raise the bar.

Subsection (2) of amendment 71 is sensible in that it would allow the area support teams that local authorities set up to include more than one local authority area, which would allow them to take local circumstances into account. I have asked the Convention of Scottish Local Authorities some serious questions about the resourcing and support needs of local area teams and it is clear that local authorities are ready to take that on and make support available throughout Scotland at the level that I believe is required. The challenge is now for Scotland's local authorities to ensure that they are up to the challenge and that they properly support area teams to deliver the national training standards.

I strongly support Liz Smith's amendment 74. Her amendments would put the matter back into the hands of local authorities and require them to make it work, and amendment 74 provides that if they do not raise the bar and deliver on support and the national standards, the national convener may establish an area support group. The default position is therefore that the support that panel members need will be in place whatever happens.

The decision is not necessarily an easy one. I agree with some of the comments that colleagues made earlier. I would not like to think how many pieces of legislation I have been involved over the past 11 years, but I think that there has been a complete lack of clarity in much of the evidence that the committee has been given by different stakeholders in the system, which has made our job very difficult. On balance, I would go more in the direction of local delivery and local accountability, with the safeguards in amendment 74 ensuring that standards are raised across the board and that support is given in a more equitable and fair manner throughout the country.

The Convener: I am sure that if we got 10 lawyers in they would each give us a different position with regard to ECHR. Such things make all legislators' lives difficult. If committee members are minded to support the amendments, there is still scope for the Government, if it can provide members with definitive legal advice, to delete their provisions at stage 3. That would be a constructive way to move forward. The amendments are at the nub of one of the central issues of the bill. It is the motivation for the proposed new legislation, and it is at the heart of the concerns that have been expressed by many of the key stakeholders who help ensure that the children's hearings system delivers decisions that are in the best interests of children every single day.

Throughout the past year, all the committee's members and all other MSPs have been the recipients of some substantial lobbying, particularly from panel members, who take their responsibilities and their jobs very seriously. They want to be able to do that job, and they want a workable system that is constantly driving up standards, but with real local accountability.

In demanding those things, panel members have been supported by COSLA. If the amendments in the group are so unworkable, as has been suggested, why have committee members not been heavily lobbied by COSLA to reject them? COSLA is good at lobbying any parliamentary committee when it thinks that it needs to do so, and when something is being done that is not in its interests. I am sure that we will be lobbied at various points on a number of issues in relation to the bill. COSLA has been silent on this occasion probably because it feels that what is being proposed is workable. COSLA has given evidence to the committee on the issue, which it wanted to be addressed. It had concerns about local accountability, and it wanted greater local control over the day-to-day administration of the hearings system.

I hope that the minister can address some of those issues.

Adam Ingram: I am afraid that I have not noticed the silence of COSLA, on these amendments in particular. COSLA has indeed been pushing the line of local accountability.

I will take some time to go through the implications of the amendments in this group, and I will expand on some of the points that members have raised.

12:00

We have discussed panel member support a number of times now. I was pleased to see the following statement in the committee's stage 1 report:

"The Committee ... believes that, on balance, the opportunities that CHS will provide for promoting consistency in quality standards across the country can be grasped without undermining the principle of local community involvement."

I am also encouraged that the committee recognises that

"the Bill's objective of providing leadership from the National Convener and consistency across the system through CHS, whilst also maintaining a local connection through panel members and the local area support teams, can be achieved."

Amendments 71 to 74 run counter to a key general principle that has been supported by the committee and agreed to at stage 1: the general principle of consistency. It underpins the whole issue of provision of support to panel members and the operation of the hearings system in the future. The need for consistency has been a key theme throughout my work on the bill. It has come up time and again during consultation. There has been consensus on the need for standardised support for panel members that is delivered against set national benchmarks. That is what the bill provides.

It is also clear that the current system does not provide that. Attempts to introduce consistency and standardisation have neither been always widely supported nor uniformly implemented. Wide interpretations of best practice have led to too much variation under the guise of meeting local needs. The bill seeks to address that by giving the national convener the power to set standards and monitor performance against them. It allows for the support that is given to be local and for it to be provided through area support teams that are based on local authorities or groups of local authorities. That will ensure that panel members are supported by those who work in and understand the local community. I remind members that the national convener would have a duty to consult local authorities and that authorities would have the ability to put forward people to serve on area support teams.

Although basing area support teams on local authority areas is beneficial, it is not appropriate to have local authority control of those teams because of the need to ensure the independence of the different actors across the children's hearings system.

Amendment 71 is designed to ensure local links and support for panel members. By moving responsibility for area support teams to local authorities, it would break the direct line of accountability that is crucial to ensuring the consistency that we all want to achieve and to the continued success of the hearings system. The amendment would mean that the national convener could set standards while being unable to monitor performance against them. It would be left to local authorities to determine themselves whether they were meeting the standards.

We know from the current system that 32 different interpretations do not create a consistent system. Frankly, we also know that local authorities have not always acted in a way that supports panel members effectively. For example, I know an extremely able and experienced panel chair who felt forced to resign because they could not secure from the local authority the support that panel members needed. I know of local authorities that take an arbitrary approach to panel member reappointments that is based on monitoring the effectiveness of panel members—which is patchy at best.

Rightly, ministers have no locus on how local authorities choose to allocate their resources. I cannot see how we can achieve nationally consistent support to panel members if area support teams are under local authority control. It is surely highly likely that the varying resource demands across each local authority will result in different approaches being taken, regardless of whether an authority has an area support team in its own right or shares resources. Further, the current financial climate will place budgets under pressure. I am aware that some local authorities are already considering whether to make changes to the support that they provide for the children's panel.

By contrast, under the bill, the national convener would be able to support area support teams equally. To secure the improvements that we want, the national convener must have responsibility for setting standards and must have the power to implement them locally and be accountable to Parliament in so doing. The national convener would have no power under amendment 71 to take the action that would be required if standards were not being met.

If we know that standards, consistency and accountability are the key areas that almost everyone in the system wants to improve, I do not understand why we, as parliamentary representatives of those very partners in the system, would seek to eliminate the far stronger model of accountability that exists in the bill.

Amendments 72 and 73 would allow local authorities to determine the membership of area support teams. Those teams will not be accountable to anyone but the local authority, but the amendments provide for no consultation on the membership of area support teams, not even with the national convener, who has the duty to provide support to panel members. The bill presents a far stronger and inclusive report, as it provides for communication between the national convener and local authorities.

Amendment 74 helps me to make my case against this group of amendments. As Margaret Smith described, it introduces a fallback position in which the national convener would step in where local authorities have failed to deliver, either in the establishment of area support teams or in the delivery of national training standards. It exposes the fear that I have highlighted all along that local authorities might not be capable of providing all the support that is required. We know that not all authorities can provide the support at present, and the amendment acknowledges that that risk will

arise if support is left with local authorities. Given that that is the case, why on earth would we consider doing that? If the committee shares our fears, it seems right that the national convener should have that responsibility from the outset, in order to prevent the risk of this type of scenario developing.

Additionally, amendment 74 could place us in the peculiar position in which some area support teams are managed by local authorities and some are managed by the national convener. That does not contribute in any way to the bill's aim of achieving consistency in delivery of support to panel members and the improvement of outcomes for children.

I am clear that the bill, as drafted, provides the best way forward—better than that which is proposed in amendments 71 to 74—and that the bill will provide the consistency and accountability that the system needs.

If we go down the road that is suggested by the amendments, I would have concerns that not only would there be an impact on the consistency and accountability of support for panel members, but there would be a risk of fundamentally undermining the system as a whole.

When putting in place a legislative framework to support the children's hearing system, it is absolutely vital that the independence of the various decision makers be fiercely protected, otherwise we raise serious concerns about the system's compliance with human rights legislation. That is crucial when we consider the need to ensure independence between members of the hearing that makes decisions on compulsory supervision of children and local authorities that have the duty to comply with those decisions and pay for their implementation.

There is a danger that the amendments, and others that we will discuss today, will lead to the construction of a system that fails to comply with the human rights duties that are placed on the Scottish Government by the Scotland Act 1998 and the Human Rights Act 1998.

The functions that are currently delegated to area support teams under the provisions in the bill are only compliant with ECHR if the national convener has responsibility for them. A system that has those functions carried out by local authority controlled area support teams would not be compliant with ECHR. Indeed, it is difficult to see how a system in which local authorities choose, train, monitor and support the very people who are there to make independent decisions could be compliant with ECHR. How could a child be confident that such a system is truly determined to have their interests as the paramount concern?

Also, the amendments are completely different from the current system. I disagree with Ken Macintosh when he talks about continuity in this regard. The amendments would give councils control over area support teams although, at present, councils do not have control over the children's panel advisory committees. A minority of CPAC members are appointed by councils.

I strongly resist the measures and cannot stress enough how inappropriate it would be to have the local authority connected to panel member performance, appointment, monitoring or training, when it has a statutory duty to implement decisions of a hearing. It strikes at the very heart of the children's hearings system and of the aim of upholding children's rights.

The Government's firm and clear legal position is that it would almost certainly be incompatible with ECHR legislation to transfer key functions of the national convener to area support teams that are run by local authorities. As a result, the national convener would not be able to devolve those functions—functions such as recruitment, selection and appointment of panel members; rota management; monitoring panel member performance; and development or delivery of training for panel members—to area support teams. If they were to do so, that would result in a system that was non-compliant. Therefore, if the arrangements were to pass, they would have the unintended consequence of preventing local control of those functions. Instead, the national convener would be obliged to retain them at national level, which is the exact opposite of what I believe is intended.

What is more, it is fairly straightforward to see how such practical issues such as rota management can be easily organised at area support team level. If, as a result of the amendments, that has to be done at national level in order to prevent a breach of ECHR, that would inevitably increase the cost and the level of bureaucracy that is associated with all the functions. Again, I recognise that that is not the intended consequence, but it is the inevitable consequence of passing the amendments.

To be absolutely clear on this point, I say that accepting amendments 71 to 74 would place us at serious risk of breaching ECHR legislation. For the reasons that I have set out, I urge Elizabeth Smith to withdraw amendment 71 and not move amendments 72 to 74.

Elizabeth Smith: Thank you for that detailed response, minister. In no way do I expect the Parliament to go against the ECHR. However, it is my advice—and it is the advice that has been given to two of my Conservative colleagues who are more legally competent than I am—that we have not yet had any convincing evidence that the

amendments would cause that to happen. If, between stages 2 and 3, you could persuade us that that was the case, we would consider that matter carefully—I give you that assurance. However, as things stand, I do not believe that that is the case.

At this stage, I should also say in relation to the parliamentary process and the way in which these matters are dealt with by committees that I was given notice of some problem with the amendments only last night at 6 o'clock. Overnight, we received some indication of part of what you have said this morning, but not the full part. About half an hour before this committee began, I had discussions with two of my colleagues about the matter. That is not something that I find particularly satisfactory. As I said, it turned out that we had received only half the story.

12:15

All that notwithstanding, I am not convinced that we have before us evidence that there is a problem about compliance with the ECHR. I intend to press the amendment because I think that we need further discussion of the issue. I also believe that there is a debate to be had—I think it should be a parliamentary debate—about the delivery of the service, which I think should be tipped in favour of local rather than national control. That is very much at the heart of these amendments.

If there is any drafting error in the amendments—which I do not think that there is—we would obviously deal with that before stage 3.

Alasdair Allan: On a point of order, convener.

The Convener: We do not have points of order in committee, Mr Allan; there is no such thing.

The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 71 agreed to.

Amendment 72 moved—[Elizabeth Smith].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 72 agreed to.

Amendment 73 moved—[Elizabeth Smith].

The Convener: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 73 agreed to.

Amendment 74 moved—[Elizabeth Smith].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 74 agreed to.

Amendment 2 moved—[Adam Ingram]—and agreed to.

The Convener: Amendment 75, in the name of Ken Macintosh, is grouped with amendments 80 and 83.

Ken Macintosh: These three amendments follow a similar line of reasoning to that which was followed by those we supported earlier, in that they are designed to place at the heart of the bill and the new structure the principle that the panels should take into account and listen to the views of children.

I will not repeat the arguments that I made earlier, but I will highlight the evidence that was gathered in relation to the bill by the children's organisations that are behind the amendments in the group. Despite the best intentions of panel members and others involved in the hearings system, children often felt that their views had not been heard appropriately. They thought that some panel members could communicate better with them in hearing their evidence and their views.

I do not believe that any of the three amendments in the group are particularly onerous. I hope that the minister will agree that, at the very least, they should form part of the working practices of the new children's hearings system.

The first amendment in the group, amendment 75, would establish a reference group of children and young people for the national convener to consult. I do not think that the minister would disagree with that, and I hope that putting it in statute helps turn into good practice what we already know that we want, which is for children's views to be listened to.

Amendment 80 extends to the training of panel members and potential panel members the principle of listening to the views of the child and consulting children and young people. We would all agree that, although panel members get a lot of training, one area that could be improved upon is how to communicate and how to take into account more effectively the views of children and young people.

Amendment 83 is important. Essentially, it is about consulting children. It refers in particular to the ministerial power to change the national convener's functions. The minister's power is wide ranging, and that is quite worrying in some ways. The debate that we have just had demonstrates our concern about the balance between the functions and powers of the national convener and the local practices of the children's hearings system. It is slightly worrying for the minister to have powers to alter that by an executive order, rather than by means of primary legislation.

Amendment 83 places a duty on the Scottish ministers to consult key stakeholders before changing the national convener's functions, and specifically to consult children and young people. I hope that the committee has already agreed on the importance of embracing the principle of consulting children and young people throughout the process. Irrespective of whether that is the key reason for it, it is important to put the duty that I have proposed on to the power to change the national convener's functions.

I move amendment 75.

The Convener: As no other members are indicating that they wish to speak on these amendments I will say that I am reasonably supportive of them, although I take a slightly different view from that of Mr Macintosh on the child's voice being heard. Panel members try hard to ensure that the child's voice is heard at the hearing. Panel meetings are getting ever larger, however, with more and more people participating. As a result, and no matter the good intentions of the panel chair and the panel to hear the voice of the child, it is difficult to ensure that it is not drowned out by the competing voices of everyone else there. That is why these amendments are important. We constantly need to keep our processes under review to ensure that the child's voice is not drowned out in that way.

I see that I have spurred Ms Smith to speak.

Margaret Smith: I realise that I have a question for Mr Macintosh on amendment 80. I do not have a problem with the proposals in principle, but I wonder whether he can give us some examples of situations where views expressed by children and young people about the training of panel members would be helpful. What sort of input would they have regarding potential panel members? I am a bit less convinced on amendment 80 compared with amendment 75, which contains more general provisions. When we get down to the specifics, it is difficult—unless we get more in the way of examples from Mr Macintosh—to know what, if I may put it this way, the added value of that involvement would be when it comes to the training or selection of panel members.

The Convener: I am sure that Mr Macintosh will get back to you on that, Ms Smith. First, I call the minister to contribute to the debate on this group of amendments.

Adam Ingram: I am supportive of the intentions behind amendments 75, 80 and 83. Starting with amendment 75, a reference group of children and young people will be a really useful sounding board for the national convener to have in carrying out his or her role. The hearings system is all about children, and this reform is all about improving outcomes for children. Having such a

reference group will help to ensure that the needs and views of children are at the heart of what the national convener does, but amendment 75 could be improved so as to better support the involvement of children and young people. As it is drafted, subparagraph (2) of the new paragraph that the amendment would insert into schedule 1, in describing

"matters of policy which will impact on children and young people",

gives the impression that children and young people will have the power to influence matters beyond those on which the national convener can make decisions. It might be better if that wording was more tightly drawn to reflect an influence over the policy decisions that are made by the national convener that will impact on children and young people. Also, I have already said that I have concerns about the introduction of a new definition of "children and young people". I suggest to Ken Macintosh that I work with him between now and stage 3 to prepare a suitable amendment. On that basis I ask him to withdraw amendment 75.

Similarly, I am supportive of the principle behind amendment 80. Children and young people should have the opportunity to influence the training that panel members and people wishing to join the panel receive. One of the clear benefits of putting in place a national convener, with responsibility for training, is that we will have consistent standards of, and access to, training across the country, rather than the mixed picture that we have at present.

As well as informing the development of the training, the national convener should consider how to involve children and young people in the actual delivery of the training—in particular, in training for people who join the panel. How do we really know that potential panel members are able to communicate effectively with children unless we see them in conversation with them? Again, however, I cannot support amendment 80 as drafted. It proposes the introduction of a different definition of "children and young people", and I have already set out why I do not support that. Again, I suggest to Ken Macintosh that I work with him between now and stage 3 to prepare a suitable amendment and I ask that he does not move amendment 80.

Amendment 83 seeks to amend section 10. I recognise the concerns that Ken Macintosh and others have, and I support the principle of consultation. The committee will know that I have spent a considerable amount of time consulting on the bill over the past year, including with children and young people, and I can see why consultation on the use of the power would be beneficial.

I wonder whether, in looking to introduce a duty on ministers to consult in respect of the national convener, we should consider a similar provision in relation to the principal reporter. Section 17 gives ministers the same power in relation to that position.

Having said that, I think that amendment 83 as drafted is overly prescriptive in the way in which it requires ministers to consult children and young people. If we want to change the national convener's functions in relation to, for example, their annual report or the payment of expenses to panel members, do we really want them to have to consult children and young people on those issues? I am not convinced that children and young people would have any particular views on those things. As I said, I also have concerns about the new definition of children and young people. Once again, I suggest to Ken Macintosh that we get our heads together between now and stage 3 to prepare a suitable amendment. I hope that he will agree to withdraw amendment 75 and not move amendments 80 and 83.

12:30

The Convener: Thank you for those comments, minister. I invite Mr Macintosh to wind up the debate on the group and say whether he wishes to press or withdraw amendment 75.

Ken Macintosh: I welcome the supportive comments from the minister and members on amendments 75, 80 and 83.

I could not agree more with the convener's remark that panel members are already listening to children's views. Panel members join the children's panel because they want to help children and I believe that all panels fulfil their duty to ensure that they listen to the child. That is at the heart of the hearing. The difficulty is that, despite those best intentions, we know that communication could sometimes be improved. The amendments in this group and others aim to build into the bill mechanisms and structures that keep that principle but attend to the detail of how we listen to children's views and improve our techniques and methods of communication.

Margaret Smith asked about the practicality of what is proposed. I say to her that potential panel members are simply those who have not yet become panel members but are in training. As those of us who have gone through the process know, it is quite a long time before people are approved to be a panel member, because a great deal of training is involved. That is what is meant by potential panel members. The point is that communicating with children and young people requires certain skills and aptitudes that we do not

all possess all the time. It is something that we all need to work at.

I was hugely encouraged by the minister's comments and his acceptance of the principle behind each of the amendments. I take his point about the wording of amendment 75. I am still not sure about the issue of the reference to the Commissioner for Children and Young People (Scotland) Act 2003. However, the principle of having the reference group is the key. On amendment 80, the minister also accepted the principle of consulting young people on the training of panel members.

On amendment 83, I recognise that a similar duty to consult young people could also be applied to the appointment of the reporter. On his point about whether young people would wish to be involved in making changes to the expenses or allowances of staff, I think that perhaps they would have a view on that and that they should be consulted. Having said that, it is the principle behind the amendments that is the most important thing. We are trying to embed in the new organisation an attitude that children's views are important and should be central to its deliberations.

I am happy not to move any of my amendments in the group and to work with the minister.

The Convener: You have already moved amendment 75, so you are seeking to withdraw it. You need the approval of the committee to do that, so is the committee content for Mr Macintosh to withdraw amendment 75?

Members *indicated agreement.*

Amendment 75, by agreement, withdrawn.

The Convener: Amendment 76, in the name of Aileen Campbell, is grouped with amendment 84. I am pleased to welcome Aileen Campbell back to the committee. I think that she is blooming a little since the last time she was here. I invite her to move amendment 76 and speak to both amendments in the group.

Aileen Campbell (South of Scotland) (SNP): Thank you, convener—it is nice to be back at the Education, Lifelong Learning and Culture Committee.

I will address only the amendment in my name, amendment 76. While I was a member of the committee, the then Commissioner for Children and Young People, Kathleen Marshall, published her report of February 2008, "Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland". That document considered the experience of children whose parents or primary carers are imprisoned and described such young people as

"the invisible victims of crime and of our penal system."

The commissioner continued:

"They have done no wrong, yet they suffer the stigma of criminality."

Her report went on to detail the many emotional and social consequences of that experience.

As members might be aware, I have sought to raise awareness of the issue since that time, and to explore what policy options might be available to help deal with it. Just before the summer recess I led a members' business debate on the subject, in which Karen Whitefield participated and at which the Minister for Children and Early Years summed up. I was grateful for that opportunity—as were the various organisations that seek to raise awareness of the issue.

Earlier this year, the Scottish Government backed an amendment to the Criminal Justice and Licensing (Scotland) Bill that would have ensured that, when a court considered the family circumstances of an offender before sentencing, that consideration would extend explicitly to responsibilities that the offender might have towards the care of children or dependent adults. That amendment fell, but I welcome the recognition by members at the time and since then about the importance of the issue.

Amendment 76 would enable children's hearings Scotland, when carrying out research relating to its functions, to consider, where relevant, the impact of parental imprisonment on children who have been referred to a children's hearing. The imprisonment of a family member can have a tremendous impact on children and young people. In effect, it can act as a bereavement, provoking identical responses in the child, such as withdrawal, acting out, deterioration in performance at school, regressive behaviour such as bed-wetting, and substance misuse. Housing, financial and care arrangements can become unstable—or even more unstable than they already were—as a result of both bereavement and imprisonment.

A significant difference, however, is that the children of prisoners are unlikely to receive support for their situation, nor are they likely to tell people about it or seek help. They might also be stigmatised or bullied. They might have to deal with absences from school to visit the prison or to care for remaining family members. One in three children with a parent in prison develops significant mental health problems, compared with one in 10 among the general population.

Many of those symptoms might be highlighted in the course of a children's hearing, but without panel members necessarily recognising the cause. Such issues have short-term and long-term repercussions for children and young people, and

it is crucial for children's panels to identify and address them. Research into the causal links, identification and the securing of the most appropriate means of support could all be of tremendous value to panel members in informing their decisions and in helping them to find the best means of preventing further problems for the children and young people concerned.

I look forward to hearing what other members say, and I look forward in particular to the minister's comments.

The Convener: Ms Campbell, I do not think that you have moved your amendment. It is a technical point, which we need to adhere to.

Aileen Campbell: Sorry—I move amendment 76.

The Convener: Thank you.

I invite Mr Macintosh to speak to amendment 84, and to the other amendment in the group if he wishes.

Ken Macintosh: This is a strange grouping—I am not sure that the two amendments are directly related.

I support entirely the intention behind amendment 76. Given the work that has been done on education among prisoners and the impact of education in the prison system on families, most committee members will be sympathetic about the matter. However, amendment 76 strikes me as slightly odd. It is quite detailed, and no other issues receive such attention. Having said that, I repeat that I am entirely supportive of Aileen Campbell's intention.

Turning to my amendment 84, one of the most welcome new measures under the bill is the feedback loop that the Government ministers have introduced to allow the children's hearings system to benefit from better research and sharing of information. At stage 1, the committee expressed its concern about the operation of that feedback loop. I remind members of what we said about it in our report, referring to paragraph 90:

"The Committee believes that, although the proposed feedback loop would be helpful at a strategic level, it remains to be convinced that this proposal will achieve its objective of informing panel members of what happens after compulsory measures are agreed."

I think that I said in the stage 1 debate that it was quite disturbing to hear how little evidence there was to support our belief that the panel system is such a good thing for Scotland and the administration of justice for children and young people. The SCRA has quite a few statistics that it circulates, and they were helpful, but we are all aware, for example, of the number of cases in which panels have agreed on a compulsory supervision order and have not received the next piece of information about that until the following year, or even later sometimes, when they have discovered that there has been no supervision whatsoever throughout the year. There is very little feedback at the local level. I think that all panel members would welcome hearing more. I have certainly heard that indirectly from many panel members. They would like to hear more about the outcomes, effectiveness and—dare I say—even the cost effectiveness of their decisions.

A number of children's organisations and other organisations have talked about the importance of the feedback loop that is being introduced and information sharing. Children in Scotland approached members with a detailed submission on how things could operate. Perhaps that submission was too detailed for primary legislation, but the point is that children's organisations are keen to have an information collection process that will allow research and allow local panel members and the national convener to benefit from the collection and collation of information. That is at the heart of the proposal.

Given the comments that the minister made to the committee in a private briefing a week or two ago, I hope that he will be sympathetic to the intent as well as the effect of amendment 84.

The Convener: As no other member wishes to speak, I invite the minister to contribute to the debate.

Adam Ingram: Amendment 76 rightly highlights the potential impact of parental imprisonment on children who have been referred to a hearing. That is one of a range of likely contributors to a child's needing support through the children's hearings system.

I welcome and share Aileen Campbell's passionate interest in the welfare of the children of prisoners. It is clear that parental imprisonment can have a severe impact on innocent children, and I welcome the work that the Scottish Prison Service and organisations such as Families Outside are doing in the area.

Schedule 1 of the bill provides children's hearings Scotland with a wide power to carry out research relating to functions conferred on it, and it is entirely possible for the specific issue that is raised in amendment 76 to fall within that wide power. I would, of course, expect children's hearings Scotland to ensure that any research that is done includes all issues that will potentially impact on children who have been referred to a children's hearing. That could include the impact of parental imprisonment as well as a range of other situations or issues that a child could face.

I entirely support the sentiment behind amendment 76, but am wary of compiling a list of

issues that children's hearings Scotland should research. Such a list might risk restricting children's hearings Scotland in making decisions on research priorities, and there is a danger in listing matters that those that are not on the list will be taken to be less important. I offer Ms Campbell my utmost assurance that the bill provides children's hearings Scotland with full powers to undertake the research to which the amendment refers without the need to make specific provision for that in the bill.

Amendment 84 would bring forward a duty on children's hearings Scotland to establish a process to monitor and review the operation of children's hearings independently of the national convener. Mr Macintosh confirmed that that stems from a desire to ensure that panel members have access to research and evaluation on the outcomes on children of decisions that have been made by hearings and on the effectiveness of interventions, and that such information might help and inform panel members' decision making. It appears to me that what Mr Macintosh is seeking mirrors precisely what we are trying to do with the proposed feedback loop, and it is not clear to me what the benefit would be of having those parallel processes in place.

12:45

It is also quite possible that that breadth of provision might allow children's hearings Scotland to monitor and review some aspects of the work of the Scottish Children's Reporter Administration. Some aspects of children's hearings fall within the SCRA's remit—for example, the organisation of a hearing falls to it, as do the provision of papers, the taking of a note of proceedings and the handling and onward transmission of a hearing's decision. All those issues are related to the operation of children's hearings. Is Mr Macintosh suggesting that children's hearings Scotland has a duty to monitor and review how those functions are carried out? I suggest that children's hearings Scotland already has sufficient powers to perform its key functions and that the additional duty is not required.

In addition, amendment 84 is not required because the provisions under section 173 on the feedback loop are sufficient to provide panel members with the information that could be used to support panel decisions. The amendment would also provide an inappropriate power for children's hearings Scotland to monitor and review the functions of the SCRA. I do not believe that that is the amendment's intention.

I ask Aileen Campbell to seek to withdraw amendment 76 and Ken Macintosh not to move amendment 84.

Aileen Campbell: I am grateful to the minister and to Ken Macintosh for supporting the issue that I have sought to raise. I recognise the concern that a range of issues affects the behaviour of children and it may be difficult to choose which to specify as being more worthy of research. However, it remains my belief that the impact on children of parental imprisonment is not fully understood or accounted for in our justice system. I am grateful for the encouragement that the Scottish Government and members have given in progressing the issue, and I welcome the minister's personal commitment regarding the impact on children of parental imprisonment and his indication that he will continue to explore such issues and to seek appropriate policy decisions.

With that in mind, I seek leave to withdraw amendment 76.

Amendment 76, by agreement, withdrawn.

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4, 11, 13, 18, 19, 36, 51, 55 to 58, 60 and 61.

Adam Ingram: This is a group of technical amendments.

The bill explicitly excludes area support teams from the provision that is contained in paragraphs 16 and 17 of schedule 1, which relate to procedure and delegation in committees of children's hearings Scotland. Amendments 3 and 4 remove the explicit references to area support teams because they are committees established by the national convener, not children's hearings Scotland. Therefore, the provisions, as drafted, do not apply in any event.

Amendments 11 and 13 are minor drafting changes that will ensure that certain provisions for the national convener and children's hearings Scotland mirror the provisions for the principal reporter and the SCRA.

Amendments 18 and 19 are technical amendments that seek to make the drafting consistent by correcting instances of the use of the definite and indefinite articles throughout section 26.

Amendment 36 is a minor drafting amendment that will insert the word "or" into section 34(2)(b).

Amendment 51 is a technical amendment that is designed to increase clarity in section 51(2)(a). The bill usually refers to children's hearings being arranged rather than required. The amendment will make section 51 more consistent with the remainder of the bill by replacing "required by" with "arranged under".

Section 53 provides an alternative interim emergency order to ensure the immediate protection of a child when circumstances prevent

an application for a child protection order from being made to a sheriff. The emergency order may be granted by a justice of the peace. Amendment 55 is a straightforward technical amendment to increase clarity and introduce consistency of language in section 53.

Amendment 56 is technical and will have no impact on the way in which the provisions in section 53 take effect. It provides clearer drafting—and therefore meaning—in the section. Amendments 57 and 58 are minor drafting amendments to clarify the wording on when orders that are made under the section will cease to have effect.

Amendments 60 and 61 are minor drafting amendments that aim to increase the clarity of section 54.

I move amendment 3.

Amendment 3 agreed to.

Amendment 4 moved—[Adam Ingram]—and agreed to.

Schedule 1, as amended, agreed to.

Section 4 agreed to.

Schedule 2

The Children's Panel

The Convener: Amendment 78, in the name of Elizabeth Smith, is grouped with amendment 79.

Elizabeth Smith: The amendments are simple and are based on the feedback that I have received from panel members and people who are at the front line of delivering the service. Amendment 78 would create an obligation—as I think is the Government's intention—to deliver the national training standards, which is crucial. I lodged amendment 79 because I received feedback that panel members appreciated national conferences in particular for comparing best practice between local authorities.

I move amendment 78.

Adam Ingram: Amendment 78 would place a duty on the national convener to establish national training standards, to be delivered by area support groups. The bill enables the national convener to train and to make arrangements for the training of panel members, and implicit in that is the ability to set national training standards.

I will speak first to amendment 78's impact in the event of local authority management of area support teams and secondly to its impact were the current provisions in the bill to remain.

If area support teams were managed by local authorities, it would be wholly inappropriate for area support teams to control the training of panel members. Training is the primary means of ensuring that panel members understand the legislative framework under which the children's hearings system operates. It is also the primary means of developing the necessary skills of panel members and providing them with understanding of their role as independent decision makers and the confidence to carry out that role.

As I made clear when we spoke about amendments 71 to 74, it would be inappropriate for local authorities to control decisions on training. The provisions that allow the national convener to delegate that training function to area support teams can apply only under the current proposed structure, which is modelled on the separation of functions of different key players in the system.

Amendment 78 would not allow the national convener to review the relevance of the content of the training or its impact on panel performance; to seek to adjust training in the light of emerging evidence that demonstrated development needs; or to respond to changes in law that impacted on children's hearings. The national convener will identify training needs and must have the power to deliver the training, but the amendment would render the national convener powerless to manage, direct or monitor the content and effectiveness of training. It follows that it should not be supported.

The second point is that amendment 78 would remove the national convener's power to ensure that the content of training was effective in developing the necessary skills of panel members. It would allow the national convener to be involved only in setting standards rather than in planning and delivering training, as provided for in the bill.

For those reasons I cannot support amendment 78.

Amendment 79 seeks to provide the national convener with the power to arrange national conferences for panel members. Panel members have enjoyed national conferences provided by the Scottish Government in the past. They provide a national platform for informing panel members and developing their skills and understanding of issues that can affect children. They also offer panel members an opportunity to learn from one another through discussion groups and informal contact, although I admit that sharing good practice drawn from panels has not always been a formal part of conference proceedings.

The amendment is well intentioned but, I argue, not necessary to ensure that the national convener can arrange national conferences for panel members if he or she considers it appropriate. Under paragraph 3(1) of schedule 2, the national convener will have the power to make

arrangements for the training of panel members, which could include holding national conferences, such as the national school. That would clearly seem sensible given the national convener's responsibility for the national children's panel. There is also a supplementary power in paragraph 9 of schedule 1, which allows the national convener to do whatever is appropriate in connection with their functions. It is not necessary to include in the bill a specific reference to national conferences for the national convener to have that facility at their disposal.

I urge the committee to take the view that amendment 78 is not required. It would be detrimental to the achievement of improvements in the system that are widely supported and which were accepted at stage 1. As a consequence, I also urge the committee to agree that amendment 79 is not necessary to achieve the required objective.

I ask Elizabeth Smith to withdraw amendment 78 and not move amendment 79.

Elizabeth Smith: I will press amendment 78. My decision is determined by the debate that we had earlier on amendments 71 to 74. The matter will have to be resolved between stages 2 and 3.

I hear what the minister says about amendment 79 and am willing to withdraw that on the basis of the commitment that he has just given.

The Convener: You cannot withdraw an amendment that you have not moved but, when we get to amendment 79, I am sure that you will indicate that you do not wish to move it.

Elizabeth Smith: Indeed.

The Convener: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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

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

Amendment 78 agreed to.

Amendments 79 and 80 not moved.

Schedule 2, as amended, agreed to.

Section 5 agreed to.

The Convener: Given that it is almost 1 pm and that we are just about to begin a new section, this is an appropriate place to break our stage 2 consideration of the bill.

I thank the minister for attending. We look forward to his return next week.

Meeting closed at 12:59.

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