EDUCATION, CULTURE AND SPORT COMMITTEE

Tuesday 3 December 2002
(*Afternoon*)

Session 1

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EDUCATION, CULTURE AND SPORT COMMITTEE
31st Meeting 2002, Session 1

CONVENER

*Karen Gillon (Clydesdale) (Lab)

DEPUTY CONVENER

*Cathy Peattie (Falkirk East) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
*Irene McGugan (North-East Scotland) (SNP)
*Mr Brian Monteith (Mid Scotland and Fife) (Con)
*Michael Russell (South of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)
Marilyn Livingstone (Kirkcaldy) (Lab)
Fiona McLeod (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Cathy Jamieson (Minister for Education and Young People)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Susan Duffy

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education, Culture and Sport Committee

Tuesday 3 December 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:03*]

Item in Private

The Convener (Karen Gillon): I call the meeting to order. Members should ensure that all mobile phones and pagers are turned off.

The first item on the agenda is consideration of whether to take item 4 in private. However, I suggest that, with members' permission, we defer that item until 17 December to allow us to consider amendments to the Protection of Children (Scotland) Bill fully today.

Michael Russell (South of Scotland) (SNP): That is a sensible idea. However, when we meet on 17 December, we will have to discuss whether we need to take the report on the purpose of Scottish education through another stage of editing. I have privately indicated to you that, although the report is excellent, it is somewhat indigestible in its current form and might require some further editing before we publish it.

The Convener: Absolutely. Are members agreed?

Members *indicated agreement*.

Protection of Children (Scotland) Bill: Stage 2

The Convener: Item 2 is consideration of the Protection of Children (Scotland) Bill at stage 2. Before we proceed, I will explain how we deal with stage 2. Members should have several documents to assist their consideration of amendments. The first is the bill; the other important documents are the marshalled list of amendments and the groupings of amendments. I ask members to check whether they have those documents. If you do not, please speak to the clerks, who will give you copies.

The amendments have been grouped to help the debate proceed logically and to ensure that amendments that address similar areas are considered at the same time. Members will have to get used to working between the papers to determine how the amendments are marshalled and debated and how they are voted upon.

Michael Russell: Including you, convener.

The Convener: I will continue to read this paper.

The amendments will be called in turn in the order in which they are found in the marshalled list. We will not go backwards and forwards through the marshalled list; instead, we will take all the amendments in one part of the marshalled together. When we move on, that will be the end of the debate on those amendments.

There will be only one debate on each group of amendments; members may speak to their own amendment if it is in that group. Some groups might contain several amendments, some of which will be technical and some more substantive. During the debate on a group of amendments, I will call first the member who lodged the first amendment in the group, who should speak to and move that amendment. I will then call all other members who wish to speak, including members who lodged the other amendments in the group. However, those members should not move their amendments at that stage, but should only speak to them. I will call members to move their amendments at the appropriate time. Members other than those who have lodged amendments should indicate in the usual way their desire to speak. I will also call the minister to speak to each group of amendments.

Following the debate, I will clarify whether the member who has moved the first amendment in the group wishes to press the amendment to a decision. If the member does not wish to do so, he or she may seek the committee's agreement to withdraw it. If the amendment is not withdrawn, I

will put the question on it. If any member disagrees, we will proceed to a division by show of hands. It is important to stress that every member should keep his or her hand raised until the clerk has recorded the vote. Only members of the committee may vote; other members of the Parliament who are present are entitled to speak to and move amendments, but they may not vote. If a member does not want to move their amendment, they should simply say "Not moved" when the amendment is called.

The committee must also decide whether to agree to each section and schedule. Before I put the question on a section or schedule, I am happy to allow a short general debate in which members may raise matters that have not been raised in the debates on amendments. However, if members feel that they have commented enough on a section, we can move straight to a decision on it.

Members are not permitted to oppose agreement to a section unless an amendment to delete the entire section has been lodged. If no such amendment has been lodged, we cannot oppose a section. If a member wishes to oppose an entire section, it would be competent for me, as convener, to accept a manuscript amendment. If that happens, it will be for me to decide whether to accept the amendment. However, it would be competent for such an amendment to be lodged.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): Can you say all that again? [*Laughter.*]

Section 1—Duty of Scottish Ministers to keep list

The Convener: I call Mike Russell to speak to and move amendment 29, which is grouped with amendments 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 44, 46, 48, 50, 51, 52, 53, 54, 55, 56, 58, 60, 62, 64, 65, 66, 67, 68, 69, 72, 73, 74, 76, 78, 79, 82, 83, 84, 85, 86 and 88.

I should point out that if amendment 15 in the group headed "Circumstances in which referral may be made" is agreed to, amendment 52 will be pre-empted and therefore cannot be called. If amendment 20 in the group headed "Appeals against soliciting" is agreed to, I will not be able to call amendment 83 for the same reason. However, as amendments 20 and 83 relate to section 13, they will not be disposed of today.

Michael Russell: Although this group appears to contain a formidable list of amendments, I hope to persuade the committee that it is not as formidable as it looks.

I hope that the committee will decide on, and that the minister will respond to, the principle behind my proposal, rather than the drafting of the amendments. I pay considerable tribute to the committee clerks, particularly Susan Duffy, for the enormous amount of work that they have done. However, it is clear that the resources for drafting amendments that are available to committee members are not the same as those that are available to the Executive. We have been in this situation before. Arguments about the wording or drafting of amendments are not as important as the arguments about the intention behind them. If the committee were to accept the intention behind the amendments, it would be incumbent on the Executive to lodge competently drafted amendments if it believed that there were difficulties with the way in which the amendments had been drafted. That would be an important starting point for each debate, because amendments sometimes run aground on arcane points of drafting rather than principle.

The purpose of the raft of amendments is simple and can be expressed in the words of amendment 32, which simply says:

"leave out <Scottish Ministers> and insert <tribunal>".

The amendments would remove the Scottish ministers from the decision-making process for listing individuals. They would not remove ministers' responsibility to hold the list and to be accountable to the Scottish Parliament and Scottish people for it and the way in which it operates, but they would prevent ministers from making decisions on who should or should not be listed.

The need for the amendments was an important element in the evidence that the Justice 1 Committee received. The Law Society of Scotland believes that to have ministers as decision makers might well be contrary to the European convention on human rights, particularly article 6, which says:

"In the determination of his"—

I assume that "his" also stands for "her"—

"civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The problem with the bill is that a decision made by ministers is substituted for that ECHR requirement for a tribunal. I acknowledge that the minister said during the stage 1 debate on 20 November that the decision would be made by a senior civil servant, but a senior civil servant would still have a relationship to the minister that cannot be described as "fair and public" and "independent and impartial". Only the establishment of a tribunal would meet those requirements.

The establishment of a tribunal would also meet the requirement for natural justice. The minister said in oral evidence to the committee:

"It is a serious matter for people to be put on the list and ministers will be held accountable for the decisions that

they make."—[*Official Report*, *Education, Culture and Sport Committee,* 8 October 2002; c 3800.]

I understand what the minister said, but she confuses the issues. The issue is not accountability: the minister is accountable and will be accountable under the bill for the list. The issue is natural justice: whether the minister—any minister—should be put in a position of making decisions on such matters or whether it would be far better for natural justice and ECHR compliance for an independent tribunal to make those decisions.

The amendments accept that ministers should decide the composition of the tribunal; it would be fair and right for ministers to make that decision. The amendments would give the minister the power to do that, but they would remove the minister from the decision-making process.

I contend that leaving the minister as the decision maker on the listing of individuals in matters as serious as the protection of children, where the absolute proof that is required in a criminal court is not required, would add an extra dimension to the process that many people would find difficult to accept. Involving a properly constituted, independent tribunal would reassure individuals that the legislation could not and would not be abused.

The number of amendments in the group is unfortunate but necessary. We require to remove ministers from the process and the bill is drafted in such a way as to require many amendments to enable us to do so. If the amendments are not agreed to, the legislation could rightly be objected to, not only on the ground of natural justice, but under the ECHR. None of us wants that to happen.

I move the appropriate amendment.

The Convener: The appropriate amendment is amendment 29.

Michael Russell: I move amendment 29.

The Convener: Did I not make myself clear enough at the beginning?

Michael Russell: Could you go through it again?

14:15

Cathy Peattie (Falkirk East) (Lab): When the committee took evidence on the issue, a number of organisations—not least voluntary organisations and the trade unions—raised concerns about the human rights aspects of the bill. They were concerned that small organisations or voluntary organisations would not have the mechanisms to implement some of the provisions, that things would go wrong from the start or that, for all the wrong reasons, listing could be used to move an individual within an organisation whom someone felt needed to be moved. It is important to flag up that issue.

I have not discussed Mike Russell's amendments with him, but I think that they would make the situation muddier. It is important to have some clarity on the issue. People are clearly concerned about the list mechanism. I would welcome the minister's views on that and on Mike Russell's proposal. I would certainly urge her to consider the whole issue because it has been raised with the committee. People are concerned about the fact that organisations might not have the mechanisms to deal appropriately with the bill's requirements. They fear that those provisions, if passed, would be used wrongly against individuals; indeed, they fear that the mechanisms might not be the right ones for dealing with any of the issues at this stage.

Ian Jenkins: I was initially attracted to the idea of a tribunal for the reasons that Mike Russell gave. However, on consideration, I think that there is a danger that some individuals might have to face a plethora of different tribunals. I agree with Cathy Peattie about the need for clarity. However, whatever mechanism is put in place, it is important that there should be a clear opportunity for people to be represented at what, to use a shorthand term, I would call a fair hearing. People have to feel that they are being given a fair hearing and that they are not being dealt with behind closed doors in a system that is less than just. I am anxious to hear whether the minister can assure me that there will be opportunities for people to give oral evidence, either directly or through a representative. The bill as introduced does not have such a provision. If I am not to support the idea of a tribunal, I will require such assurances from the minister.

The Convener: Minister, I ask you to clarify one point. The recent decision in England that the Home Secretary should not be directly involved in sentencing policy is one that has some resonance for the bill. It would be useful if you could explain the ECHR guidance that you received about the list and tribunals, because ministers' decisions could be determined to be political. Good employment practice has always had spheres of evidence such as tribunals and disciplinary processes. I would be interested to hear what ECHR advice you were given.

The Minister for Education and Young People (Cathy Jamieson): I am happy to try to deal with the points in the numerous amendments. Mike Russell said that we must consider the principle of the amendments as well as how they are drafted. I accept that to a degree, but we must consider the impact that this group of amendments would have on the bill if they were agreed to as drafted.

During the stage 1 debate, I listened carefully to the concerns that were expressed about the rights of the individual and the arguments in favour of a tribunal. I said that I would assess whether changes were needed and consider how we could make progress. I have looked at the issues again—it is perhaps important to stress that I did so in the context of the entire package for listing in the bill. Perhaps I will answer the convener's question about the ECHR when I come to that point. Having looked at the issues again, I remain convinced that the provisions on the listing procedures are correct. In developing the proposals, we took careful account of the rights of the individual and we sought legal advice to confirm that the proposals are ECHR compliant. I have been given no legal advice that would suggest that that is not the case.

During the stage 1 debate, many members recognised the difficulties of striking the right balance between the interests of individuals who are considered for listing and the interests of children. Many MSPs agreed with me and others that the child's interests are paramount and that the balance should not be tipped away from them. Therefore, let me stress again for the record that inclusion on the list would be based on robust evidence presented by an employer at the conclusion of dismissal or disciplinary procedures. We would expect to see that the individual had been given ample opportunity to defend their actions during such procedures. Any attempt to make a referral based on concerns that were not backed up by evidence or that had not gone through the appropriate processes would simply not be entertained.

It is obviously important that we have a formal, fair and transparent process of gathering information, that we invite views from both parties on that information and that we clarify any points as required. Those steps would be part of the determination process.

I accept Ian Jenkins's point that putting views in writing may not be the best format for some individuals. The committee must consider that issue to ensure that no one is unfairly disadvantaged because they are unable to put their views in writing.

The assessment of each case would be informed by the relevant expertise of a member of the senior civil service with policy responsibility for children's services, along with—this is an important point—an inspector from social work services or Her Majesty's Inspectorate of Education.

The department is considering an extensive appeals procedure, which would protect the presumption of innocence. If a case were to go to appeal, the sheriff would have to be satisfied that the person had harmed a child and therefore was unsuitable for work with children. In that sense, the proposals are consistent with the Protection of Children Act 1999, which has been in force in England and Wales since October 2000.

My understanding of the process in England and Wales is that it does not use the court for appeals; the system follows a tribunal process. I am not aware of any successful challenges under ECHR to that process. By using the sheriff court, we will give people greater protection. Therefore, I am confident that we do not need to introduce a new tribunal system to balance the rights of the child with the rights of the individual.

I have some serious concerns about the practicality of the amendments. I am concerned that, as drafted, they would require a great deal of work on regulations. We could face further difficulties, because arguments would be created if ministers appointed the tribunal, which would not be helpful.

It is also worth recognising that if we choose to establish a tribunal procedure, the employer would be expected to be a party in that procedure. Inadvertently putting employers in a prosecutorial role would be likely to place a greater burden on organisations, especially small ones, than the proposed system would. Employers may argue that it would be inappropriate for us to expect them to take on those burdens in the public interest.

This is not the most pressing issue but, nonetheless, we must consider the cost-effectiveness of creating a separate system rather than building on the existing system. We would also need to consider how many processes an individual might have to go through. They might have to go through a disciplinary process, followed by an industrial tribunal, possibly followed by the processes of their own regulatory bodies, followed by another tribunal and so on. That does not seem streamlined or straightforward.

We have developed a system that, taken as a package of the initial listing system with clear rights of appeal to the sheriff court, strikes the necessary balance between the rights of individuals and the rights of young people. The system will ensure that concerns, especially in relation to employment, are addressed. As Cathy Peattie said, the Scottish Trades Union Congress and others are concerned that some organisations do not have robust employment practices. That also concerns me because, if an organisation could not deal with the process of listing, it would not be able to deal with the process of a tribunal. Perhaps it is more important to ensure that those organisations are supported in getting their procedures and processes right so that they can make the correct decisions.

Michael Russell: I do not find the minister's response or the long list of items that she introduced convincing. To return to the basic point with which I started, it is better to create—as does all the underpinning legislation—an independent body to make serious decisions about individuals than for those decisions to be made by a minister. Experience shows that it is better to have an independent body. Our legal system is based on that fact and if we are to change the system, there must be a reason why this situation is different.

The minister's arguments were varied. The first was that having an independent body would damage the bill's aim of protecting children. I do not believe for a moment that introducing an extra measure of fairness and balance into the procedure would harm children. That point is disingenuous and it proved to be so in her argument because, toward the end, she argued against my proposal on the basis of cost.

Cathy Jamieson: No I did not.

Michael Russell: You used the term "cost-effectiveness". If the argument was about cost-effective legislation rather than children's rights, I would be worried. Your arguments cancel each other out.

I hear what my colleagues say about muddying the water and small organisations, but I ask them to remember that the minister will be able to direct the structure and actions of the proposed tribunal. I am not, as the minister argued, asking bodies to be parties to tribunals; I am asking only for an extra element of transparency in the process so that it works with, rather than against, the grain of the presumption of innocence, which the minister mentioned.

The Convener: What is the point of a tribunal if people are not able to put their case?

Michael Russell: I am not saying that people should not make their case. The minister said that organisations would have all the difficulties of being parties to a tribunal. Of course the people on either side would put their case, but it is not a question of being party to the tribunal. It would not be terribly difficult for organisations to send a representative to argue a case. My point was that it is unnecessarily alarmist to talk about organisations being party to the tribunal, when I am talking about an extra level of fairness.

The minister mentioned that ministers would work on the presumption of innocence. I am sure that they will try to do so, but I do not believe that they can do so as effectively as a tribunal that is established within rules that mean that it must, in what will be difficult circumstances, be impartial and work on the presumption of innocence. At the beginning of her speech, she said that, under the bill as it stands, referrals will take place after a disciplinary body has found the person to be guilty and has taken action. In those circumstances, it will be incredibly difficult to work on the presumption of innocence, but a tribunal would be better able to do so than a minister.

Even if there are drafting errors in my amendments—although I again pay tribute to those involved in the task, who did not have the Executive's resources—it should be possible to come up with amendments that achieve the aim. If the committee, like me, believes that the aim is worth achieving and that it is fair in terms of natural justice for children and for those who are listed, I am sure that the Executive will co-operate in drafting another set of amendments. If the Executive will not co-operate, we will have to have the debate again at stage 3.

I understand the desire to have legislation that is as simple as possible, but in law and in all the issues that the committee deals with, striking a balance is essential. The balance will not be struck if ministers have an active role in the decision-making process, rather than their proper role of keeping the list and being responsible to the Parliament for the operation of the process. Therefore, I will push the proposals to a vote.

The Convener: The matter is important and I want to be clear about the proposals. My interpretation of what a tribunal is might be different from your proposal. I have been involved with industrial tribunals in the past. In those tribunals, there is an opportunity for people to put their case, to be cross-examined and to cross-examine those who make other points. My understanding of good employment practice is that that would have happened before we reached this point. I am just not sure what you are proposing. Are you proposing a similar set-up to an industrial tribunal?

14:30

Michael Russell: Amendment 31 is about the establishment of the child protection tribunal. The normal operation of that tribunal would be essentially to substitute for the minister in hearing the evidence, in discussing the matter and in coming to a conclusion. The rules of evidence would apply, but there must be some flexibility. The important thing is to take the minister out of the process and substitute an impartial body.

If the minister or the convener has objections to do with the exact details of how the tribunal will operate, those details could certainly be developed through subordinate legislation or in other ways. However, the principle is important, Should it be the minister or should it be, in the words of article 6 of the European convention on human rights,

"an independent and impartial tribunal"?

We should, of course, remember that the meaning of the word "tribunal" in the convention is also slightly different from our understanding of the word. Which should it be? More than being right on balance, having something that is independent and impartial, rather than a politician, is very important indeed.

The Convener: I am taking advice from the clerks. I had moved to the wind-up speeches, but this issue is at the crux of things and it would be helpful to explore it further, if members will allow me to continue. Are you happy about that, Mike?

Michael Russell: I am happy.

The Convener: I shall allow you to sum up again at the end, but I think that it would be useful to continue this debate a little longer.

Ian Jenkins: Supposing that the minister's wee group or panel were to be called a tribunal, what difference would that make in essence?

Michael Russell: It would be open and transparent, and we would know who was making the decisions. I am not criticising the minister, but she has said in the chamber and again this afternoon that she would not be involved. That is not in the bill; it is a decision that she has made. The Executive has not lodged an amendment to say that. I would not object if that wee group were to be the tribunal, but it would be constituted according to the bill and it would have that element of impartiality. We would know that it was not a politician who was making the decisions; we would know that it was somebody else. We may know that because we have read the *Official Report* and listened to the minister, but it is not made explicit in the bill. I want absolute clarity that the proper role of ministers is to keep the list and to be accountable to the Parliament for the list and for the operation of the system, but not to be a decision maker within that system. He or she—it is not a question of who the minister is—is in the bill as a decision maker.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I apologise for being late.

I would like to ask Mike Russell whether it is his desire to ensure that there is a national standard for a tribunal, compared to what might be differing standards of tribunal or of disciplinary procedures for different organisations. Is that what he is seeking to do, so that, whatever standard of procedure a person has gone through, which might be different from the standards in other organisations, that person is assured of a common standard of testing the veracity of accusations?

Michael Russell: That might be an incidental benefit, but it is certainly not my prime intention. My prime intention relates to the ECHR and the proper role of politicians. What I propose might also operate in another way in terms of standards, as there would be a consistent standard no matter what minister was in office. Of course, that would be determined by civil service advice, but it is possible, as the bill is drafted, that that might not be so. If there was a tribunal in the bill, there would be a consistent standard.

Cathy Jamieson: We perhaps have different understandings about what constitutes a tribunal and the purpose that it would serve. I am now even more confused by what Mike Russell has said. In his opening remarks, he seemed to want to set up some method by which people could get a fair, open and transparent hearing. He now seems to be suggesting that, in fact, it would be all right to have two or three people who are not the minister, but who would not necessarily go through the process of having a fair, open and transparent hearing. What he is really talking about is a panel of people to make the decision, rather than a full tribunal process. It would certainly have been helpful to have greater clarification on that point.

It is important to recognise that if we are talking about opening up a full tribunal process—that seems to be the aim of the amendments—there will inevitably be parties to that. People would have to be prepared to submit evidence. That will put a greater burden on some organisations, particularly smaller ones in the voluntary sector, which may not have the capacity to do that and may find themselves in difficulty in the process of listing. I understand that there would be concerns if it were thought that the minister would be open to political or other influence, but the bill makes it clear who will be involved in advising ministers.

We should also consider the whole package. At the point at which the appeals process starts and the appellant goes to the sheriff court, ministers are accountable for their decisions. They are ultimately responsible for showing that they made the correct decisions on the basis of the evidence that was presented. That is a strong safeguard.

Ian Jenkins: I come back to the idea of the panel and tribunal. There seemed to be a wee shift in our understanding of it, and there could be a solution at stage 3. If the panel consisted of the people identified by the minister and perhaps one other person who was appointed from somewhere else, that might make it seem as if it was not totally Government directed. Calling it a tribunal might satisfy our slight worries about people having a freer hearing. It is just a suggestion.

Michael Russell: We have reached an interesting stage. The minister said that she would be accountable. Of course she would, because that is what ministers are. The legislation makes ministers accountable. I remind the committee that section 1(1) says:

"The Scottish Ministers shall keep a list of individuals".

The decision about who is on that list is not a proper matter for ministers.

Ian Jenkins, as a good Liberal, is moving towards a compromise, and I have no objection. I always like to see that. However, I notice that the Law Society of Scotland, in its evidence to the Justice 1 Committee, suggested that the tribunal should consist of a legally qualified person as chair, sitting with another member who has a background in children's services. It defines two individuals as involved in the decision making. The civil servants, whom the minister has mentioned twice, sitting with an independent, legally qualified person, would be another possibility. The important point is to get the principle right, which is that decisions should be made at arm's length from ministers in such matters.

The crux of the matter is that if the committee is sympathetic towards a change but doubtful about the amendments' wording, the committee's obligation—as I have said often in this committee—is to let the Executive return at stage 3 with its amendments. The present system is not satisfactory, will put ministers in invidious positions and is contrary to natural justice. That is not just my view, or the view of the Law Society of Scotland and the Justice 1 Committee, but the view of this committee. In paragraph 48 of our report, we said:

"The Committee notes that the Justice 1 Committee recommends that the decision to include an individual on the list should be made by a tribunal. The Committee would be supportive of this method being used."

That was our view at stage 1, and it was shared by the Law Society of Scotland and the Justice 1 Committee.

The Convener: I am well aware of what our report said. It also said that the minister should take on board all the representations made to her. It would be dangerous for us to quote individual passages.

Michael Russell: To be fair, that was our view. If members believe that that view has been taken on board and that appropriate changes have been made, so be it. As far as I can see, however, no offer to make appropriate changes has been made. I will therefore press amendment 29.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

McGugan, Irene (North-East Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 29 disagreed to.

The Convener: Amendment 30 was debated with amendment 29. I ask Mike Russell whether he wants to move amendment 30.

Michael Russell: I am tempted to move all of my amendments in the group but, in the interests of smooth proceedings, I will not move amendment 30.

Amendment 30 not moved.

Section 1 agreed to.

Amendment 31 not moved.

Section 2—Reference following disciplinary action etc

The Convener: Amendment 1 is grouped with amendments 2, 5 to 9, 11, 25 and 27.

Irene McGugan (North-East Scotland) (SNP): This group of amendments arises from the fact that the bill differentiates the obligations that are placed on organisations. Although regulated child care organisations must refer individuals to Scottish ministers for inclusion on the register, other organisations may refer individuals. Concern has been expressed that that might create a two-tier system of protection.

I hope that the amendments in the group eliminate the potential for that to happen. They place a duty on organisations whose staff or volunteers have unsupervised access to children to refer those individuals to the list irrespective of the organisation's status as a regulated or non–regulated body. The important issue is not the status of the organisation but whether unsupervised access to children is involved. It would be wholly unacceptable for the Parliament to legislate for children to be protected by some organisations but not by others.

Many voluntary organisations support this move although concern has been expressed about the obvious issue of whether extra guidance, training and resources will be available to help voluntary organisations to fulfil the proposed duties and obligations. Any assurances that the minister could give in that regard would be appreciated. Although it is important to acknowledge those concerns, I want to press ahead with these amendments, which in effect remove the definition of a child care organisation so that the bill refers to an organisation in the widest sense of the word. I

believe that the proposal will ensure that appropriate checks are made on the suitability of all those who work with children and young people in order for us to develop the best possible system of child protection.

I move amendment 1.

14:45

Cathy Jamieson: I listened and took note of the concerns that were expressed by the committee and other organisations at stage 1. Having carefully taken account of what was said and considered the balance of the need not to impose additional duties inappropriately on small voluntary organisations with the need to protect young people, I decided that amendments were needed to impose a duty on all organisations. Irene McGugan lodged amendments identical to those that I intended to lodge and, in the interests of unity, I am happy to support her amendments.

I have carefully considered the concern that potential abusers might target non-regulated organisations because the message could have been given that the risk of referral was lower. I accept the case for tightening procedures and ensuring consistency in the bill. I have concluded that we should extend the duty to refer to all organisations that employ individuals to work with children, whether that work is paid or unpaid.

I have also lodged amendments to back up the duty to refer with the sanction of an offence. That is necessary because the duty will be broadened to cover more than regulated organisations. The amendments will mean that all organisations that employ individuals to work—whether paid or unpaid—with children will commit an offence if they fail to make a referral to the list when they should have done so. Failure to comply with the duty will attract a penalty that is in line with the proposed penalties for employing a banned person to work in a child care position.

During the stage 1 debate, I acknowledged some organisations' concerns—some of which have been expressed again today—about their ability to comply with the new duty. We will produce guidance for all early in the implementation process to explain what is needed to comply with the duty. We will work with the voluntary sector to address its needs. I give a strong commitment on that. I also provide assurances that support, guidance and training will be put in place. We will need to consider the preparation for implementation to ensure that we get the time right and that we give organisations time to gear up for compliance with the new duty.

Jackie Baillie (Dumbarton) (Lab): I welcome the bundle of amendments from Irene McGugan and the minister on two counts. First, the committee and the minister considered at length extending the duty to all organisations, because the bill's primary purpose is to protect children, so we want to avoid any loopholes. That extension is particularly welcome. Secondly, progress on the undertaking to provide support, guidance and training to voluntary organisations that work in the field will be helpful, so I urge the committee to support all the amendments.

Cathy Peattie: As the minister knows, I was initially concerned about the voluntary sector's involvement, because small voluntary organisations work hard locally and it is sometimes difficult to put in place the structures that are needed.

The duty will place additional burdens on voluntary organisations and on small local organisations in particular. I am happy to support the amendments, but we must ensure that the time scale is right to allow organisations to come up to speed, to have the support and training that they need and to identify appropriate agencies locally and nationally to develop the situation.

It is important not just to talk about the duty being a good idea and about ensuring that support is available, but to back that up with resources. We must be sure that such organisations have links with local agencies so that the duty works and that organisations have the support that will enable them to do their work and meet the expectations that the bill will create.

Ian Jenkins: I agree with Cathy Peattie. It is good to extend the bill's footprint to take in voluntary organisations, which will need support. As we discussed earlier, it is important that they should have enough resources to have good procedures in place before people are referred to whatever panel decides whether to list them. It is good to place a duty on those organisations, but we must ensure that they have the support and mechanisms that will allow them to put the bill's purposes into action.

Irene McGugan: I am pleased about the consensus because, as was expressed fairly clearly in the debate and in evidence from Volunteer Development Scotland, the concern is that if the position is not made universal, it is highly likely that unsuitable individuals will gravitate towards organisations that are not subject to the requirements. Like others, I welcome the minister's assurances about support and guidance and the commitment to training and resources. I am sure that that will be welcome. I am pleased that the amendments will proceed and will undoubtedly improve the bill.

Amendment 1 agreed to.

Amendment 32 not moved.

Amendment 2 moved—[Cathy Jamieson]—and agreed to.

The Convener: Amendment 3 is grouped with amendments 4, 10, 14 and 15. If amendment 15 is agreed to, I will not call amendment 52, which has already been debated in the group headed "Establishment of a tribunal", when it is reached on the marshalled list.

Cathy Jamieson: The need for amendment 3 came to our attention during stage 1. Section 2 sets out the circumstances in which an employer should make a referral to ministers. Having reconsidered that, we believe that there could be some doubt as to whether staff on fixed-term contracts would be covered. Amendment 3 removes any doubt. It is especially important to ensure that short-term staff who are unsuitable to work with children do not slip through the net and move on from one temporary post to another without being detected.

As I indicated during the stage 1 debate, I have listened to concerns expressed by organisations about their duty to refer individuals on suspension prior to carrying out a full investigation and disciplinary procedures. I accept that that could cause a problem and inhibit precautionary suspensions. Therefore, amendment 4 removes the requirement to refer individuals to the list when they have been suspended or provisionally transferred. It is altogether more appropriate for the referral to be made on conclusion of the employer's investigation.

Amendments 14 and 15 are consequential amendments. Under the provisions to which those amendments refer, ministers could not decide to include an individual on the list until the employer had reached a final decision on suspension or a provisional move, so those provisions are no longer required.

I hope that the amendments are self-explanatory or have been explained clearly enough at least.

I move amendment 3.

Amendment 3 agreed to.

Amendment 4 moved—[Cathy Jamieson]—and agreed to.

Amendment 33 not moved.

The Convener: Amendment 34 is grouped with amendments 47, 49, 61, 63, 71, 75, 77, 80, 81, 87 and 89, in the name of Michael Russell.

Michael Russell: Amendments 34 and 75 are the core amendments in this group. There was some discussion in the stage 1 debate about provisional listing, which prompted me to look at the bill again. I have a strong concern about the issues of natural justice.

It is unusual, to say the least, that somebody can be found provisionally guilty, but that is essentially the effect of provisional listing. Provisional listing will carry the stigma of listing without a decision having been determined. I accept the minister's assertion that there is a good reason for acting, and acting promptly, on determinations or recommendations of determinations. It is important that an employing body does not essentially shuffle off the individual while there is still the potential for them to be listed and to do damage to children. It is equally important that the individual cannot remove himself or herself from employment and go and work somewhere else, thus avoiding being listed.

The amendments would abolish the concept of provisional listing, on the ground that somebody is either listed or not listed. Indeed, until someone is listed, the definition must be that they are not listed.

Amendment 34 would put in place the safeguards that the minister has referred to. It would ensure that organisations cannot simply move or get rid of people so that they are not listed. Equally, an individual would commit an offence if, knowing that they were in the process that might lead to their being listed—they have been through or are going through a disciplinary tribunal—they went off to do something else and to try to hide from the system.

My amendment would achieve the aims that the minister said that she sought in the stage 1 debate and in the committee. It would remove the flawed concept of deeming someone to be provisionally guilty—that is what provisional listing is. The amendment would meet the minister's objectives in assisting the overall concept of child safety. I hope that the minister will think again about provisional listing, because it seems to go too far against natural justice, given that the aims can be met in another way.

I move amendment 34.

Jackie Baillie: I have listened carefully to what Mike Russell has said. Although I think that he raises valid issues, I keep coming back to the balance between the interests of the child and the interests of the adult. We need to have prompt action. We need to remove completely people's ability to avoid being listed. On balance, I find in favour of provisional listing, simply because it closes a loophole. The primary concern has to be the protection of the interests of the child.

Ian Jenkins: I said in the stage 1 debate that I accepted reluctantly the necessity for the bill. I accept very reluctantly the necessity for provisional listing, but I am not comfortable about it at all. I acknowledge that there are times when action has to be taken but we would like a longer

process to take place before final decisions are made. I am uncomfortable with provisional listing, but I accept the necessity for it, as I accepted the necessity for the bill in the first place.

Cathy Peattie: Everything that I wanted to say has already been said. We need to put the rights of the child first. I have worked in situations in which things have been swept under the carpet and people have moved sideways. I know that the bill is about stopping that from happening and I think that provisional listing in the interim is a good way forward. I understand why Mike Russell has lodged amendment 34 and I understand the reason behind it, but I think that we need to hold on to what is in the bill as it stands.

Cathy Jamieson: I acknowledge the serious nature of provisional listing and I note the concerns that Ian Jenkins raised. These are difficult issues, but sometimes we are not dealing with reasonable people during the processes. We have to ensure that provisional listing exists as an essential safeguard to prevent unsuitable people from simply moving undetected from one post to another. I acknowledge that Mike Russell is trying to find another route to do that, but I do not think that the route that he suggests would achieve the objective.

Amendment 34 would cause us difficulties in practice, because the organisation would not necessarily know to whom to disclose the information. We are assuming that people would be entirely up front and honest if they were going to move on to another post. I presume that the organisation could disclose the information only in response to a request for that information. That would depend on the person giving out accurate details about previous employers—unfortunately, we know that, in practice, they do not always do so. However, in our plans, the fact that a person is provisionally listed will be included on a disclosure check. That is a greater safeguard than bits of information moving around the system in informal channels.

15:00

We must also recognise that some people who are involved in direct work with young people in a paid capacity will also be involved in voluntary sector work. Under Mike Russell's proposals, there are no plans to notify other existing employers of the disciplinary proceedings, whereas, in our proposals, all current employers will be notified of provisional listing, which will increase the checks and balances.

Provisional listing must be retained. Our plans have been carefully drawn up to maximise child protection while minimising damage to the individual. The fact that a person is on a provisional list will be closely guarded and released only to current or prospective employers. The person's name will be removed from the provisional list as soon as a determination is reached or when the six months allowed for a decision elapse without an extension being granted. A disclosure check that is issued after that will contain no record of provisional listing.

The amendments would provide for a system that offered children in Scotland potentially less protection than there is in England and Wales. I am sure that none of us would wish to see that, so I ask Mike Russell not to press the amendments.

Michael Russell: I will press the amendments. Jackie Baillie said that the primary interest of the bill is the protection of the interests of the child. Are we constructing a system that is so strong in that respect that it erodes the normal standards of justice that we expect in society? That would not be in the interests of children or anybody else. The amendments provide for the double lock to which the minister referred in the chamber in respect of employing organisations and for the duty on individuals to give notification that they are in a disciplinary process that may lead to listing. They would also make it an offence for someone not to follow those procedures.

I return to a point that I am sanguine about winning and that is essential in respect of human rights. I would have hoped that the Liberal Democrats, with their long tradition of supporting human rights, would recognise that there is no such thing as provisional guilt. That concept does not exist in law; in law, the concept is that someone is guilty or not guilty. My amendments would allow us to retain that concept and to protect children. We should not create a new category of guilt. Instead, there should be procedures to protect children, which is what the bill is about.

I closely followed what the minister said in the chamber about what she wishes to achieve, but, as it stands, the bill will create a new category of guilt. If we create that category, we will damage Scottish society. I intend to press amendment 34.

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
Peattie, Cathy (Falkirk East) (Lab)

ABSTENTIONS

Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 2, Against 4, Abstentions 1.

Amendment 34 disagreed to.

Section 2, as amended, agreed to.

Section 3—Reference by employment agency etc

Amendment 5 moved—[Irene McGugan]—and agreed to.

Amendments 6 and 7 moved—[Cathy Jamieson]—and agreed to.

Amendment 8 moved—[Irene McGugan]—and agreed to.

Amendments 9 to 11 moved—[Cathy Jamieson]—and agreed to.

Section 3, as amended, agreed to.

Section 4—Reference by certain other persons

Amendments 35 and 36 not moved.

The Convener: Amendment 12 is grouped with amendment 13.

Cathy Jamieson: I hope that discussion of amendments 12 and 13 will be fairly short, because I announced our intention to lodge them during the stage 1 debate. Having listened to the views of the committee and of others, I agree that the General Teaching Council for Scotland should have powers to make referrals to the list of persons who are unsuitable to work with children. Amendments 12 and 13 will achieve that.

I move amendment 12.

The Convener: Do any members have any points relating to amendments 12 or 13? I would like to clarify why only the General Teaching Council for Scotland is included in the amendments. Why are other regulatory bodies not included?

Cathy Jamieson: The GTC was the body that was mentioned specifically in the committee's evidence taking. We could look at the need to include other bodies, if that became appropriate.

Amendment 12 agreed to.

Amendment 13 moved—[Cathy Jamieson]—and agreed to.

Section 4, as amended, agreed to.

After section 4

The Convener: Amendment 37 is in a group on its own.

Michael Russell: Amendment 37 tackles an issue that is incidental to the bill, but which could become central. As members are aware, the issue has its origin in a court case in Dumfries. That case is under appeal, so I will not address the details, but the principle is important. The bill allows for the possibility of suing for defamation a child or a young adult who makes a complaint that leads to a provisional referral—if the bill still contains that concept—but that ultimately does not lead to a referral. That would be parallel to the situation that arose in Dumfries.

Of course any individual who is wrongly accused has the right to take action to clear their name. The important element is the moment at which official Scotland, so to speak, begins its involvement in the case and the individual falls out of the case. The bill makes it clear that, when the process of disciplinary procedures gets under way, the responsibility for taking the matter forward lies not with the individual who has made the complaint, but with others who have not found the complaint to be vexatious or frivolous and who have chosen to pursue it. They can pursue the complaint all the way to listing.

Amendment 37 is comparatively simple. It would give privilege to individuals in those circumstances. It would take away the possibility that those young people could be sued and find themselves in considerable difficulty. It would come into effect at the moment at which the official proceedings started. It would not apply to circumstances in which an individual made a vexatious allegation simply for the pleasure or advantage of annoying, disrupting or even destroying a person's career; it would come into effect at the crucial moment at which the process was moved forward from being a complaint to being an official matter that was part of a proceeding. In the first instance, that proceeding is a disciplinary proceeding.

Amendment 37 would provide a necessary additional protection. Many members have referred to the bill's primary aim, which is to protect the interests of children. Amendment 37 would further protect the interests of children.

I move amendment 37.

Jackie Baillie: I support amendment 37, not least because redress should be targeted at the people who made the decision—whether that is the employer or the minister—not at the child or young person. After all, it is the judgment of the minister or the employer that is the issue. However, although I support the principle behind amendment 37, I wonder whether the bill is the right place for the provision, given that its impact would be wider than the scope of the bill. I would be interested to hear from the minister about any plans that she has to ensure that no child or young

person is the subject of a defamation action as a consequence of information that they provide.

The Convener: I share the concerns raised by Jackie Baillie. There is considerable merit in amendment 37, but there is scope for the measure to extend beyond the bill. We do not want young people to be deterred from bringing complaints, in what is already a difficult situation, for fear of legal proceedings at some point in the future. I hope that we can move some way towards meeting each other on the matter.

Cathy Jamieson: Like other members, I do not in any way wish to make life more difficult for vulnerable young people who wish to bring complaints of abuse or other mistreatment. However, there are difficulties with the way in which amendment 37 is structured, which I will explain. It provides for absolute privilege to be given to complaints relating to an individual whose case has been referred to ministers for inclusion in the list and to evidence and statements either that ministers call for or that feature at some earlier stage in the complaint.

I stress that I sympathise with Mike Russell's desire to enable complaints to be made without fear of consequences. However, the difficulty is that, as drafted, amendment 37 would give absolute privilege to any complaint about a person who had been referred, regardless of whether that complaint had been investigated or had any relevance to the matter for which the reference was made. I would have difficulty supporting that.

It is important to recognise that, on occasion, privilege is given to encourage people to speak openly without fear of the consequences. However, amendment 37 would give absolute privilege to a complaint and to the evidence or statements relating to it only when the reference to ministers had been made, which would usually follow investigation and dismissal. The complainant or the other givers of evidence would have no idea whether matters would result in a reference and thus give protection to what they said. In other words, they would not know at the time whether what they said would have absolute privilege. That could give protection to matters that were accepted as true, and thus not liable to actions for defamation, while leaving cases that were not eventually referred without any special protection. I am sure that that is not what was intended.

It is also worth noting that the ordinary law of defamation, which protects honestly made allegations in evidence while not giving protection to malicious statements that are made when they are known to be untrue, can be used appropriately in situations that arise from referrals under section 2(1) and section 4(1). In theory, that ought to be more than sufficient.

In light of the particular circumstances, I have raised the issue with the Minister for Justice, because at some stage we need to address the matter and achieve clarity. Amendment 37 would not take us down the road or get us to the point where we need to be and it would apply only to the bill. For that reason, I ask Mike Russell to consider withdrawing the amendment so that we can consider the matter.

Michael Russell: I would be sympathetic to the request not to press amendment 37 if there were a commitment to lodge an amendment that would achieve the same aim. Once again, we are dealing with semantics and people in Scotland are getting fed up with such debates. We need to know whether the minister will make a commitment to come back at stage 3 with an amendment that will achieve the aim that I—and other members—want to achieve.

The minister talks about continuing discussions with the justice department and others, but the clock ticks every day. We already have difficulties with the issue and those difficulties could arise in the first case in which someone is referred to the list. I will not press amendment 37 only if the minister gives a commitment to lodge an amendment at stage 3 that would endeavour to deal with the difficulty.

15:15

Cathy Jamieson: I do not wish to go into the circumstances of the case to which Mike Russell referred, as it is currently before the courts, but I will want to know the outcome of the appeal process, because there may be some lessons to be learned. I give the commitment that I will reconsider the issue in light of the comments that have been made to see whether an amendment to the bill can be lodged. If that is not possible, the Minister for Justice and I will continue to consider how we can deal with the issue.

It is important to recognise that young people would become vulnerable only if they had knowingly given wrong or malicious information. My understanding is that the situation is covered by the current legislation. I fully accept that there have been difficulties, but it would be inappropriate to go into the detail of those. I will certainly reconsider the issue, but the question remains whether the bill is the right context in which to achieve what Mike Russell seeks. Amendment 37 would give young people protection only in the context of the bill, which I do not think is what he is seeking to achieve.

Michael Russell: Incremental change is what I am seeking to achieve. The best is the enemy of the good. I would like to see the issue dealt with across the spectrum but, if that cannot be done, it

is right to introduce the protection in the bill, because the bill may give rise to the circumstances that I have described.

I cannot say that I am overwhelmed by the commitment that the minister has given. However, as other committee members are indicating that they are prepared to give the minister that opportunity, I will withdraw amendment 37 on the basis that I hope that the minister will have something to offer at stage 3. If she has nothing to offer at that stage, I shall be disappointed. I hope that other members will also indicate their disappointment at that time.

Amendment 37, by agreement, withdrawn.

Section 5—Inclusion in list following referral under section 2(1) or 4(1)

Amendment 38 not moved.

Amendment 14 moved—[Cathy Jamieson]—and agreed to.

Amendments 39 to 42 not moved.

The Convener: Amendment 43 is grouped with amendments 45, 57 and 59.

Michael Russell: Amendments 43, 45, 57 and 59 are a natural part of the group of amendments that would have established a tribunal, but they have been grouped separately because they can stand alone. The amendments would strengthen the opportunity of the individual and the organisation to seek a hearing. It is important that individuals are not put in the position where decisions are made without a hearing taking place.

The minister and the substantial team that is with her today have shown no willingness to compromise on elements of the bill, but I believe that the amendments would provide for an important measure.

I move amendment 43.

Ian Jenkins: As I said, people should have an opportunity to be heard and seen. People need to feel that there is an element of justice in the procedure. I hope that that principle will be remembered when we consider further amendments at a later stage.

Cathy Jamieson: I refer back to the fairly detailed comments that I made in response to the proposal to establish a tribunal. We may be in danger of repeating some of the confusion over what constitutes a hearing and what constitutes a tribunal. To recap, I am convinced that the bill's provisions on the listing procedures strike the right balance between the interests of the individual and the rights of the child. I am confident that the proposals are compliant with the European convention on human rights.

The bill sets out a formal, fair and transparent process of gathering information, which mirrors the equivalent systems operating in England and proposed for Northern Ireland. Those systems allow the individual to make their case through a paper-based process before any decisions on listing are reached and orally at the appeal stage. The bill contains extensive provisions and safeguards for appeal and individuals will have the opportunity to have a hearing at each stage of the appeal, whether that happens before a sheriff, the sheriff principal or even the Court of Session.

I am concerned that introducing what has been described as an oral hearing in advance of listing would run the risk of shifting the balance in a different way. The proposal has not been thought through and I do not accept that there is a need for the amendments at this stage. However, I acknowledge Ian Jenkins's point that, for some people, a paper-based process might present difficulties of equality of opportunity. I would want to consider that matter in the guidance.

Michael Russell: I still believe that the bill runs the risk of going in a direction that would damage civil liberties. I accept entirely that the bill should have as its primary aim the protection of the interests of the child. However, some dangers can be overcome by having a stronger element of openness and transparency, which includes the opportunity to seek a hearing. People will find it quite bizarre that there are circumstances in which one cannot seek a hearing.

Despite Mr Jenkins's support, I do not think that the vote will follow the voice. Nonetheless, I will press the amendment to see what happens.

The Convener: The question is, that amendment 43 be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

McGugan, Irene (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 43 disagreed to.

Amendments 44 to 51 not moved.

Amendment 15 moved—[Cathy Jamieson]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Individuals named in the findings of certain inquiries

Amendments 53 to 65 not moved.

Section 6 agreed to.

Section 7—Provisional inclusion in list

Amendments 66 to 69 not moved.

The Convener: Amendment 16 is grouped with amendments 17 and 26.

Cathy Jamieson: Again, there was compelling evidence at stage 1 about the need to align the listing process with other disciplinary procedures that might be running in parallel with it. I have considered the issues in detail and I have tried to balance our wish to keep provisional listing to a minimum with the issues around prejudicing the outcome of the disciplinary procedures that are conducted by various professional bodies. Having reconsidered that, we decided that it would be most equitable to await the outcome of disciplinary procedures before making a determination. That is in line with our existing proposals for criminal proceedings. It does not mean that we will be tied to the professional body's decision. The tests for professional deregistration and for listing will be different. Nonetheless, the proposals for aligning procedures with other disciplinary and court procedures seem to make operational sense.

I move amendment 16.

Amendment 16 agreed to.

The Convener: Amendment 70 is in a group on its own.

Michael Russell: I made my objections to provisional listing absolutely clear. The committee has decided that it believes in provisional listing, but I cannot believe that it believes in an indefinite time for provisional listing, which is what section 7(6) would achieve. The bill sets a time limit for provisional listing by the minister. Section 7(6) would remove that time limit by allowing ministers to apply to a sheriff who could specify an undefined period of time. In such circumstances, it is perfectly possible to imagine that someone could be provisionally listed for ever.

That power is unnecessary. I still find provisional listing objectionable. If the minister cannot make a determination on someone on a provisional list within six months, that person should not be provisionally listed. Had an opportunity been provided for the minister to go to a sheriff and ask for a three-month extension, that might have been acceptable. However, section 7(6) is without qualification in terms of what time limit the sheriff might specify and that is totally against the principles of natural justice.

I move amendment 70.

Jackie Baillie: I take Mike Russell's point, but we need to build in a modicum of flexibility. The minister might not be able to make a decision within six months because of having to weigh up the evidence on both sides in the interests of natural justice. It would therefore be valuable if the minister could go to a sheriff and ask for an extension of another few months. I take the point that we do not want the sheriff to be able to set an indefinite length of time, but I am sure that the sheriff would interpret what was reasonable in the circumstances. I am interested to hear what the minister has to say on the issue.

Ian Jenkins: I have reservations about provisional listing. I would not like to see it being extended indefinitely and I will vote with Michael Russell this time.

Cathy Jamieson: It is important to recognise why section 7(6) was included. As has been said, the bill contains a provision to allow the minister to apply to a sheriff for an extension to the six-month limit. That provision would be used only in exceptional circumstances, but it is essential.

For example, an individual could be in hospital and unable to provide observations on the evidence that has been submitted with the referral. In that case, it would not be appropriate to move to a determination without giving the individual the opportunity to comment; nor would it necessarily be appropriate to remove the individual from the provisional list.

I recognise that members are saying that the process should not be open ended. We do not intend to have an open-ended process and, given our assurances that the provision would be used only in exceptional circumstances, I ask Mike Russell to consider withdrawing amendment 70.

Michael Russell: I am certainly not going to withdraw the amendment, especially as Ian Jenkins said that he would vote with me—goodness gracious me!

Jackie Baillie: He might change his mind.

Ian Jenkins: I have not changed my mind.

Michael Russell: I would not be surprised.

The minister has said nothing that justifies the provision. Of course, special circumstances might arise and the minister has stated that an extension might be granted for six months. That is fine, but the provision is absolutely without limit and might be substantially abused. I am sure that the minister would never abuse it, but we do not want to pass legislation that could be substantially abused. Given that, it is reasonable for amendment 70 to be agreed to. If the minister wants to lodge an amendment at stage 3 so that

extensions can be made for six months or a year, I might support that, but I do not support the provision as it stands.

15:30

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

Members: No.

The Convener: There will be a division.

FOR

Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McGugan, Irene (North-East Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Amendment 70 agreed to.

Amendment 17 moved—[Cathy Jamieson]—and agreed to.

Amendment 71 not moved.

Section 7, as amended, agreed to.

Section 8—Determination under section 5 or 6: power to regulate procedure

Amendments 72 to 74 not moved.

Section 8 agreed to.

Section 9—Individuals convicted of an offence against a child

The Convener: Amendment 18 is in a group on its own.

Cathy Jamieson: Amendment 18 will remove any doubt about retrospection and allow for a court to make a referral in cases in which the crime against the child occurred prior to the commencement of the relevant provision. That is particularly important, given the time that can elapse in child abuse cases. The amendment simply ensures that there is no doubt over the wording of the bill.

I move amendment 18.

Amendment 18 agreed to.

Section 9, as amended, agreed to.

The Convener: That concludes day 1 of our stage 2 consideration. I thank the minister and her officials. Next week, we will commence consideration of the bill at section 10.

Scottish Media Group

The Convener: For item 3 on the agenda, members have a copy of our correspondence with the Scottish Media Group. The clerk sent a letter and we received an interesting reply. Before I open up the discussion to members, I will make a number of comments.

I accept points 1 and 2 of SMG's response, which relate to confidential transactions and company law, but I am concerned about point 3, which is about the locus of the Parliament and the committee in the matter. The committee has been very clear on all occasions that the conduct of the sale is very much a matter for the United Kingdom Government to determine, under the newspaper media regime.

However, given the importance of the print media to Scotland, we have a clear locus in trying to establish and maintain the plurality and diversity of the Scottish media. That is where our concerns emanate from, so it is entirely appropriate for this committee, and indeed this Parliament, to consider that issue and make its view known. I hope that the Parliament will do that in due course. Eighty-six members have signed a motion in my name on the matter.

If members are agreeable, it would be useful for us to seek meetings with the First Minister, the Secretary of State for Scotland and the junior minister at the Department of Trade and Industry, Melanie Johnson, to make our views clear. That would not be done in a partisan way, but in the interests of Scotland as a whole, which would be entirely appropriate. Members will be interested to know that, as we speak, an adjournment debate on the issue is taking place in Westminster Hall.

Michael Russell: I concur with the convener's views. I find the letter to be wholly unacceptable. Certainly, there are legal requirements of which we were entirely aware, as Mr Flanagan was aware, and questioning on those matters would have been by agreement. To say that the committee has no role or function in the matter and to make no reference, for example, to the considerable interests of employees, or the diversity and plurality of the Scottish press, leaves me fairly staggered.

The letter is unacceptably dismissive. I recall that first world war soldiers were described as "lions led by donkeys". With SMG, one could say that, for the very senior management, the same situation is developing. I hope that the senior management will think long and hard before committing themselves to paper in that way again.

I support absolutely an all-party group from this committee meeting relevant Westminster

ministers. I also support an attempt to have the matter debated in the Scottish Parliament at an appropriate time. I think that other members are of the same view—indeed, many have signed the motion in the convener's name.

Mr Monteith: The tone and terms of the letter from SMG do not surprise me. The letter is entirely predictable because the group is entirely correct in what it says, certainly in points 1 and 2. It is fair to expect this committee to consider cultural issues, but we cannot divorce ourselves from the fact that there are 72 Scottish members of the House of Commons. In the sense of takeover policy, the matter is reserved. One would expect those MPs to raise certain points with regard to plurality and cultural matters. I am not saying that the committee has no locus, but we must recognise that final decisions rest in Westminster.

We can add little to the decision-making process. We can raise members' concerns or concerns that the public make known to MSPs. That is entirely appropriate. However, in the final analysis, it is members of the Westminster Parliament who should raise points that should be taken into consideration when the final decisions are made at Westminster. If the committee decides to proceed with seeking a meeting, I will happily string along because it is important that, in the interests of plurality, a different view is put. The committee has pointed out that there is no such difficulty with regard to plurality of provision in the Scottish media, both in the sense of sales and editorial opinion.

Cathy Peattie: I support the convener's suggestion. I remind the committee that, from year one, we have debated media-related issues as regards culture in Scotland. We have had representations from trade unions and from several organisations regarding SMG. The subject is not new to the committee and it makes sense that we move things forward.

I accept Brian Monteith's point that there are 72 members in Westminster representing Scotland, but the issue is about employment, news and news coverage from Scotland and Scottish culture. All those issues are important to the committee and to the Parliament. I suggest that we proceed with the convener's proposal.

Ian Jenkins: I agree with what Cathy Peattie said, with what the convener said and with what Michael Russell said but not quite with everything that Brian Monteith said.

Michael Russell: Why not just say that you disagree with what Brian said?

Ian Jenkins: I disagree with some elements of what he said, but he is quite right about the legal points.

This is a matter of great interest to the Scottish people and the voice of the Scottish Parliament must be heard. If we can try to influence Westminster in this regard, we should do so. The suggestions that have been made would allow us to do that as strongly as possible.

The Convener: I am in no doubt about the fact that Scotland has 72 MPs at Westminster, as Brian Monteith pointed out. I am a unionist and I know what the role and responsibilities of those MPs are. I have no doubt that they are doing their job well—at least the ones who represent my party, although Michael Russell, as a nationalist, might have another view.

Even so, there is a role for us to play in making our voice heard. For me, the issue is not about where broadcasting—

Mr Monteith: It is about Andrew Neil.

The Convener: It is not about Andrew Neil. If you check my comments carefully, you will see that I have never mentioned any individual editor. I have expressed concern that Scotland might be left with one broadsheet covering central Scotland.

Mr Monteith: Would your concern also apply if the person who bought the SMG titles were in a position to bid for *The Scotsman*? I ask that question because the answer has not been made clear.

The Convener: My concern would definitely apply in such a situation. For me, the issue is not about either *The Scotsman* or *The Herald*, but about the diversity of the Scottish media. The points that have been raised would be pertinent regardless of whom SMG chooses to sell the titles to. I hope that due consideration will be given by the minister to all potential purchasers and that anyone who seeks to purchase the papers makes commitments to ensure that the diversity of the Scottish media is maintained. All potential purchasers should be examined by the minister, not just the one who has been identified as the potential highest bidder.

Michael Russell: The diversity of the Scottish media should be not maintained but increased. For the avoidance of doubt, I will echo what the convener has said: I would oppose *The Herald* buying *The Scotsman*, just as I oppose *The Scotsman* buying *The Herald*. I would like there to be more Scottish ownership of the media but, in the present circumstances, this debate illustrates why it would have been useful to have had the owners of the titles around to discuss what they thought their future should be in Scotland, rather than simply getting this letter from Mr Flanagan.

The Convener: Will we proceed on that basis and seek appropriate meetings with the First Minister, the Secretary of State for Scotland and Melanie Johnson?

Members *indicated agreement.*

Meeting closed at 15:43.

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