The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 21 January 2014

Session 4

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EDUCATION AND CULTURE COMMITTEE
3rd Meeting 2014, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Bibby (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
Clare Adamson (Central Scotland) (SNP)
*Jayne Baxter (Mid Scotland and Fife) (Lab)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Joan McAlpine (South Scotland) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Marco Biagi (Edinburgh Central) (SNP) (Committee Substitute)
Aileen Campbell (Minister for Children and Young People)
Mary Fee (West Scotland) (Lab)
Alex Johnstone (North East Scotland) (Con)
Mike MacKenzie (Highlands and Islands) (SNP)
Michael Russell (Cabinet Secretary for Education and Lifelong Learning)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 2

Scottish Parliament

Education and Culture Committee

Tuesday 21 January 2014

[The Convener *opened the meeting at 09:52*]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning and welcome to the third meeting in 2014 of the Education and Culture Committee. I remind everyone present to switch off mobile phones and other electronic devices because they affect the broadcasting system.

Today is the fourth and final day of stage 2 of the Children and Young People (Scotland) Bill. I welcome to the meeting Michael Russell, who is the Cabinet Secretary for Education and Lifelong Learning, and his accompanying officials. I remind the officials that they are not permitted to participate in the formal proceedings—I am sure that they are well aware of that fact.

Some additional members will be coming along this morning to move amendments and get involved in our discussions. Clare Adamson is absent, but has been replaced by her substitute Marco Biagi. I know that Mr Biagi has another appointment, but he will stay with us for as long as possible; I thank him for coming along this morning. The Minister for Children and Young People will join us after we have debated the amendments on school closures.

Section 68—Scotland's Adoption Register

The Convener: I start by calling amendment 380. As members know, the Presiding Officer has determined that rule 9.12.6(B) applies to this amendment. However, as no further amendments dealing with powers to charge fees have been lodged and as this is the final day of stage 2 consideration, we are able to dispose of amendment 380 according to normal marshalled order.

Amendment 380 moved—[Michael Russell]—and agreed to.

Section 68, as amended, agreed to.

After section 68

The Convener: Amendment 405, in the name of the cabinet secretary, is grouped with amendments 406, 407, 408, 408A, 409, 409A and 423.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Thank you very much, convener, and thank you for inviting me before the committee to discuss these amendments. Unfortunately, given the amendments that I will be covering, I will have to speak for a reasonable length of time, but I hope that the committee will bear with me.

Amendment 405 sets the scene for the substantive package of amendments on school closures that has been lodged in my name, by seeking to insert a new part into the bill and by making it clear that any references to "the 2010 act" in the part are to the Schools (Consultation) (Scotland) Act 2010.

I think that we are all familiar with the issues here. School closures are emotive and disruptive events for the children, parents and communities who are affected by them, and it is clear that the 2010 act has not been operating satisfactorily either for those who are affected or for education authorities. The commission on the delivery of rural education, which was jointly established by the Government and the Convention of Scottish Local Authorities, was charged with examining the 2010 act. Its report made a number of recommendations for change, all of which bar one were accepted by the Government. The amendments that we are debating today will implement many of those recommendations. I add that some of the recommendations do not require legislation.

The commission's remit was to consider rural education; amendment 408 applies to rural schools only. However, the other amendments in my name apply to all schools and will improve and strengthen consultation in every community.

Amendment 407 seeks to require an education authority to present information about the financial implications of a school closure proposal as part of its proposal paper for consultation. I think that we are all determined that educational benefit must continue to be the primary consideration in making the case for school closure proposals. However, requiring authorities to provide clear financial information to communities will ensure that there is a more informed debate about such proposals.

Amendment 408 seeks to make a number of changes to the process for rural school closures under the 2010 act by clarifying how an education authority should assess whether a rural school should close, and it will ensure that the 2010 act operates as Parliament originally intended. When the Scottish Parliament unanimously passed the 2010 act, it intended that the three rural factors in section 12 would operate as a presumption against closure of rural schools. It was expected that they would require local authorities to show that they had carefully considered and weighed up

the implications of proposed closures. However, following the judicial review that was brought by Comhairle nan Eilean Siar, it was clear that the provision in the act was not having the required impact. Clarity on the issue was recommended by the commission, was strongly supported in the Government's consultation and is what I now wish to deliver through amendment 408.

Amendment 408 seeks to set out the detailed careful consideration that an education authority is required to carry out before even proposing a rural school closure. Authorities will be subject to an additional requirement to identify any reasonable alternatives to closure, and to assess the likely educational benefits and effect on the rural community and on travel arrangements of any and each such alternative. The alternatives are to be set out in the consultation on the proposal and further alternatives may be proposed during the consultation. The authority is then to reassess the proposal and the alternatives following consultation and, if it chooses to proceed, to explain why, in the light of those assessments, it still considers that the closure proposal is the most appropriate response. I want to ensure that future consultations reach not just the letter but the spirit of what Parliament intended when it passed the 2010 act.

When I gave evidence to the committee in December, I explained that we were still considering the best way of ensuring that the presumption against closure was as clear as possible. Having given the matter careful consideration, we think that from a legal perspective it is clearer and safer to set out exactly what we expect authorities to have assessed and considered in formulating a closure proposal for a rural school, and to set out exactly what they must assess and explain when consulting on a closure proposal. We think that amendment 408 will ensure that authorities will not be able to proceed with a closure proposal unless there is a clear educational benefit in doing so, and unless there is no more appropriate means of addressing whatever problem a rural school is experiencing. In other words, if this clear test is not met, a closure proposal cannot be implemented.

We consider that revising, adding to and strengthening both the statutory assessment and consultation requirements that authorities are subject to is a better way of achieving the policy. We consider that to be clearer than simply referring to a presumption against closure in the 2010 act, which education authorities and the courts might, in any case, not find clear.

The additional and strengthened statutory processes in proposed new sections 12A and 13 of the 2010 act, which will be inserted by amendment 408, should secure the careful and comprehensive consideration that education authorities have to give any proposal to close a rural school, given their particularly important status and the long-term consequences of closure on both families and rural communities. I believe that that is what those communities want and that it is what they deserve.

Amendment 409 seeks to make a number of changes to the process for calling in and determining school closure proposals. It will require Her Majesty's Inspectorate of Education to provide advice that is requested by Scottish ministers in deciding whether to call in a closure proposal. Formalisation of that mechanism in legislation will add transparency to the process and ensure that ministers have access to educational advice when making their call-in decision.

10:00

Amendment 409 will require ministers, following call-in of a school closure proposal, to refer the proposal to a new public appointee—the convener of the school closure review panels. It also makes provision for the convener's appointment. It will be the responsibility of the convener to appoint individuals who will be eligible to be members of a panel, and to constitute panels on a case-by-case basis to determine on particular closure proposals once they are called in.

Establishing the school closure review panels to determine school closure proposals will improve transparency and remove allegations of political bias from the decision-making process. Although it has never been the case that ministers' decisions have been biased or influenced by political considerations, it is a perception that is often hard to refute, so it is better that in the future those decisions will be taken away from the political spotlight and be made at arm's length from ministers.

Amendment 409 also provides for the panels to be able to draw on advice from HMIE, as well as information from the education authority and any other person, just as ministers may obtain expert advice from HM Inspectorate of Education at the call-in stage.

The judgment in the case of Comhairle nan Eilean Siar v the Scottish ministers held that the 2010 act as written required ministers to consider the merits and the procedural aspects of an education authority's decision to implement a closure proposal. The commission also recommended that ministers should consider the merits of the decision as well as its procedural aspects. We have accepted that recommendation.

We have considered whether further clarification of the 2010 act is required. However, given that

the judgment from the inner house of the Court of Session is clear that the wording in section 17(2) of the 2010 act requires such consideration, we have concluded that, although it was not the original policy intention behind the provision, no amendment to section 17(2) is required. We have used the same formulation in proposed new sections 17B and 17C to make it clear that a school closure review panel will also be required to consider the merits and procedural aspects of an education authority's decision in determining whether to consent to or refuse a proposal once it has been called in. Had we chosen to amend the wording in the 2010 act, that might have been interpreted as meaning that the amended provision did not require a determination of merits and process. We therefore concluded that we should follow the wording in the 2010 act in relation to call-in.

Amendment 409 also sets out the options that a school closure review panel will have for determining a school closure proposal. The commission recommended an additional option of remitting the proposal back to a local authority for the authority to take the decision afresh, so amendment 409 will add that option to the decisions that are available to the school closure review panel. That respects the primacy of local decision making in a case where a flaw in a closure proposal process, for example, can be easily remedied, and is especially important given that amendment 406, which has been lodged by Liz Smith, and to which I will speak in more detail later, would mean that refusing consent would lead to a five-year restriction on repeating the closure proposal.

Finally, amendment 409 provides for a right of appeal against a panel decision to the sheriff court on a point of law only. That will achieve the right balance between providing a right of appeal and the need to ensure that decisions can be taken forward efficiently.

I believe that the extensive changes to the call-in and determination process that are contained in amendment 409 will significantly improve the transparency of the overall process, so that it has the full confidence of communities and education authorities.

I now turn, with relief, to the non-Government amendments.

I welcome amendment 406, which has been lodged by Liz Smith, and which I believe will significantly benefit communities that have been affected by a school closure proposal and give them a degree of certainty over their school's future. I agree that a five-year period sets the correct balance between providing assurance to a community and not unreasonably restricting an education authority's ability to manage its school estate.

Liz Smith's amendment 406 recognises that there will be exceptions to the moratorium during the five-year period; I agree that it is necessary to have limited flexibility in that area. Significant changes in a school's circumstances might include a school's roll declining dramatically, or the fabric of the building requiring significant unplanned investment. The Government proposes to set out in the revised statutory guidance for the 2010 act further advice on the types of appropriate exception.

I am glad that there is support across the political divide for amendment 406. That very much reflects the spirit in which the 2010 act came into being, and the unanimous support that Parliament gave in passing it. I believe that amendments 405 to 409 will benefit all those who are involved in and affected by school closures.

Amendment 408A, in the name of Liz Smith, would amend amendment 408 to alter the basis on which an education authority could decide to implement a rural school closure proposal. Instead of the authority being "satisfied", it would have to have "demonstrated" that closure was the best option.

I am sympathetic to that proposal, and I understand and respect the intention behind the amendment. I accept that Liz Smith and others have concerns about whether "satisfied" is the most appropriate term to use—it may not be. However, I do not believe that changing the wording of amendment 408 to include "has demonstrated" will deliver the clarity and improvements in the assessment and consultation process that both Liz Smith and I wish to be implemented.

I have concerns that the change that amendment 408A proposes would result in a lack of clarity. It is unclear to whom it would need to be demonstrated that closure would be the most appropriate response, and—crucially—such a requirement could inject into the process further uncertainty and delay for parents and young people. Furthermore, given how controversial closure proposals can be, it is unclear that an education authority would ever be able to satisfy that test fully. In addition, amendment 408, as drafted, maintains consistency with the rest of the 2010 act, which is desirable.

As I have explained, amendment 408 will require an education authority to carry out a more rigorous assessment in formulating a rural school closure proposal, and to consult in a more thorough and transparent way. Its complying with those requirements should mean that the authority will, in practice, demonstrate that its decision is the

most appropriate response based on the reasons for formulating the proposal. If it does not, and the decision is considered to be unreasonable, ministers may call in that decision for the panel to determine.

However, as I have indicated many times throughout the bill process, I am prepared to listen, in advance of stage 3, to suggestions to improve the provisions that relate to rural school closure proposals. The additional safeguards for rural schools that were originally included in the 2010 act followed a sustained campaign from communities that was supported by a number of MSPs and championed by Murdo Fraser. The campaign was an example of MSPs from a number of different political parties working together to deliver a common objective, which I hope we can do again.

I am happy to discuss with Liz Smith, and with others who have an interest in the issue, their concerns and the best way to deliver what we are all after: an improved assessment and consultation process. We need to step back and think through carefully the implications and consequences of any amendment, but we are clear, as legislators, that the proposal is what we want. If Liz Smith is prepared to undertake that process with those with whom she is involved, I am prepared to do so too, and to come back with an improved amendment at stage 3.

Liam McArthur will be disappointed that I am not going to be quite as positive in my comments on his amendment 409A. The Scottish ministers may issue a call-in notice for a school closure proposal only where it appears to them that the education authority "may"—I use that word advisedly, because it is in the legislation—have failed either to comply with the factors that are set out in sections 17(2)(a) and (b) and therefore failed significantly to comply with the requirements that are imposed on it by or under the 2010 act, in so far as they are relevant to the closure proposal, or to take proper account of a material consideration that is relevant to its decision to implement the proposal.

The crucial word in the 2010 act is "may". At that stage in the process, ministers have not decided that a failure has occurred. Issues might have been raised in representations to ministers, or in reviewing the documentation that is associated with the proposal, which suggest that the education authority "may" have failed to comply with the 2010 act and that ministers should call in the proposal.

However, in undertaking further investigation and evidence gathering following call-in, a school closure review panel could find that the authority has not failed in either of those respects and that the appropriate decision is to grant consent. That does not mean that the proposal should not have been called in. It is important that possible failures are investigated, and undertaking further investigation and making determinations on proposals that have been called in, in a manner that has the confidence of the affected community and the education authority, is the primary role of the school closure review panels.

Amendment 409 will require a panel to give reasons for its decision, which may in practice make it clear whether the panel considers that a call-in was required or not. Furthermore, it requires the convener of the panels to provide an annual report to the Scottish Parliament on its decisions. It will therefore be apparent if there are many—or any—school closure proposals that are called in but given unconditional consent by the panels.

Although I will listen to any cogent arguments that Liam McArthur makes, I do not think that amendment 409A is necessary; indeed, it may deflect a panel towards spending time looking backwards instead of considering the matters that are in front of it. Therefore—with some relief—I ask the committee to support amendments 405, 407, 408, 409 and 423 in my name, and amendment 406 in the name of Liz Smith. I do not support amendments 408A and 409A, although I am willing to work with Liz Smith to see whether we can find a way forward through amendments to improve the legislation.

I move amendment 405.

The Convener: I have been extremely generous with time because, given that we are inserting a completely new part into the bill, I feel that it is appropriate for members to have a full understanding of what the amendments refer to. I will be equally generous with other members who have amendments to this part of the bill, although I hope that their speeches will not be quite as lengthy.

I call Liz Smith to speak to amendment 406 and the other amendments in the group.

Liz Smith (Mid Scotland and Fife) (Con): I am afraid that my speech will be a little lengthy, but not quite as lengthy as the cabinet secretary's speech, I hope.

In the event of a school closure proposal being rejected, my amendment 406 would ensure that the decision would not be revisited for a period of five years. I have listened carefully to the debate about the appropriate length of time for a moratorium following the rejection of a school closure, and I am grateful to Councillor Douglas Chapman and his colleagues at COSLA for the letter that they wrote to the committee on 17 January—specifically paragraph 7—in which he set out his reasons for the rejection of the amendment.

I have considered Councillor Chapman's points carefully, especially his concern about the Scottish Government's decision not to implement the commission's recommendation 20. I have also considered how to balance educational benefit—to which the cabinet secretary referred, quite rightly, as the prime motive—with the challenges that local authorities face as they seek to rationalise their education services. It is not an easy issue, but I have come down on the side of favouring a five-year moratorium with some flexibility. I shall explain why.

A moratorium would prevent a multiple review from occurring over a short period of time, and it would give parents, pupils and teachers the necessary confidence to commit to the school and develop it beyond just the short term. Although it has been a rare occurrence, there have been instances of a school going through three or four closure proposals in under a decade. Such uncertainty benefits no one and can create a vicious circle whereby parents opt against sending their child to the school, which in turn calls into question its long-term viability.

A five-year moratorium would ensure that communities are not put through what Leslie Manson of the Association of Directors of Education in Scotland described as "a constant merry-go-round". Indeed, it might well encourage parents to send their children to rural schools safe in the knowledge that the school has a medium-term future and the opportunity to address any shortcomings.

A further upshot of the five-year period concerns the fact that any second proposal would therefore fall after council elections and, as such, would be considered by some fresh faces. That would ensure that the arguments were deliberated anew and that different voices would participate in the process.

Although there are arguments for having a three-year or seven-year moratorium, the need to provide the balance that we seek between safeguarding the school's immediate future and monitoring its progress has persuaded me to come down on the side of having a five-year moratorium.

I thank the cabinet secretary for his comments on amendment 408A. When our predecessor committee met on 30 September 2009, the then cabinet secretary Fiona Hyslop said:

"The intention of the bill is to create a robust, fair and transparent process that addresses such concerns."—[*Official Report*, *Education, Culture and Lifelong Learning Committee*; 30 September 2009; c 2770.]

That was very much the spirit of the bill at that time. Section 5 of the 2010 act was supposed to be absolutely watertight when it came to ensuring that the decision-making process is based on accurate and relevant information and that there is absolutely no scope for misinterpretation. That has turned out not to be the case, which is largely why we are here to amend the legislation.

In the interim period, we have been furnished with very detailed evidence from several key witnesses who have been able to demonstrate just how extensive has been the misuse of information and, in a few cases, the failure to present accurate information in decision making. That evidence included examples of situations in which information had been incomplete, other situations in which the information had been inaccurate and—perhaps worst of all—situations in which it was alleged that information had been withheld or misrepresented to suit a specific viewpoint.

The committee has been presented with very detailed evidence in the area. I will not go over it all again; suffice it to say that, whatever the reason for misinformation happens to be, it is completely unacceptable. It is important that, under the current bill, there is no scope for that practice in the future.

10:15

Amendment 408A is an attempt to ensure that any local authority has to demonstrate how it has arrived at its decision, rather than just being called on to claim that it is satisfied that it has met the correct criteria. Simply having one stakeholder saying that it is satisfied is absolutely no guarantee of that or of any appropriate, objectively drawn conclusions having been made.

It is my understanding that the cabinet secretary is sympathetic to the spirit of amendment 408A, but I understand what he has said: that it will be necessary to be more specific when it comes to demonstrating that a proposal is appropriate. I will take him up on his offer of meeting before stage 3, so that we can lodge a tighter amendment. The last thing that we want to do is to create any further confusion. I thank the cabinet secretary for his offer.

On the other amendments in the cabinet secretary's name and amendment 409A in Liam McArthur's name, I am grateful to the cabinet secretary for noting that the Scottish Conservatives have a long-standing interest in the issue, given the efforts by my colleague Murdo Fraser in 2007, when he made his own proposal for a member's bill. I thank the cabinet secretary for referring to that.

The cabinet secretary is absolutely correct when he says that the essential principles that ought to underpin all school closures, irrespective of whether they are rural or urban, must revolve around the maximum educational, economic and

social benefit that can be achieved. A completely level playing field must be provided; there must be full transparency when it comes to the actual decision-making process; and there needs to be an opportunity for engagement with and participation by the interested parties.

I believe that those principles have been at the basis of the deliberations on the issue since before 2010, but for one reason or another—mainly to do with the interpretation of language in the bill—it has not been possible for many of the recent decisions regarding school closure proposals to adhere to the principles.

The six areas of concern that were set out by the Sutherland commission are absolutely correct, and it is appropriate that we are examining each of them with regard to the amendments.

We had an interesting debate at committee about the concept of presumption: what it really means and whether it needs to be set in stone in the bill. It was pointed out by some witnesses that, if it was fully written into the bill, it would raise too many expectations among parents and that all schools would stay open even where that is not the correct decision. In one witness's words, that would set the bar too high.

Although I understand the logic behind that statement, I have been persuaded by other evidence that, in too many cases, the intended presumption against closure would in some circumstances be interpreted by local authorities as a presumption to close. I note what the cabinet secretary said in response to a question from Joan McAlpine at committee on 3 December 2013.

The ruling by the Court of Session clearly said that it is not sufficiently tight to rely on provisions involving matters "to have regard to" and that doing so had allowed misunderstanding and evasion. Anything that we can do to tighten up the provisions is crucial.

I will support the Government's amendments in this area. Although I understand the spirit with which Mr McArthur presents his amendment 409A, I accept what the cabinet secretary has said about the wording, so I am interested to hear what Mr McArthur has to say.

Liam McArthur (Orkney Islands) (LD): Like the cabinet secretary and Liz Smith, I apologise at the start for the length of my comments, convener, although I hope that you are reassured that we will witness an increasing level of brevity, in accordance with Liz Smith's comments.

As ever, I need to declare an interest in this issue, as the father of a son at a primary school that was identified for closure prior to the last local council elections. From that experience, I am all too well aware of the impact that even the prospect of school closure can have on pupils, staff, parents and the wider rural community.

Fortunately, two of the proposed school closures in Orkney appear to have been shelved, but it is fair to say that people in Stenness and Burray remain apprehensive. That threat brought both communities closer together, although the experience was difficult for all those involved. I accept that it was also difficult for those on the council who were involved in the proposals.

All of that might be predictable, but I did not anticipate the effect that the situation had on some of the pupils involved. Listening to my youngest son, it was clear that he, along with some or perhaps all of his peers, felt somehow responsible for what was happening. That was despite the reassurances and support that were given by us as parents, by the teachers, by support staff and by others. I confess that I found that almost the most difficult aspect of the whole experience to deal with.

I do not underestimate the importance of the amendments to this part of the bill, including Liz Smith's amendment 406, which seeks to limit the speed with which any closure proposal affecting a particular school could be initiated—save in exceptional circumstances, as articulated by Mr Russell. However, we passed the previous act only in 2010 and, if that experience tells us anything, it is that we should take great care not to raise expectations unduly about what we are trying to do or what the bill will be able to do.

I am in absolutely no doubt that responsibility for the decisions should continue to rest with local authorities and not with ministers or panels of experts, however esteemed or independent they are. We can undoubtedly assist in that task and help to ensure that decisions are taken on the best possible evidence and are subject only to tightly defined and clearly understood criteria, but ultimately government at all levels is about making choices and taking decisions even—or indeed particularly—when they are difficult. To pretend otherwise may offer short-term respite, but the longer-term consequences can invariably prove more serious and damaging.

I turn to the amendments in the group. I broadly support the proposed changes, which, as the cabinet secretary said, largely reflect the conclusions of the Sutherland commission. That said, I recognise the disappointment that some commission members and many in local government feel about the Scottish Government's refusal to accept recommendation 20. It seems to me that this is likely to be the area on which the most controversy will continue to be focused and where decisions will be challenged in future. However, it was not clear to me—like, I think, Liz Smith and the minister—that adopting

recommendation 20 and diluting the educational benefit threshold that has to be met would avoid those challenges.

I welcome the efforts to support councils in the earlier stages as well as to improve the basis on which proposals come forward and are then consulted on. I certainly hope that amendments 407 and 408 reduce the number of cases that are subsequently challenged, although it is not entirely clear how Education Scotland will be able to manage the potential conflicts of interest in its different roles, as was indicated through evidence early in the process. The Chinese walls that are needed here may well be visible from space.

Mr Russell's amendment 409 proposes changes to call-in procedures and introduces the idea of a review panel. He recalled in his earlier remarks our exchanges during stage 1 evidence and my concerns about ministers retaining the power to call in council decisions but leaving examination and determination to an independent panel of experts. I accept—and Mr Russell has confirmed—that I am not going to persuade him to change his mind, but he will appreciate my concern that that leaves ministers free to play to the gallery in calling in controversial decisions without having to worry about actually determining whether they were justified.

In order to address that issue, my amendment 409A seeks to introduce an option for the panel also to pass judgment on the validity of the call-in by the minister. That option would be exercised only when the panel felt that the council was justified in its original decision to close, but it—or at least a variant of it—could act as a useful check on ministers simply calling in decisions because it is politically expedient to do so. Even the perception of that, as the minister acknowledged, is damaging and has given rise in the past to accusations of political bias.

Like the cabinet secretary, I understand the motivation behind Liz Smith's amendment 408A, but I have concerns about the practicalities of the provision. At the end of the day, it may be impossible to demonstrate to the satisfaction of those who oppose a proposed closure the benefits to be had, in which case such wording is likely only to raise expectations unfairly, prolong conflict or indeed both. I know that we are all keen to avoid that.

In conclusion, I acknowledge the importance of the improvements that we are seeking to introduce in this part of the bill. I am disappointed by the cabinet secretary's failure to accept my amendment in the group, although at this stage it hardly comes as a surprise. I accept that improvements are being introduced to the bill through amendment 409 but, without some safeguard of the kind that I seek to introduce through my amendment 409A, I have reservations about how they will be implemented. I therefore reserve the right to bring my amendment or a variant of it back at stage 3. However, I welcome the comments that the cabinet secretary made to clarify his position.

The Convener: A number of members wish to contribute to the debate on this group. I begin by calling Neil Bibby.

Neil Bibby (West Scotland) (Lab): I have a number of concerns about amendment 408, and I note COSLA's concerns about the exclusion from the bill of provisions to implement recommendation 20 in the COSLA and Scottish Government commission report. That recommendation states:

"It should be acceptable for an Educational Benefits Statement to conclude that the educational impact is neutral, with no overall educational detriment to the children directly concerned."

Councillor Douglas Chapman from COSLA has since written to the committee:

"By not implementing recommendation 20 the Government has altered the balance brought in by the Commission, and we are now concerned it will be actually far harder for local authorities to take necessary decisions on the school estate."

He says that he has written to the cabinet secretary to express concern that

"This is the impact that amended legislation could have on improving educational outcomes",

and he also raises COSLA members' concerns

"that the proposals to amend the 2010 Act do not ... embrace all that the Commission was trying to achieve and because of this local government's job will be made all the harder."

In discussing these amendments, we need to take note of such very serious concerns and, indeed, the valuable points that have been raised about amendment 408.

In addition, I am concerned about the unnecessary burden that the required steps, particularly those to be taken before any school closure proposals are made, could place on local authorities. For example, if there is a school with zero pupils in an area where the population is not likely to increase, there is little point in looking at alternatives. We do not want schools with no children to be mothballed. There is also the obvious question about why the community benefits and transport opportunities should apply only to rural schools and not to all.

I also have a number of concerns about the proposal in amendment 409, the first of which is, as Liam McArthur has already mentioned, the abdication of ministerial and Government responsibility. Although the panel will be appointed

by ministers, it will have a fair degree of autonomy and the amendment says little about the criteria for appointing the convener, who will select the panel members. That appears to be an attempt to divert responsibility for making unpopular decisions to the panel, and it is also unclear who the panel will be accountable to.

As has been suggested, the panel will be another quango from a Government that said that it would cut the number of quangos. Given the Scottish Government's statement that the panel will have whatever staff and resources are needed, its creation is likely to increase expenditure. As a result, it would be helpful to find out whether the Scottish Government has set any cost limit for establishing the panel. For all those reasons, I cannot support amendment 409.

I very much agree with amendment 409A, in the name of Liam McArthur, which would ensure that, if a minister called in a closure proposal but the panel found in favour of the authority, the panel would have to say in its response that the proposal should not have been called in.

Amendment 406, in the name of Liz Smith, seeks to ensure that local authorities cannot make any new proposals for five years. I believe that such a measure has the potential to be too restrictive and that the period should be reduced from five years to three. The five-year period is likely to end outwith the period of an administration given that it is unlikely to consult and get a decision on any new proposals on day 1 of its period in office.

Amendment 407 in the name of Mike Russell, which relates to the financial impact of closures, appears to allow the Scottish Government to show that certain proposals by councils are being used to save money. However, on the flip-side, local authorities might be able to show that money is being better spent and, on that basis, I am comfortable with the amendment.

Finally, amendment 408A in the name of Liz Smith seeks to place on local authorities an additional burden of demonstration. I do not believe that such a measure is necessary because, if an authority had met the preliminary requirements, it would in effect have demonstrated that closure is the most appropriate course of action. I am therefore not convinced by the proposal.

At present, I will abstain on amendment 408 and oppose amendments 406, 408A and 409.

10:30

Colin Beattie (Midlothian North and Musselburgh) (SNP): Having experienced the closure of no less than six rural schools in Midlothian, I obviously have a big interest in this proposed new section.

I welcome the cabinet secretary's amendments, which seek to extend the consistency that the Government has put in place in order to improve transparency and public confidence in the school closure process. We should keep in mind that, back in June, the cabinet secretary confirmed that educational benefit would remain a key consideration of the school closure decision-making process. As such, I very much welcome this package of amendments.

On amendment 406 in the name of Liz Smith, I must say that when I saw the reference to five years I thought that it was quite a long time. Neil Bibby has made one or two relevant comments but, considering the responses to the consultation, which overwhelmingly support the five-year moratorium, I am persuaded that it is right to support the amendment.

With regard to amendment 408A, I do not actually think that such a change is necessary. It is the education authority's responsibility to be satisfied with compliance and the implementation of the proposal as the most appropriate response to the reasons for the formulation of the proposal. That should really remain with the education authority; indeed, I think that there would be a lot of opposition from local authorities to the proposed move.

On amendment 409A, amendment 409 already requires a panel to give reasons for its decision, and I presume that its explanation will make it clear whether it thought that the call-in was required. Moreover, the convener of the school closure review panel will send an annual report to Parliament on the decisions that have been taken during the year, which means that any information about the number of school closure proposals that have been called in and the cases in which consent has been granted will be readily available. As a result, I do not really see the purpose of amendment 409A.

Mike MacKenzie (Highlands and Islands) (SNP): I am grateful for the opportunity to speak in favour of amendment 408. Indeed, I felt it important to do so, given the real difficulty that the issue of school closures has caused across the Highlands and Islands. I also make it clear that I am sympathetic to the spirit of what Liz Smith is attempting to achieve in amendment 408A.

The issue causes difficulty not only for councils, council members, parents, children and communities but, as we have seen, for the courts. For the sake of all concerned, the Parliament needs to take this opportunity to clarify matters. Although the spirit and intention of the 2010 act seem very clear, in practice, the legislation does

not seem to have been clearly understood and, for the sake of all those I have already mentioned, we need to take this opportunity to make it clearer.

I was disappointed that when Argyll and Bute Council gave evidence to the committee it did not enter into the spirit of candour that characterises the interaction of most agencies and individuals with this Parliament. The committee and the Parliament should have the benefit of learning from the experience of the proposed Argyll and Bute school closures in 2010, because the experience of the parents and communities affected by the proposals differs greatly from the version that the council presented. For example, the community on the island of Luing very quickly showed that the closure of their school would result in pupils having to take a very much longer journey than the guidelines suggested. Moreover, the journey to the next nearest school involved a ferry journey that is often subject to cancellation or delay because of bad weather. As a result, that school was taken off the list of proposed closures, which was very quickly reduced to 25, but similar inaccuracies were found in the proposals for a high number of the other schools.

Parents were aghast to discover that the council that they trusted with the education of their children could be so casual about the closure proposals. They were shocked, too, to discover so many mistakes. Instead of admitting its mistakes, the council clung tenaciously to the proposals and, inevitably and understandably, trust then began to break down.

Thanks to the good offices of the Scottish rural schools network and the expertise of Sandy Longmuir, from whom the committee has heard, and to the parents' own diligence in scrutinising the proposals and acquiring their own expertise, the proposals were revealed as increasingly incompetent. Local council members were also disappointed that the information that they had accepted from officers proved to be so untrustworthy. The final straw came when Sandy Longmuir was able to prove conclusively that, far from saving the council money, many of the proposals would cost money.

The statistics show that our small rural schools substantially outperform the average school. They are the jewels in the crown of our education system and if they can be saved they should be. They are at the very foundations of sustainable rural communities, as parents, quite rightly, place a high value on the quality of education.

Argyll and Bute is one of the few areas in Scotland with a declining population. People are voting with their feet and rejecting the dead hand of Argyll and Bute Council. Parliament must take into account the worst of councils as well as the best of them. I therefore urge the committee to support amendment 408 and the other amendments in the name of the cabinet secretary.

The Convener: Before I call the cabinet secretary, I have one or two comments to make on the amendments.

I support the amendments in the name of the cabinet secretary. Given what has occurred since the 2010 act came into being, it is clear that a relatively quick resolution is required, so I very much welcome the changes that have been proposed in the cabinet secretary's amendments.

I turn to the amendments in the names of Opposition members. I too am interested in amendment 406, in the name of Liz Smith, and in the five-year period that was chosen—not because I thought that it was too long, but because I wondered whether seven years was a more appropriate period, as that is the length of an individual pupil's primary schooling. However, I accept that a period of five years probably strikes the right balance in the circumstances that Liz Smith outlined.

I do not believe that five years is too short a period. If we had a period of three years, we would effectively have a perpetual round of closure proposals—we would never escape from that cycle. If that were the case, as outlined by Liz Smith, parents would effectively vote with their feet and schools would close by default, rather than be closed by intent. That shows that three years would be too short a period.

I welcome the discussion and agreement between the cabinet secretary and Liz Smith on amendment 408A. We must have absolute clarity in that area, as we do not want to have to come back in a short time to go over the issue again.

Finally, I cannot support amendment 409A, in the name of Liam McArthur, not because it is in the name of Liam McArthur, as he may be beginning to suspect, but because I do not believe that any cabinet secretary or minister can call in such a decision on a whim. That is not the basis on which such things are done. There is a process that has to be undertaken and it can be difficult to persuade a minister to call in a decision by a council. Having gone through some of the process myself, I think that it is important that there is the right balance and a separation of powers in that area, and I do not think that amendment 409A strikes at the reality of the situation regarding the decision that a minister—whether this cabinet secretary or any future cabinet secretary—would make. There is a process to be undertaken, and I am sure that ministers follow it diligently and have due regard to it and to the rules that are in place. Therefore, I cannot support amendment 409A.

I call the cabinet secretary to wind up.

Michael Russell: Thank you, convener, and thank you for the discussion that has taken place.

I will start with Mr McArthur's amendment 409A. I understand the point that he is making and the fact that ministers might be more reluctant to call in proposals if they feel that they will be publicly criticised for so doing. However, when we look at the list of proposals that have been called in and at the suggestion—the intention—that in future the list should be even shorter, given the involvement of Education Scotland, we can see that amendment 409A is unnecessary. Mr McArthur should be reassured to know that a panel could undertake the actions that we are talking about without the need for any specific legislation. There is to be an annual report, and I would expect that an independent convener would want to say if they felt that ministers were abusing the legislation in any way.

Mr McArthur's intention is probably a good one but adding what he proposes to the bill is unnecessary. If his proposal was enshrined in legislation, local authorities might be encouraged to focus solely on trying to get the panel to justify why there should not have been a call-in. We have a better situation in the bill, so, reluctantly, I do not support his amendment.

Liam McArthur: Will the cabinet secretary take an intervention?

Michael Russell: Absolutely.

Liam McArthur: I am grateful that the cabinet secretary accepts at least the principle that lies behind what I am seeking to achieve with amendment 409A. He has just implied what the response of local authorities might be. Does he accept that that is no different from my suggestion that we might need to guard against even the perception that the minister might take a certain approach to calling in particular proposals? Does he accept that that would be better dealt with on the face of the bill rather than our simply making an assumption that it will happen as a matter of course?

Michael Russell: No—I disagree. The matter will be best dealt with if we have robust legislation that is entirely clear, and we are trying to improve the 2010 act in this process. Once we have the legislation in place, the issue will be well dealt with if all those involved forbear from attacking ministers for being politically partisan when they make these decisions and instead look at the facts of the case. Those two things together will assist.

I have in front of me the number of school closure proposals that have been called in. The final outcome was that six cases received unconditional consent, which is 7 per cent of the total. It is therefore possible that, in 7 per cent of cases, that might have been the panel's judgment. The issue is around the use of the word "may"—a small number of cases might have been subject to comment, and the panel would be free to comment. It is interesting to note that there was conditional consent in 24 per cent of the total number of schools that were prepared for closure. That meant that there were issues that were clarified and assisted by the process, which is a vital point. Only in 10 per cent of cases was consent refused.

I understand the points that Mike MacKenzie makes. I lived through the experience of the school closure proposals in Argyll and Bute not once but twice, because I was involved in an earlier round of school closures—I declare an interest, in that my wife was the headteacher of a school that was closed.

The process is damaging for everyone involved, and Mr McArthur was quite right to say that pupils and staff often blame themselves for the process that they are going through. As Liz Smith has said on a number of occasions, we must have a fair and transparent process. That objective is not assisted if the information in the process is regarded as being unfair, not comprehensive and—as has often happened—impossible to understand. I regret that the information that the committee was given, in the opinion of many people in Argyll and Bute, did not conform to the facts of the chronology of the process. That was regrettable—the council might still want to consider that point.

I turn to the points made by Mr Bibby. If the school has no pupils, the local authority will have to consider alternatives only when there are alternatives. I have never argued that all schools should remain open. There are schools that close because they have no pupils, so that issue is a red herring.

Mr Bibby's position is logically inconsistent. Having attacked me for refusing to accept one out of 37 recommendations—the only one that was not unanimously agreed by the commission—Mr Bibby announced at the end of his comments that he is going to reject more than that in his approach to my amendments. He is therefore taking a position that is even less consistent than that taken by COSLA and is motivated more by the Bain principle than by anything else.

Neil Bibby: Will the cabinet secretary take an intervention?

Michael Russell: Of course.

Neil Bibby: It is not just me who has raised concerns about the altering of the balance of the legislation—Councillor Douglas Chapman has done that, too, on behalf of COSLA.

10:45

Michael Russell: I heard Mr Bibby the first time that he mentioned that. My point remains. I disagree with COSLA on the issue. I have done so openly and have had a discussion with COSLA. I disagree because I believe, as we should all believe, that educational benefit is paramount in all educational decisions. We have had that disagreement, which is on one out of 37 recommendations—the only one on which there was a minority report. I repeat that Mr Bibby's position will be to oppose more of the recommendations than that. Therefore, if I am altering the balance of the measures, Mr Bibby is undermining them in an even greater way. That speaks volumes about the fact that his approach is motivated by the Bain principle rather than by anything else.

I think that my amendments are valuable contributions, not because I am proposing them but because the commission on the delivery of rural education proposed them and had strong views on what should change. In those circumstances, the amendments will be welcomed right across Scotland. There are differences of opinion. COSLA objects to the idea of a five-year moratorium. Again and again, I hear those who are involved in the process and who have saved a school say, "Please, don't let them come again for us too quickly." People recognise that times change, but they do not want to go through the process again and again. I believe that the five-year proposal is sensible.

On Liz Smith's amendment 408A, I repeat the undertaking to work with her and others to ensure that we get the approach absolutely correct. I hope that, at stage 3, we can find a way in which she can lodge an amendment that will achieve the effect that she and others wish for.

The changes to call-in and the determination process in amendment 409 are important. It is right to take ministers out of the final decision. Mr Bibby lambasted me for giving up that right, but he and his colleagues usually lambast me for exercising my rights as a minister—there really is no winning in these matters. However, I think that it is absolutely right to ensure that there is another set of voices in the process, so that we can return to the intention of the 2010 act, which was to have a level playing field and transparency and to ensure that people are treated fairly. We are taking a further step towards that, difficult as it has been.

I encourage members not to sit on the sidelines or to undermine the commission, as Mr Bibby proposes to do, but to support my amendments and ensure that we take the issue forward.

Amendment 405 agreed to.

Amendment 406 moved—[Liz Smith].

The Convener: The question is, that amendment 406 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 406 agreed to.

Amendment 407 moved—[Michael Russell]—and agreed to.

Amendment 408 moved—[Michael Russell].

The Convener: I ask Liz Smith to move or not move amendment 408A.

Liz Smith: I will not move it, on the basis of the strict understanding that the cabinet secretary will engage prior to stage 3 and that we can put in motion an amendment that prevents the type of incidents to which Mr MacKenzie referred. Information has been misinterpreted in other councils, too.

Amendment 408A not moved.

The Convener: The question is, that amendment 408 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 408 agreed to.

Amendment 409 moved—[Michael Russell].

The Convener: I ask Liam McArthur to move or not move amendment 409A.

Liam McArthur: With less hope and expectation than Liz Smith, I will not move the amendment and will return to the issue at stage 3.

Amendment 409A not moved.

The Convener: The question is, that amendment 409 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 409 agreed to.

The Convener: I call a short suspension to allow a change of minister.

10:51

Meeting suspended.

10:53

On resuming—

Before section 69

The Convener: I welcome the Minister for Children and Young People.

Amendment 410, in the name of the minister, is grouped with amendments 411 to 418 and 432.

The Minister for Children and Young People (Aileen Campbell): The Children's Hearings (Scotland) Act 2011 places an obligation on safeguarders who are appointed under the act to produce a report for a children's hearing. In certain circumstances, it is extremely difficult for a safeguarder to carry out their investigations and produce a detailed report for the hearing because of the time limits for certain hearings proceedings. The standard time for producing a safeguarder report is 35 days, but some hearings take place after as few as two working days. Amendment 410 will remove the duty on safeguarders to produce reports in those limited circumstances, as no meaningful report can be produced.

Amendment 411 is a technical amendment to ensure that, where a child protection order is made under the 2011 act, the period within which the eighth-working-day hearing is to take place begins on the eighth working day after the making or implementation of the order, as was the case under the Children (Scotland) Act 1995.

Amendment 412 gives power to a pre-hearing panel to determine whether a person who had previously been deemed to be a relevant person in relation to a child should not continue to be deemed a relevant person. The pre-hearing panel would have power to make such a determination if the person did not have and had not recently had a significant involvement in the upbringing of the child.

A pre-hearing panel has power to deem a person to be a relevant person in relation to a child, so we consider it appropriate that it should also have power to undeem a relevant person. Part of amendment 432 provides that a person undeemed by a pre-hearing panel may appeal against that decision and part of amendment 426, which is part of a later group, ensures that children's legal aid is available for such an appeal.

Amendment 414 addresses the situation in which a child does not attend a grounds hearing for unforeseen reasons but in which the child's circumstances are such that it is necessary as a matter of urgency for that hearing to put in place measures to protect the child. The amendment would give the grounds hearing power to make an interim compulsory supervision order where the hearing considers that the nature of the child's circumstances is such that an ICSO is necessary as a matter of urgency for the protection, treatment, guidance or control of the child. That would allow the hearing to be assured that appropriate supervision was in place to protect the child for an interim period until a subsequent grounds hearing could be held.

Amendment 413 is a technical, clarifying amendment to ensure that a children's hearing is able to address all the issues that may merit compulsory supervision. Situations can arise where the child or relevant person indicates to the hearing that grounds are accepted but certain facts—perhaps significant facts—are not. The hearing should not be impeded by limited acceptance of certain facts, especially where it considers it appropriate to be able to send the disputed matters to the sheriff for determination.

The policy intention is that children's hearings should be able to address all the issues in a child's life that may merit compulsory supervision. Amendment 413 obliges the chair of the hearing to check understanding and acceptance of each fact and, on that basis, enables the hearing to decide whether to proceed only on the basis of the accepted facts alone or to send the matter to the sheriff for determination.

Amendment 415 simplifies the basis on which the timeframes can be calculated for interim compulsory supervision orders that the principal reporter seeks from the sheriff. The previous provision made it difficult for the reporter to align the expiry of ICSOs with a timely and appropriate application to the sheriff. To comply with the statutory timescales, children and families were being called into ICSO review hearings to renew an interim order for a matter of days before returning to the sheriff for the same case. That process was not child centred.

Amendment 415 enables the reporter to make an application at a suitable point before the expiry of the third ICSO. It keeps ICSO decisions in the hands of the tribunal, limits the number of successive ICSOs applying to the child, simplifies hearings administration and still prevents the sheriff from becoming involved at an unduly early stage in the process.

Amendments 416 to 418 are technical amendments to aid interpretation of the bill.

I ask the committee to support all the amendments in this group.

I move amendment 410.

Amendment 410 agreed to.

Amendments 411 to 415 moved—[Aileen Campbell]—and agreed to.

Section 69—Area support teams: establishment

Amendment 416 moved—[Aileen Campbell]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Area support teams: administrative support by local authorities

Amendment 417 moved—[Aileen Campbell]—and agreed to.

Section 70, as amended, agreed to.

After section 70

Amendment 418 moved—[Aileen Campbell]—and agreed to.

Section 71—Appeal against detention of child in secure accommodation

The Convener: Amendment 419, in the name of the minister, is grouped with amendments 420 and 430.

Aileen Campbell: Amendments 419 and 420 bring the appeal process created by section 44A of the Criminal Procedure (Scotland) Act 1995, as inserted by section 71 of the bill, in relation to situations where a child has been placed in secure accommodation following the making of an order by a sheriff under section 44 of that act, into line with the relevant parts of the appeal process set out in the Children's Hearings (Scotland) Act 2011 and subordinate legislation made under that act.

11:00

Amendment 419 provides that an appeal under the new section 44A may be made jointly by the child and one or more relevant persons or by two or more relevant persons and that the appeal must not be held in open court.

Amendment 420 provides that a relevant person in relation to a section 44A appeal is a relevant person for the purpose of the 2011 act and includes a person who has been deemed to be a relevant person.

Amendment 430 is a minor technical amendment to correct a small error in an amendment made by the recent section 104 order in consequence of the Children's Hearings (Scotland) Act 2011. It clarifies that each reference to the 2000 act in the definition of secure accommodation in section 44(11) of the Criminal Procedure (Scotland) Act 1995, as amended by the section 104 order, is to the Care Standards Act 2000.

I ask that the committee supports amendments 419, 420 and 430 in my name.

I move amendment 419.

Amendment 419 agreed to.

Amendment 420 moved—[Aileen Campbell]—and agreed to.

Section 71, as amended, agreed to.

After section 71

The Convener: Amendment 421, in the name of the minister, is in a group on its own.

Aileen Campbell: Amendment 421 adds new section 28LA to the Legal Aid (Scotland) Act 1986, which will allow Scottish ministers to make regulations extending the availability of children's legal aid for court proceedings under that act. This addresses concerns that were raised by stakeholders during consultation on the draft Children's Legal Assistance (Scotland) Regulations 2013 about when children's legal aid can and cannot be extended under the existing powers and ensures that children's legal aid can be made available to more people in the future where that is appropriate.

It is important that children's legal aid can be made available to those individuals who need it for proceedings under the Children's Hearings

(Scotland) Act 2011. Most commonly, applicants for children's legal aid will be children and relevant persons as described by the 2011 act. Discussion with stakeholders has shown that children's legal aid may also need to be made available to other people, including for court proceedings. That requires flexibility to lay regulations to make legal aid available where further discussion shows that that should be the case.

Similarly, the eligibility tests for making legal aid generally available must be equitable and consistent. Children's legal aid is no different. Where the circumstances are the same, the same tests should apply.

The amendment achieves both those aims: it allows flexibility to make children's legal aid more widely available where that is appropriate; and it does so in a way that is consistent with existing children's legal aid provisions. I therefore ask committee members to support the amendment.

I move amendment 421.

Liam McArthur: I am very supportive of amendment 421. In the context of the financial memorandum, has any calculation been made about the impact that these provisions would have on the overall legal aid budget, particularly in the light of what we all understand are quite serious pressures on the budget already?

Aileen Campbell: I take on board the points that Liam McArthur makes. There will be a supplementary financial memorandum to accompany some of the changes that have been made as a result of the amendments that have been agreed to, not just in this regard but in other areas, too.

Amendment 421 agreed to.

The Convener: Amendment 422, in the name of the minister, is grouped with amendment 431.

Aileen Campbell: Amendment 422 seeks to remove outdated restrictions linked to the participation of children under the age of 14 in performances by repealing section 38 of the Children and Young Persons Act 1963.

Amendment 431 is a minor repeal in consequence of amendment 422.

You will be aware that I wrote to the committee on 13 January setting out the background to the proposals in this area. The arrangements for licensing children to participate in performances, whether on stage or on screen, are of long standing and are in need of modernisation.

The vast majority of the changes that we need to make can be delivered through revised secondary legislation, and we will shortly publish a consultation paper that sets out what that should look like. However, in December it became clear that Scotland could be negatively impacted by changes that are proposed by way of amendment to the UK Government's Children and Families Bill, which is before the House of Lords. An amendment to that bill will remove restrictions that limit the types of performance in which children under 14 can be involved across England and Wales, by repealing section 38 of the Children and Young Persons Act 1963. Scotland could be placed at a disadvantage, in terms of opportunities for our young people and for our creative industries if a similar change is not pursued here.

Of course, our young people's wellbeing must always be our primary consideration. We would not propose the removal of the rule if we were concerned that doing so could result in children being placed at risk. However, the rule seems arbitrary and unnecessary, given the broader licensing arrangements for all children below school-leaving age. All licensing decisions that are taken by a local authority should be based on a thorough assessment of a child's circumstances and not simply on the child's age. Indeed, that is the child-centred approach that we should be taking to all decisions that impact on our young people.

It is unfortunate that the timing of the amendment to the UK bill has left us little scope for consultation on the proposed change. However, throughout December we sought views from a number of key organisations, including the Scottish Youth Theatre, Barnardo's Scotland, Glasgow City Council, BBC Scotland and the Office of Communications, all of which supported the removal of the under-14 rule. My officials have written to COSLA on the matter, and no concerns have been raised.

I hope that the committee, having taken what I said into account, is satisfied as to the merits of making the change and I encourage members to support amendments 422 and 431, in my name.

I move amendment 422.

The Convener: For clarity and for my own interest, can you reassure the committee that amendment 422 will in no way affect the protection of children? It is clear that the rule was put in place some time ago, for good reasons, and I want to be reassured that if section 38 of the Children and Young Persons Act 1963 is repealed, children and young people who take part in artistic performances will still be properly protected.

Aileen Campbell: The approach will in no way affect a child's wellbeing, which is paramount not only in relation to amendment 422 but throughout the bill. We have taken views, not just from stakeholders who have an interest in performance but from Barnardo's, and COSLA did not raise issues. We will be able to continue to look at the

issue through the consultation and engagement that will be required for the secondary legislation.

Amendment 422 agreed to.

The Convener: Amendment 433, in the name of Alex Johnstone, is in a group on its own.

Alex Johnstone (North East Scotland) (Con): Members will instantly recognise amendment 433 as a blunt instrument; they will be equally unsurprised that this is my weapon of choice. I have lodged the amendment in the context of the Marriage and Civil Partnership (Scotland) Bill, with a view to ensuring that children are educated in line with their parents' wishes. The amendment would apply to sex education across the board, but it is the introduction of same-sex marriage that makes it necessary at this time.

There is no doubt that the Marriage and Civil Partnership (Scotland) Bill is controversial. Therefore, it is of paramount importance that the rights of parents in relation to what their children are taught are fully protected. It is correct, of course, that children are taught the law of the land, regardless of whether they or their parents or teachers agree with it. That is not in dispute. However, that is different from lessons that endorse or promote a particular lifestyle to which many parents might have a sincere moral objection, such as same-sex marriage.

The Scottish Government appears to concede the need for safeguards in the area. It did so in July 2012 when it promised that, through consultation, it would

"consider any additional measures that may be required to guarantee freedom of speech and religion in specific circumstances, including education."

Therefore, it is unfortunate that the bill neglects the area.

The Scottish Government's approach is to rely on guidance, but in the eyes of many people guidance is insufficient. Many parents, because of religious or other convictions, will not want their children to learn about same-sex marriage before they reach a certain age, fearing that they will find it confusing. Some parents might be concerned that teaching on the subject will not be balanced or will not respect their convictions on the matter.

The danger, if the right of withdrawal is not strengthened and placed on a statutory footing, is that parents' deeply held beliefs will be undermined by their inability to have their children educated in accordance with their convictions, as is their right under article 2 of protocol 1 to the European convention on human rights, which people fear might be infringed. I would like to hear the minister's views on whether there is a problem and how she has satisfied herself that the Children and Young People (Scotland) Bill satisfies the undertaking that was given in 2012.

I am aware that there is more than one option for dealing with the circumstances. Other suggested routes might yet be explored. I look forward to hearing what the minister has to say, so that I can decide how to proceed.

I move amendment 433.

Neil Bibby: The amendment raises a difficult question of competing rights. A child has a right to education about his or her health. The number of teenage pregnancies and sexually transmitted diseases is rising in some areas. It would be difficult to tell a 15-year-old who is capable of making their own decisions and who might well be sexually active—we do not know—that they cannot attend sex education classes and that doing so would not be in their best interests.

However, as Alex Johnstone said, there is a right to private family beliefs and a right to raise a child in a religious family with certain views. The decision is about whether withdrawal from sex education is in a child's best interests. I do not believe that that would in all probability be in a child's best interests, so I do not support Alex Johnstone's amendment 433.

Liam McArthur: The Government is consulting on legislation to license airguns. I have misgivings about aspects of that, but perhaps we should look at licensing blunt weapons, given Alex Johnstone's performance this morning. I understand the background to the concerns that he has raised and the motivation for the amendment, but I see sex education as an important part of equipping our children and young people with the knowledge that they need to make safe, sensible and informed decisions about issues that can have a dramatic impact on their lives.

There is no dispute that the development of such education and even aspects of its content should be discussed between on the one hand schools and on the other hand children and young people and their parents or guardians. That can provide helpful reassurance and address the fairly legitimate point that Alex Johnstone raised about ensuring that materials are age appropriate.

However, sex education is a fundamental part of ensuring that our children and young people are equipped and empowered to deal with the challenges that life throws up, and the safeguards that Alex Johnstone wants are covered in guidance. In its briefing, Barnardo's Scotland points out that paragraph 13 of Scottish Executive circular 2/2001 says:

"While it is a nationally accepted part of the existing and agreed curricular framework for Scottish schools and of pupils' educational entitlement, there is no statutory

requirement for participation in a programme of sex education. Schools and authorities must therefore be sensitive to the rare cases in which a parent or carer may wish to withdraw a child from all or part of a planned sex education programme."

I understand what Mr Johnstone seeks to do and the further assurances that he seeks, but amendment 433 is unnecessary and would not help to do what we all seek to do through the bill, which is to underscore the rights of children and young people.

Liz Smith: I understand exactly where Mr Johnstone is coming from. Irrespective of people's views, it is important that the Government appreciates the concern that the existing legislation—whether it is considered by this committee or any other committee—is not sufficiently tight. I understand why Mr Johnstone lodged amendment 433.

However, I am concerned that the amendment would not necessarily articulate with some current legislation. I worry that if it was taken in its full context, the system would become bureaucratic and it would be difficult to spell out exactly what sex education consists of. On that basis, I will abstain.

11:15

George Adam (Paisley) (SNP): It is good to see that Mr Johnstone is starting the new year being a wee bit more subtle than he has been in the past—that was sarcasm.

On the whole, I can understand the concerns and reasoning behind Mr Johnstone's amendment, but I do not agree with it and there is no definition of

"any programme of sex education"

in the amendment.

I remember going through sex education at a difficult time in the 1980s, when it was an important part of my own development as a person. As a parent, I have gone through it again with my two now 20-something children. I do not like to be reminded of the time that I had to talk about contraception with my daughter, who was a teenager at the time, but it was something important that we had to do, so I am a strong advocate of sexual health education.

Following the Marriage and Civil Partnership (Scotland) Bill, the Government will issue guidance and will seek views, and I think that guidance is probably the best way forward. I have faith that Scotland's teachers will be able to deal with the issue in a way that helps young people to develop as young adults. Like Liam McArthur, I do not believe that amendment 433 is necessary.

The Convener: I very much agree with the comments made by a number of members this morning about amendment 433. In particular, I re-emphasise the point made by Liam McArthur about the issue already being covered. There is flexibility in the system, so the amendment is unnecessary. The amendment as laid down is also badly drafted.

I have concerns, too, because the motivation behind the amendment, if I understand Mr Johnstone correctly, is concern about the same-sex marriage issue that is being debated at the moment in Parliament. However, his amendment refers to the withdrawal of the child

"from any programme of sex education",

so I do not think that his motivation meets with what is in the amendment itself. Those two things do not equate.

Finally, I would like to emphasise a point that other members have mentioned. Sex education is an extremely important part of a young person's health. It should not be seen as somehow different from other matters of health education. Irrespective of the balance of privacy and the rights of parents, young people have a right to understand fully the implications of engaging in sexual activity and the possible impacts on their health, and to deny them that would be a mistake on our part, as legislators. Therefore, I cannot support Alex Johnstone's amendment.

Aileen Campbell: The Government does not support amendment 433, in the name of Alex Johnstone. The Government is a strong believer in and advocate of sexual health education. Neil Bibby has raised some important points about a right to education and about how sex education enables young people to develop appropriate relationships and to keep themselves safe—a point that you also made, convener.

Liam McArthur also made important points about the rights of the child, which underpin much of the bill. I understand that a number of issues have been raised in the debate on the Marriage and Civil Partnership (Scotland) Bill, and we have sought views on guidance for education authorities and schools to follow. The Government believes that parents should be given transparent information about what children should be learning, so that parents can offer views and feedback. That is true not only in relation to sexual health education, although we recognise that it can be a sensitive area, so we consider guidance to be the best and most appropriate route.

As Alex Johnstone suggested in his opening remarks, amendment 433 is blunt, and it is not clear what it includes. A definition of

"any programme of sex education"

would need to be included for members to know exactly what they are voting on. That is another point that you raised, convener, and Elizabeth Smith also alluded to it.

As I said, we have sought views on updated guidance on sexual health education and have received more than 60 responses, which we are currently considering. We aim to issue revised guidance towards the end of March and will continue to keep stakeholders informed of progress.

I am sure that we will take on board this morning's debate and the points that have been made regarding the concerns that parents have raised, so that we can strike the right balance when we publish that revised guidance in the spring. I suggest that having guidance in this regard is better than having provisions in legislation. Therefore, and for all the reasons that other members have outlined, I do not support Alex Johnstone's amendment 433.

Alex Johnstone: Having heard the discussion, I have some hope. I have heard members expressing one or two concerns that are in line with those that I expressed myself.

However, I am convinced that not everybody around the table fully understands the desire that exists among some parents to ensure that the liberal attitudes that resulted in the Marriage and Civil Partnership (Scotland) Bill are not universally shared. There is a reluctance among those who support movement towards the bill to accommodate the broad needs of others. The discussion has not been reassuring. As a consequence, I remain very concerned about the position in which some individuals will find themselves as a result of the Marriage and Civil Partnership (Scotland) Bill once it passes into law.

Given the views that have been expressed, I give an undertaking that I will continue to pursue the matter and will consult a number of organisations on how the issue might be dealt with before this bill or other proposed legislation reaches stage 3.

Amendment 433, by agreement, withdrawn.

The Convener: Amendment 434, in the name of Liam McArthur, is grouped with amendments 436 and 437.

Liam McArthur: The Education (Additional Support for Learning) (Scotland) Act 2004 was a landmark piece of legislation for our Parliament, of which we can feel justifiably proud, not least our predecessor Education Committee. The 2004 act attracted cross-party support and has made a real, positive difference to the lives of children and young people, their parents and Scottish education more widely.

As we have already noted this morning in connection with the debate on rural school closures—an area of legislation that is in for an overhaul after less than four years—no legislation is ever perfect, and so it is with the ASL act. Ten years ago, our understanding of the crucial importance of the earliest years in shaping later educational results was less robust, and prevention was only starting to become a guiding principle of public policy.

The coalition behind the "Putting the Baby in the Bath Water" report reminds us of three facts in this regard. First, although children are officially covered by the 2004 act from birth, its implementation has not benefited equally those below the age of three. That is reflected in the fact that progress reports have next to nothing to say about children with ASL needs from birth to three years. On average, 15 per cent of the school-age population has established ASL needs, a number that appears to have risen dramatically, according to the figures that ministers recently released in response to a question from me, yet the number and proportion of under-school-age children having or likely to have ASL needs remains unknown, or at least unexplored.

Secondly, Scotland does well in identifying and dealing with physical conditions that suggest ASL needs that are obvious at or soon after birth. However, many ASL needs, such as those associated with communication difficulties, autism and foetal alcohol harm, develop or emerge in the two years between the age of two months, when universal health visiting usually ends, and 27 to 30 months, when the new universal checks will start occurring. That hiatus appears to be out of step with the whole notion of early intervention. Some preventable problems are not being prevented, just as some problems that could be addressed through early intervention instead get worse.

Finally, we know that that situation has arisen in part because the ASL act is an education act and was not written with under-school-age children in mind, and because the act's benefits have been limited—unlike for children of any other age—to those eligible under the Disability Discrimination Act 1995. That undermines primary prevention and denies support during most of the first 1,001 days of life, when young children and their parents could most effectively and inexpensively be helped through genuinely early intervention.

Although the gap in ASL assessment and provision has not gone unrecognised over the years, it remains to be closed. Amendment 434 offers such an opportunity by explicitly including in the ASL legislation a duty with regard to prevention in the 1,001 days of life, which, after all, are also the first 1,001 days of learning.

As has been said many times, the bill before us is a starting point and this amendment not only provides an illustration of what could and should happen next in the delivery of its objectives but is entirely in keeping with recommendations in the "Putting the Baby in the Bath Water" report. I hold out little hope that the amendment will be supported but, in moving it, I encourage committee members to see this as unfinished business and invite the minister to commit to looking at ways of closing this particular gap.

Amendments 436 and 437 are much simpler and seek to enable a named person for an under-school-age child to request an ASL assessment instead of relying almost entirely on parents to do so. Parental consent would still be required but not direct parental action and I urge the committee to support the amendments.

I move amendment 434 and look forward to the responses from the minister and other colleagues.

Joan McAlpine (South Scotland) (SNP): I support Liam McArthur's comments. He has raised an important issue and I think that we will all agree that the ASL act was a landmark and has made a positive difference to the lives of many children. However, I think that what these amendments are trying to achieve is already covered in the bill. Every child, including pre-school-age children, will have access to a named person and, where there is a wellbeing need, the named person can seek to determine the best way of supporting the child, which might well be through a co-ordinated support plan. Although Liam McArthur has raised a number of very important issues, I am not sure that these amendments to this bill are necessary at this stage and, as a result, I will not be supporting them.

The Convener: Before I bring in the minister, I, too, will make one or two comments.

I am certainly very sympathetic to Liam McArthur's argument and think that he has made a number of very pertinent points in defence of his amendments. As a result, I would like to hear from the minister a clear statement of the Government's view of the amendments, an indication of whether, as Joan McAlpine has suggested, these issues are already covered in the bill and perhaps a commitment to further discussions about some of these areas. After all, these amendments and others that we have dealt with are making a wider point that requires to be discussed not just today but outwith the committee itself.

With that, I call the minister.

Aileen Campbell: I thank Liam McArthur for the points that he has raised and the coalition behind "Putting the Baby in the Bath Water" for suggesting these amendments.

First of all, I reiterate that we absolutely support the principle of prevention and early intervention that lies behind all of these amendments, especially where such early intervention might prevent an additional support need from developing in the first place or existing additional support needs from getting worse. Indeed, that is why, as Joan McAlpine has pointed out, the bill contains a number of early intervention and prevention provisions. I want to outline some of the areas of the bill where we think that such an approach is most apparent and then address the specific requests that have been made by Liam McArthur and Stewart Maxwell.

A child's health and wellbeing are assessed from birth during the contacts set out in the child health programme, which now includes a 27 to 30-month universal health review. Where wellbeing needs require it, a child's plan will be developed in partnership with the child, their family and relevant professionals and will take account of learning needs to ensure that as part of the named person's role to promote, support and safeguard children's wellbeing the learning needs of children under school age are met alongside any other needs that might affect their wellbeing.

Section 24 requires service providers to publish information about the named person service and its functions and contact arrangements to ensure that families are made aware of the most appropriate contact for information. The named person functions include a duty to advise, inform and support the child and their parents.

Section 25 requires service providers and relevant authorities, where requested, to provide assistance to the named person service provider where it would assist the exercise of the named person functions, and section 38 contains a similar duty in respect of child's plans. As a result, the bill already contains sufficient provision to ensure that relevant information about children's wellbeing, including any learning needs, is or can be made available to those who require it.

11:30

More specifically in relation to the points made by Liam McArthur and Stewart Maxwell, the advisory group for additional support for learning has agreed that the issue of prevention and early intervention through the early years is very important. The statutory code of practice for ASL is already being revised because we wish to be clear about the delivery of additional support for learning in the context of this bill, and that work will specifically include a focus on prevention and early intervention. The revised code of practice will be subject to full consultation and parliamentary scrutiny as required under section 27 of the 2004 act and, given the considered and thoughtful input

that the campaign behind "Putting the Baby in the Bath Water" has already made, I know that the code's revision will benefit from the coalition's expertise, knowledge and input.

With regard to the collection of data on school-age children with additional support needs, I note that under the bill's provisions relating to child's plans local authorities and health boards will be required to report on outcomes prescribed by the Scottish ministers, including a number of outcomes related to early intervention and primary prevention activity. Again, statutory guidance on this part of the bill will be developed in collaboration with a wide range of partners and stakeholders.

Although I appreciate the points that Liam McArthur has made, we believe that, for all the reasons that I have set out, his amendments are unnecessary. However, I hope that my commitment to a full and wide consultation on the revision of the code gives comfort not only to committee members but to the coalition, which has already suggested some very thought-provoking amendments to this section of the bill.

Liam McArthur: I thank the convener, Joan McAlpine and the minister for their very encouraging comments. As Joan McAlpine has indicated, the 2004 act is a landmark piece of legislation and I think that this bill will address a number of the concerns that have been raised. However, we need to guard against any suggestion that once this bill has been passed our business is done. Clearly, we will have to keep the matter under review and, in that respect, I welcome the minister's comments about the advisory group's consideration of the statutory code. I also think that the invitation to the coalition behind the "Putting the Baby in the Bath Water" report to engage directly with that process will be helpful.

I am conscious that we will be discussing our work programme later on. It might be a bit premature for this issue to be picked up in that item but we certainly have an opportunity to come back to it in due course. For the time being, I am grateful to the minister, in particular, for her comments and will not press amendment 434.

Amendment 434, by agreement, withdrawn.

The Convener: Amendment 435, in the name of Mary Fee, is grouped with amendment 438.

Mary Fee (West Scotland) (Lab): Amendments 435 and 438 relate to the minimum age at which a young transgender person can apply for a gender recognition certificate. At the moment, the minimum age is 18 and the lack of gender recognition for 16 and 17-year-old transgender people means that, compared with other 16 and 17-year-olds, they are discriminated against, including being prevented from marrying in accordance with their gender identity until they are 18.

During stage 1 of the Marriage and Civil Partnership (Scotland) Bill, the Equal Opportunities Committee heard evidence on the need to reduce the minimum age for gender recognition from 18 to 16 and, in its stage 1 report, that committee asked the Scottish Government to provide a detailed response. In that response, the Government said that it needs to consult and obtain more evidence on the matter before making any such change. That is exactly what my amendments would provide for. They were ruled out of scope for the Marriage and Civil Partnership (Scotland) Bill because they do not relate only to marriage and civil partnerships; however, they fall within the scope of this bill.

This is a very important issue for young transgender people. A significant number of young people are diagnosed with gender dysphoria in their early teenage years and, with their parents' support, transition until they are full time in the opposite gender to that on their birth certificate. They can change their name on a range of documents, including school reports, medical and dental records, bank records and bus passes but without a gender recognition certificate their legal gender remains unchanged, which causes significant discrimination in education and employment, for example, when they make college or job applications.

People can apply for gender recognition as long as they have a diagnosis of gender dysphoria and have lived in their acquired gender for at least two years. Significant numbers of 16 and 17-year-olds qualify but are prevented from applying by the minimum age being 18. Changing the application age to 16 is supported by the specialist psychiatrist who provides treatment to young transgender people in Scotland; it is also in line with best practice in other European countries.

Amendment 435 would provide for a consultation and review on the proposed change. If a review concluded that a change should be made, the amendment would provide for a one-off order-making power for that purpose only. Amendment 438 would make the order-making power subject to the affirmative procedure. I believe that a review of the matter is needed and should not be delayed, because young transgender people are facing real discrimination now and the sooner that the issue is sorted, the better. I hope that the committee can support the amendment.

I move amendment 435.

The Convener: Thank you very much, Mary, and congratulations on getting through that although you have a cold.

Liam McArthur: I congratulate Mary Fee on lodging the amendments and, indeed, getting through the process of speaking to them.

Mary Fee's call for at least a review of the minimum age for applying for gender recognition is well made. Reviewing whether the limit should be lowered from 18 to 16 or 17, possibly through secondary legislation, seems to me to be perfectly sensible and it would go some way towards better reflecting the needs of young transgender people in Scotland. As LGBT Youth Scotland pointed out in its briefing for this morning's proceedings, many transgender young people begin living in their new or acquired gender well before they reach 16, so they must live for far longer than the normally required two years in their new gender role without proper legal documentation or recognition. It is not hard to appreciate, as Mary Fee set out, that that can force those who are affected to develop a very negative perception of themselves, and it can impact adversely on the way in which others view them.

Mary Fee also set out some of the practical disadvantages that arise from the way in which the law is currently framed. If the minister does not support the amendments, I hope that she will at least offer a commitment to have the position reviewed outwith the context of the bill. Again, I thank Mary Fee for bringing her amendments to the committee this morning.

Joan McAlpine: I am sympathetic to the spirit of Mary Fee's amendments. I commend the briefing on the subject that we received from the Equality Network, which covers many of the comments that Mary Fee made. I learned a lot from reading the briefing, including that the issue is obviously a very sensitive and important one for those who are affected. However, the fact that I learned so much from reading the briefing and that the committee has not heard any of that evidence makes me uncomfortable about supporting Mary Fee's amendments. The way in which the committee should work and how we should pass legislation is that we should be able to take evidence on a subject, particularly one as important as this, before making a change to the law.

I, too, would welcome the minister's comments. As I said, I support the spirit of amendment 435 and the organisations that have argued in favour of it.

Liz Smith: I think that I understand the basis on which amendments 435 and 438 have been proposed, because there are quite clearly some discrimination issues that we must address. However, I have concerns about the issue in Parliament just now of applying legislation to 16 to 18-year-olds, whether this committee deals with it or not. I do not think that our approach to such legislation is entirely consistent, and I hope that that can be addressed in terms of whether we take forward amendment 435.

I think that there is a debate to be had about not just the merits of amendment 435, but where we sit with regard to legislation that includes 16 to 18-year-olds, because there are lots of inconsistencies. On that basis, I am not comfortable about voting for amendment 435. It is nothing to do with the discrimination aspect; it is because I am not comfortable about the consistency of our legislative process at present.

The Convener: Mary Fee has very fairly raised an issue that needs to be addressed. The problem that I face with regard to her amendments 435 and 438 is the lack of background knowledge, information and evidence received by the committee throughout the process. The issue has come to the committee out of left field, if I may put it that way. It is certainly very new to the committee, and I am personally unaware of the detail and the arguments, both in favour of and against such a change.

The issue has to be properly debated and argued through. Like other members, I am very interested to hear what the Government's position on it is. I am sympathetic to removing discrimination if such discrimination exists but, unfortunately, I cannot support Mary Fee's amendments at this stage, because of that lack of background evidence. We have not had such evidence as we have gone through the process of scrutinising the bill, and that leaves me in some difficulty when it comes to supporting the amendments.

Aileen Campbell: I thank Mary Fee for battling through her sore throat in speaking to and moving her amendments.

The issue of reducing the application age for gender recognition arose, as the member outlined, in the context of the Marriage and Civil Partnership (Scotland) Bill, which is also making its way through Parliament. Amendment 435 is deemed to be outwith the scope of that bill. As Mary Fee suggested, this is an incredibly sensitive issue, and the young people whom Mary Fee mentioned can face very difficult and uncertain circumstances. It is critical that we make the right legislative choices and have the right understanding to support all those who face such important decisions about their lives. However, we do not believe that this is the right point at which to make those choices, nor do we think that the Children and Young People (Scotland) Bill is the best place in which to do it.

We understand the points that were made in evidence to the Equal Opportunities Committee, where the matter was first raised. However, the Government considers it premature to take an order-making power now. As the convener mentioned, the matter was not raised in the original consultation on the Children and Young People (Scotland) Bill or in the committee's evidence gathering at stage 1. We think that it would be responsible to consult and seek expert advice on the issue, as Joan McAlpine outlined. That consultation would of course include expert groups such as the equalities groups that have provided briefing material to committee members.

Under the current requirements of the Gender Recognition Act 2004, a person normally has to live in the acquired gender for two years before applying to the gender recognition panel. That means that children would have to start living in the acquired gender at 14 in order to be able to apply at 16. That raises questions about the support and advice that are available to people of that age, which deserve far more detailed and careful consideration. Liz Smith raised some important issues about the wider context of the bill.

Policy responsibility rests with my health colleagues. I understand that the equalities minister, Shona Robison, will carefully and seriously consider representations on the issue. We will not forget the points that have been raised and raised well here at this committee. We will ensure that the equalities minister is updated about today's debate and the points that have been made, including the submissions that have been presented by the equalities groups.

However, in the meantime we cannot support Mary Fee's amendments, and I invite her to withdraw amendment 435 and not move amendment 438.

Mary Fee: I thank the minister and committee members for their comments, and for their understanding of a very sensitive subject. I am slightly disappointed that a greater commitment has not been given to review the issue in some way. However, I take on board the minister's comments about the equalities minister looking into the issue. If I could have a further assurance and commitment that the matter will be taken seriously and further consulted on, I would be happy to withdraw amendment 435.

Aileen Campbell: Absolutely. I have said on the record that the matter will be considered seriously by the equalities minister, and that we would ensure that all the points that have been raised today would be raised with her.

Mary Fee: On that basis, I am happy to withdraw amendment 435.

Amendment 435, by agreement, withdrawn.

Section 72—Closure proposals: call-in by the Scottish Ministers

Amendment 423 moved—[Aileen Campbell]—and agreed to.

Section 73—Consideration of wellbeing in exercising certain functions

Amendments 381 to 385 moved—[Aileen Campbell]—and agreed to.

Section 73, as amended, agreed to.

After section 73

Amendment 254 moved—[Jayne Baxter].

11:45

The Convener: The question is, that amendment 254 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 254 disagreed to.

Amendment 255 moved—[Jayne Baxter].

The Convener: The question is, that amendment 255 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 255 disagreed to.

Section 74 agreed to.

After section 74

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

Liz Smith: This committee knows better than any other committee in the Parliament about the outstanding work that voluntary organisations do in supporting the development of children and young people. It is as a result of their important and highly informative insistence that I have lodged amendment 82. Its purpose is to enable the Scottish Government to provide voluntary bodies with either general or particular guidance after consulting them beforehand, which acknowledges the unique role of voluntary bodies in assisting development. Guidance that is issued to local authorities is sometimes not appropriate or consistent with that which is required for voluntary bodies, and its demands might be too onerous or take up scarce resources that volunteer organisations do not have or at times when those resources are best deployed elsewhere.

Amendment 82 would prevent such problems from arising by creating a separate avenue through which distinct guidance can emerge, which would ensure that voluntary bodies always have a voice in the process of development on issues relating to children and young people. I think that we are all aware that, as things stand, voluntary bodies are nervous that their interests will not always be adequately reflected and that guidance sometimes fails to take into account their special role and circumstances.

Amendment 82 is designed to address those concerns head on, and would go a long way towards reassuring voluntary bodies that their specific role and character will be taken into account.

I move amendment 82.

Liam McArthur: I can think of few other bills that have impacted quite so much on voluntary organisations or on the third sector more widely, given the extent to which this bill will rely on the voluntary sector in delivering its objectives. Liz Smith makes the fair point that guidance for public bodies more generally does not necessarily apply in its entirety to voluntary organisations. Amendment 82 would appear to be a sensible addition to the bill that would allow ministers to provide more specific guidance where it is appropriate.

Aileen Campbell: I echo Liz Smith's view that the voluntary sector is unique and plays an important role in services and in developing policy. The voluntary sector is actively engaged in all aspects of the bill, including the development of guidance, and we have said a number of times that we will want to consult those organisations as we progress the bill's implementation. Third sector organisations are represented at all levels of consultation and policy development.

However, the amendment's use of the term "voluntary organisations" is imprecise and does not reflect the complexity and range of provision of children's services by non-public sector organisations, which include voluntary, charitable, social enterprise, non-governmental and private sector organisations.

The inclusion of the term "voluntary organisations" would require a legal definition and an attendant consultation with the sector to agree on that definition. Previous discussions and consultations on the issue have resulted in general agreement on the term "third sector", which is now generally accepted.

Traditionally, the third sector has valued its independence. Specific reference on the face of a Government bill could undermine that and it would not be welcomed by all parties in the sector.

Scottish ministers can at any time issue non-statutory guidance to voluntary organisations about the application of the act to them—that can be achieved without the need for amendment 82.

I therefore urge the member to withdraw amendment 82.

Liz Smith: I have listened to what the minister said, but amendment 82 was lodged because of lobbying and consultation with many who are in the third sector or voluntary organisations. They were very clear indeed that they do not have the clarity that they require about the roles that they will have and how they will proceed when it comes to children and young people. We have to be extremely clear that we are giving them that guidance. I am not convinced at present that the guidance is sufficient to make it clear to the organisations exactly what is expected of them and where their role lies. For that reason, I will press amendment 82.

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

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

Amendment 82 disagreed to.

Section 75—Interpretation

Amendment 256 moved—[Jayne Baxter].

The Convener: The question is, that amendment 256 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 256 disagreed to.

Amendment 386 moved—[Aileen Campbell]—and agreed to.

Section 75, as amended, agreed to.

Section 76 agreed to.

Schedule 4—Modification of enactments

The Convener: Amendment 424, in the name of the minister, is grouped with amendments 425, 426, 387 and 427 to 429.

Aileen Campbell: Amendments 424 and 425 are minor technical drafting amendments consequential on the Children's Hearings (Scotland) Act 2011, which came into force after the introduction of the bill. Amendment 427 is consequential on the changes that are made by amendments 424 and 425.

Amendment 426 makes two minor consequential amendments in relation to legal aid as a result of amendments 412, 432 and 421 in previous groups. It will ensure that legal aid is available for appeals against the decision that a person previously deemed to be a relevant person is no longer deemed a relevant person under the Children's Hearings (Scotland) Act 2011. It will also ensure that affirmative procedures apply to the new section 28LA powers to be inserted in the Legal Aid (Scotland) Act 1986 by amendment 421.

Amendment 387 makes an amendment to section 20 of the Children (Scotland) Act 1995 in consequence of provisions in the bill on counselling services and kinship care orders. Under section 20 of the 1995 act, local authorities must, from time to time, prepare and publish information about relevant services that they provide.

Amendment 387 extends the definition of "relevant services" to cover services provided by local authorities for, or in respect of, children in their area under part 9, which is on counselling, and part 10, which is on kinship care orders. It is a technical amendment to ensure that local authorities publish information about the kinship care assistance and counselling services that they provide, alongside information about other services that support children and families and promote their wellbeing.

Amendments 428 and 429 are two minor drafting amendments to make small adjustments to the text of an amendment that is being made by paragraph 3(4) of schedule 4 to the bill to section 44(1) of the Children (Scotland) Act 1995. Section 44 of the 1995 act makes provision for publishing restrictions in relation to certain proceedings involving children. The amendments align the wording in new section 44(1)(a) of the 1995 act with an amendment previously made to that section by section 52(a) of the Criminal Justice (Scotland) Act 2003 to ensure drafting consistency.

I ask the committee to support the amendments in this group.

I move amendment 424.

Amendment 424 agreed to.

Amendments 425, 426, 387 and 427 to 431 moved—[Aileen Campbell]—and agreed to.

Amendments 436 and 437 not moved.

Amendment 432 moved—[Aileen Campbell]—and agreed to.

Schedule 4, as amended, agreed to.

Section 77—Subordinate legislation

Amendments 117, 311, 313 to 315, 388 and 389 moved—[Aileen Campbell]—and agreed to.

Amendment 438 not moved.

Section 77, as amended, agreed to.

After section 77

Amendment 118 moved—[Aileen Campbell]—and agreed to.

Sections 78 to 80 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank all members who lodged amendments; you contributed to a substantial period of scrutiny. I also thank the minister and her accompanying officials and the

cabinet secretary, who came along this morning, for their contributions to stage 2.

Aileen Campbell: I thank the committee.

The Convener: Thank you, minister.

The timing for stage 3 proceedings will be confirmed soon. We will publish details on the committee's web page.

Subordinate Legislation

Colleges of Further Education (Transfer and Closure) (Scotland) Order 2013 (SSI 2013/354)

11:58

The Convener: We move on to consider subordinate legislation—[*Interruption*.] Minister and Mrs Fee, could you be a little quieter as you leave, please? It is just that your conversation is rather loud.

A number of colleges have exercised their powers to transfer property and rights to other colleges. The order closes the colleges and transfers any residual property and rights to recipient colleges. If members have no comments on the order, do we agree to make no recommendation to the Parliament on it?

Members *indicated agreement.*

Decision on Taking Business in Private

11:59

The Convener: We are invited to agree to take in private at future meetings: our work programme; correspondence in relation to school closures; and correspondence from the Standards, Procedures and Public Appointments Committee on its inquiry into the legislative process. Do members agree?

Members *indicated agreement.*

The Convener: Thank you. I thank everyone again for their dedication and hard work during stage 2 of the Children and Young People (Scotland) Bill.

Meeting closed at 11:59.

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