OFFICIAL REPORT
AITHISG OIFIGEIL

Education, Children and Young People Committee

Wednesday 31 January 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 31 January 2024

CONTENTS

EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
4th Meeting 2024, Session 6

CONVENER

*Sue Webber (Lothian) (Con)

DEPUTY CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

COMMITTEE MEMBERS

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Ross Greer (West Scotland) (Green)
*Liam Kerr (North East Scotland) (Con)
*Bill Kidd (Glasgow Anniesland) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Willie Rennie (North East Fife) (LD)
*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Miles Briggs (Lothian) (Con)
Natalie Don (Minister for Children, Young People and Keeping the Promise)
Michael Marra (North East Scotland) (Lab)
Roz McCall (Mid Scotland and Fife) (Con)
Martin Whitfield (South Scotland) (Lab)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 31 January 2024

[The Convener opened the meeting at 09:01]

Children (Care and Justice) (Scotland) Bill: Stage 2

The Convener (Sue Webber): Good morning, and welcome to the fourth meeting in 2024 of the Education, Children and Young People Committee. The first and only item on our agenda is day 2 of consideration of the Children (Care and Justice) (Scotland) Bill at stage 2.

Last week, the committee considered amendments and agreed up to and including section 11 of the bill. We will therefore begin our consideration from section 12 of the bill.

I welcome the Minister for Children, Young People and Keeping the Promise and her supporting officials to the meeting. I note that the officials who are seated at the table are here to support the minister but are not able to speak in the debates on amendments. Members should therefore direct their comments or questions for the Scottish Government to the minister.

Before we begin, I will explain, for everyone who is watching, the procedure that we will follow. The amendments that have been lodged to the bill have been grouped together, and there will be one debate on each group of amendments. I will call the member who lodged the first amendment in each group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call any other members who have lodged amendments in that group. Members who have not lodged amendments in the group but who wish to speak should catch my attention. If Ms Don has not already spoken on the group, I will then invite her to contribute to the debate. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the agreement of other members to do so. If any member present objects, the committee immediately moves to a vote on the amendment.

If any member does not want to move their amendment when called, they should say, “Not moved.” Please note that any other member present may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

I remind everyone that only committee members are allowed to vote. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate point.

Now that we have covered the housekeeping matters, we can restart the substantive business.

Section 12—Restriction on report of suspected offences involving children

The Convener: Group 12 is on reporting restrictions and self-identification. Amendment 20, in the name of the minister, is grouped with amendments 24 and 48 to 50.

The Minister for Children, Young People and Keeping the Promise (Natalie Don): Good morning, everyone.

Sections 12 and 13 of the bill as introduced place restrictions on the reporting of certain information that could identify a person in relation to an offence or suspected offence that occurred while they were children, whether they were a suspect, a victim or a witness in relation to that offence. The restrictions apply respectively before, during or after any court proceedings in respect of the offence.

On introduction, the bill did not make provision to allow such persons to self-identify by publishing information that was covered by the reporting restrictions without committing an offence, unless a court had dispensed with those restrictions or they had otherwise come to an end. Therefore, it could potentially have criminalised a person for publishing their own information.

That approach was criticised by stakeholders, including the campaign for complainer anonymity and the Children and Young People’s Commissioner Scotland, at stage 1. We accept that it did not necessarily strike the correct balance between children’s rights to freedom of expression, autonomy and control over their own information and experiences and their rights to privacy and protection of other rights in the context of their evolving capabilities and development.

Therefore, the amendments in this group make provision to enable a person to self-identify by publishing information that would otherwise be

subject to a reporting restriction, without committing a criminal offence.

Amendment 24 will enable a child victim or witness to self-identify prior to any court proceedings for the alleged offence when a court has not already dispensed with reporting restrictions.

Once court proceedings have been raised, amendment 48, which seeks to insert new subsection (1BB) into section 47 of the Criminal Procedure (Scotland) Act 1995, will enable a child victim or witness to self-publish information that can identify them at any stage of proceedings without seeking the prior authority of the court to do so. That echoes the provisions that are made in the Victims, Witnesses, and Justice Reform (Scotland) Bill in relation to victims of certain offences that are listed in that bill.

For those persons who are suspected, accused or convicted of committing an offence in childhood, because the considerations are particularly nuanced, that has resulted in provisions that are slightly different in scope. Before any court proceedings, those persons will therefore be able to self-identify only with the consent of the court, as provided for in section 12 of the bill. That is in recognition of the different risks involved for child suspects, which include the risk of self-incrimination during an on-going police investigation.

Moreover, once court proceedings have been raised, as is provided for in amendment 48, which seeks to insert new subsection (1BA) into section 47 of the 1995 act, those persons will be able to self-identify only on the disposal of proceedings, in line with other provisions in the bill. The intention is to prevent other risks from arising, including to the right to a fair trial, whether of the accused or of other persons.

Amendments 49 and 50 are consequential to amendment 48.

We consider that the provisions that are proposed by the amendments in this group strike a more appropriate balance, and I ask the committee to support them.

I move amendment 20.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning. I welcome the amendments, especially amendments 24 and 48, which address matters that were discussed during the stage 1 process and in the committee's stage 1 report, and which had been raised by stakeholders, including Glasgow Caledonian University.

I support the amendments, but I would like to draw the minister's attention to the University of Glasgow's 19 January submission to the committee. If the Government has not received a copy of that, the committee can share it. I ask the Government to reflect on that submission prior to stage 3 and to consider whether further refinement of the proposed amendments might be beneficial in dealing with the issues at hand.

Natalie Don: I thank Mr Macpherson for that contribution. I do not believe that I have had sight of that submission as yet, but I will certainly look at that ahead of stage 3. I appreciate Mr Macpherson's support for the amendments.

Amendment 20 agreed to.

The Convener: Group 13 is on reporting restrictions, powers and the public interest test. Amendment 21, in the name of the minister, is grouped with amendments 191, 30 to 40, 42, 137, 138, 44, 45, 51, 54, 55, 60 to 62, 147, 65 to 67, 148, 192, 149, 150, 68 to 79, 81, 82, and 151. I remind members of the pre-emptions in the group.

Natalie Don: The group contains a large number of amendments that cover a wide range of important areas. Some of the amendments are quite technical, so I require to speak to each of them in turn.

First, there are a number of Government amendments that concern dispensing with reporting restrictions. Those follow on from the amendments that we have just debated, concerning a person's right to self-identify through publishing information that is otherwise subject to a reporting restriction, without committing a criminal offence.

Amendment 42 is my main amendment on the topic. It would insert new section 106BA into the Criminal Justice (Scotland) Act 2016 to enable an application dispensing with reporting restrictions to be made in relation to the publication of information relating to a child victim or witness to a suspected offence when no court proceedings are already under way in respect of the offence. That reflects provisions in the Victims, Witnesses, and Justice Reform (Scotland) Bill in relation to victims of the offences to which that bill applies. It would essentially enable a person other than a child victim or witness to whom information subject to a reporting restriction relates to apply to the court for an order to dispense with the restriction in order to be able to publish that information. The granting of any dispensation order would, however, be subject to important safeguards. It would require the court to have regard to the best interests of the child as a primary consideration and to consider any relevant representations made by or on behalf of the child or by anyone who is considered to have an interest in the application.

Moreover, the court would also require to be satisfied that the child has understood and appreciates the effect of any dispensation and has

given consent to the publication of the information, and that there is no good reason why such an order should not be made. Subject to those safeguards, it would enable a child victim or witness to consent to a third party publishing the information rather than the child self-identifying through publishing their own information.

Martin Whitfield (South Scotland) (Lab): Will the minister take an intervention in relation to this section?

Natalie Don: This is quite a lengthy group of amendments. I will take the intervention, but I may respond in relation to all the amendments in the group.

The Convener: Mr Whitfield, you are speaking next to this group of amendments, so perhaps you can make your comments then. I am trying to keep a bit of pace going.

Martin Whitfield: That is fine.

Natalie Don: Amendments 32 and 41 make changes to new section 106B of the 2016 act in consequence of new section 106BA, so that section 106B will now apply only to dispensing with reporting restrictions in relation to child suspects. The new section 106B power remains different in scope from the new section 106BA power. Just as with the provisions on self-identification, there are different considerations in play in relation to child suspects, given the potential adverse impact on future police investigations and, beyond that, fair trial rights.

It would remain possible for a suspect, constable, prosecutor or a media representative to apply for a dispensation from reporting restrictions and for the court to grant that if it was satisfied that it was in the interests of justice. However, Mr Whitfield's amendment 191 proposes the wholesale removal of new section 106B, which would mean that there would be no scope at all for reporting restrictions to be dispensed with prior to any court proceedings, whether in relation to a child victim, witness or suspect.

Although I appreciate that Mr Whitfield might not believe that a media representative should be able to apply to the court to have such reporting restrictions lifted, the removal of that entire section would mean that a constable or prosecutor would be breaking the law by publishing any identifiable information in relation to a child suspect. Police Scotland and the Crown Office and Procurator Fiscal Service have been clear that they require the ability to do so in some form. Publication of such information could be crucial for the protection of that child or other people and could seriously interfere with the ability of those organisations to investigate crimes and prosecute. That would be to the detriment of everyone involved and could interfere with the ability to protect the public and children. Moreover, even in the case of a media representative making the application, it can be legitimate for the court to consider whether reporting restrictions should be lifted where it is satisfied that doing so is in the interests of justice.

I therefore urge Mr Whitfield not to press the amendment, and, if he does, I urge the committee not to support it.

09:15

I will turn back to my amendments. Amendment 60 would insert new sections 47ZA and 47ZB into the 1995 act to make provision enabling applications to the court to dispense with reporting restrictions in relation to the publication of information, respectively, in relation to a child accused after the disposal of any court proceedings and in relation to a child victim or witness during or after the completion of court proceedings. Amendments 44 and 45 are consequential to amendment 60. The amendment broadly ensures parity in terms of the provisions on dispensing with reporting restrictions, whether prior to, during or after any court proceedings.

Ruth Maguire's amendments 137 and 138 concern the court's powers to remove or reinstate reporting restrictions. Before I come on to those amendments, I want to state that I recognise that the intention behind those amendments and her other amendments, to be debated in a later group, is to seek to reduce the trauma that is experienced by those who lose a child as a result of crime. I understand Ms Maguire's motivation for lodging the amendments and I acknowledge the letter that was sent to me and a number of other ministers from families who have been bereaved by a crime, calling for change in this area. That letter was followed by a similar letter from a number of organisations.

The Government is absolutely committed to considering the issue in more detail and in discussion with those with lived experience, victim support organisations, academics, legal professionals and media representatives. To that end, the Cabinet Secretary for Justice and Home Affairs provided further international evidence to this committee and the Criminal Justice Committee in a paper of 23 January, which I think it is important that we reflect on. The Scottish Government is also hosting a round-table event with victims organisations and a range of partners in February to discuss experiences and options. The cabinet secretary and I are committed to working with Ms Maguire and other members on the matter, but we need to take the necessary time to do so.

In respect of amendments 137 and 138, at this stage and as drafted, I have significant concerns

about how they could work in practice. I note that officials in the criminal justice agencies have raised concerns with my officials about whether the amendments would be enforceable in their current form. In the case of amendment 137 and an order made under its proposed new section 106C, vast resources would be required to identify all publications breaching the order and ensure that they were removed or withdrawn from public availability. Such is the media landscape that publications, publishers and broadcasters may well be located outwith the United Kingdom, and so publications might have reached an international audience. There are also questions about the value of such provisions, given that once there is widespread knowledge of an individual's identity it is impossible to completely retract that information.

Today's media landscape is almost unrecognisable from when legislation on reporting restrictions was first introduced. It is no longer limited to the traditional print and broadcast channels but ranges from international news agencies to individuals posting on public forums, with an exceptional growth in the number of self-published authors, bloggers and influencers. That has been reflected in the updated definition of "publication" in the bill. Many people who are outwith the larger media organisations do not have ready access to legal teams to advise them on what can and cannot be published. It is therefore essential that, as far as possible, provisions on anonymity are unambiguous and offer legal certainty—a sentiment that has been echoed by academics from the campaign for complainer anonymity at Glasgow Caledonian University.

The ability for the restrictions to be applied retrospectively; to be varied or revoked in relation to particular information, people or publications; and to be reinstated at any time following expiry could lead to considerable confusion and the risk of criminalising those who are unaware of or unable to follow repeated court orders on varying, revoking or reinstating restrictions.

We must balance our desire for appropriate safeguards and protection with the principles of open justice and freedom of expression. Although the powers of removal rest with the courts, which would need to take decisions in a way that was compliant with the European convention on human rights, it might be difficult, if not impossible, for a court to exercise those powers in a rights-compatible way in order to identify relevant published information that should be removed or reinstated or to identify who was responsible for that.

Once information has been published in breach of any restrictions, the person who was originally responsible would have no control over how that information might then be used or disseminated by others.

In summary, a host of legal complexities require further consideration and consultation in order to establish how measures would realistically work in practice.

Ruth Maguire's amendment 138 provides a further power to reinstate reporting restrictions following their removal and raises similar concerns to amendment 137 with regard to its workability, enforceability and potential to undermine legal certainty.

For the reasons that I have outlined, I am unable to support amendments 137 and 138, and urge Ruth Maguire not to move them. However, I am fully committed to further discussion and engagement on how we better protect the privacy of those bereaved by crime, which the committee will discuss shortly.

The next amendments concern the removal of the power of the Scottish ministers to dispense with reporting restrictions. The Government's amendment 51 would mean that the Scottish ministers would no longer have the power to dispense with reporting restrictions after the completion of court proceedings. Consequently, only a court would have such a power, under section 47(3) of the Criminal Procedure (Scotland) Act 1995, to dispense with reporting restrictions on disposal of the proceedings. That change will locate such decision making solely with the courts.

Amendment 51 follows the compelling stakeholder evidence, including from the campaign for complainer anonymity, which stated:

> "We believe the courts are the only appropriate forum for making decisions on whether reporting restrictions in cases involving children continue to apply or are set aside."

In practice, as it stands, the ministerial power is partial in that ministers can dispense with reporting restrictions only after the completion of court proceedings, and that would only be before the child turned 18, when reporting restrictions automatically lapse.

In the future, it is likely that decisions about dispensing with reporting restrictions and/or extending restrictions beyond the child turning 18 will be made at the completion or disposal of proceedings. If the restrictions are extended beyond a child turning 18, there are provisions to enable the order to be reviewed or revoked.

Leaving decision making with the court brings a number of advantages. Judicial decision making can benefit from hearing the full evidence in a case, with in-built appeal provisions, in a way that the ministerial power could not. That is particularly important given the huge implications and potential risk for the child involved if reporting

restrictions are dispensed with, including in respect of children's rights. The change would also afford consistency with the Victims, Witnesses, and Justice Reform (Scotland) Bill, which was introduced in April 2023, under which ministers have no powers to dispense with reporting restrictions for cases covered by that bill. Amendments 61, 68, 69, 72, 76 and 81 are consequential to amendment 51.

Government amendment 62 concerns the right of appeal under section 47A of the 1995 act. The bill as introduced makes provision for a child accused, a child victim, a child witness or a prosecutor to appeal the court's decision to dispense with reporting restrictions. Amendment 62 provides greater clarity on the ability of victims and witnesses to appeal that decision. That is an important change to ensure that the ability of victims and witnesses to exercise that right is as well understood as possible.

I move on to the amendments that concern the extension of reporting restrictions. On introduction, the bill did not allow reporting restrictions for victims and witnesses to extend beyond the age of 18 or the conclusion of proceedings, if that comes later. That was to enable victims and witnesses in adulthood to self-identify, should they wish to do so. However, as we debated in the previous group of amendments, the proposed amendments would enable child victims and witnesses to self-identify at any point without breaching reporting restrictions.

Various stakeholders, including the campaign for complainer anonymity, Together Scotland and the Children and Young People's Commissioner for Scotland, criticised the fact that, while the bill as introduced enabled a child accused to seek an extension of reporting restrictions, no similar provision was made in respect of child victims and witnesses.

That is addressed by Government amendment 65, which amends the power in new section 47B of the 1995 act to extend reporting restrictions in relation to child victims and witnesses. Amendments 66 and 67 are consequential to that. Moreover, Government amendments 54 and 55 would also enable child victims or witnesses to appeal any decision to extend or not extend reporting restrictions in the same way as a child accused. Those amendments now ensure parity between a child accused and a child victim or witness in relation to decision making around extensions of reporting restrictions.

I understand Ruth Maguire's intention behind and motivation for lodging amendments 147 to 150 and 192 and the associated amendments. They, too, make provision for the extension of reporting restrictions with associated rights of appeal. The amendments appear to have a similar intent to the Government amendments that I have just described.

However, the Government's amendments go further in some respects, as they extend to child witnesses as well as child victims. I am concerned that Ms Maguire's amendments would not extend to child witnesses. I strongly believe that child victims and child witnesses should have the option to apply to have reporting restrictions extended, in keeping with our person-centred and trauma-informed approach. To limit that to child victims would mean that child witnesses could miss out on those important protections and benefits into adulthood.

Although I acknowledge that Ms Maguire's amendment 148 would also enable extensions of reporting restrictions in relation to deceased victims, I have concerns about the extension through the bill of provisions in relation to deceased victims and the potential adverse consequences of that. I will address my concerns when we come to debate the issue shortly.

If an extension has been granted at the request of one family member but another family member wants to identify the deceased child publicly, they would have to apply to the court to have the order varied or revoked, with the emotional and financial costs involved. Failure to do so could result in that individual, and anyone else who subsequently published that information, being criminalised, adding to the trauma for that individual and their loved ones. There could be different views between family members and it is unclear what would happen in such situations.

Another concern is that extending the protection to deceased victims could inevitably extend the protection to those who commit offences. We must keep it in mind that, tragically, the majority of child homicide victims are killed by a parent. It is hard to understand how you could identify one without leading to the identification of the other.

I am therefore unable to support Ruth Maguire's amendments, for the reasons outlined. Again, I urge her not to move them in return for a commitment from the Government for further discussion and engagement on this deeply important issue, allowing time for the level of detailed consultation and consideration that we have committed to, in which I know that Ruth Maguire is keen to participate. As I said previously, the Government is keen to seek a solution to the issues raised by bereaved families and victim support organisations and to engage on those issues in an open-minded way, but it is essential that we fully explore the complexities involved to avoid any unintended consequences from making such a significant and expedited change to the law. I note that the issue has potential implications for the Victims, Witnesses,

and Justice Reform (Scotland) Bill, which also includes provisions about reporting restrictions for the protection of other victims of offences under that bill.

Instead, I ask members to support the Government's amendments concerning the extension of reporting restrictions. I firmly believe that the Government's amendments are more consistent with our trauma-informed approach, provide equality for child victims, witnesses and accused, and bring greater consistency with the provisions under the Victims, Witnesses, and Justice Reform (Scotland) Bill.

Finally, I will address the Government's amendments concerning the application of the public interest test, which should inform decision making by the courts in relation to dispensing with reporting restrictions or not. In further support of Scotland's incorporation of the United Nations Convention on the Rights of the Child, the amendments vary the tests to be considered in making decisions regarding reporting restrictions.

09:30

Amendments 70, 71, 73 to 75, 77 to 79 and 82 make further amendments to new section 47D of the 1995 act, as inserted by section 13 of the bill, which makes provisions for the court's application of the public interest test in relation to decision-making around dispensing with or extending reporting restrictions.

In relation to decisions concerning a child accused, amendment 73 ensures that their best interests must be regarded as a primary consideration.

Amendments 75 and 79 concern decisions in relation to a child victim or witness. Amendment 79, in particular, would mean that, when a child victim or witness is under 18, the court should regard the best interests of the child as a primary consideration and should have no regard to the length of time until the person will reach the age of 18. That is because reporting restrictions might not cease when a child turns 18, as debated elsewhere in this grouping. That will bring consistency with provisions for a child accused and it should address the concern raised by stakeholders about differential provisions in relation to consideration of those matters depending on whether they relate to a child accused or a child victim or witness.

Moreover, the amendments reflect the call made by stakeholders during stage 1 that the best interests test should be more consistent with the language in the UNCRC.

Members will be pleased to know that that concludes my discussion of the amendments in the group. I urge Martin Whitfield not to move amendment 191. I likewise urge Ruth Maguire not to move her amendments pending further exploration of the important matters that they and her other amendments raise.

I move amendment 21.

The Convener: Thank you, minister. There is, indeed, a lot in this grouping. I call Martin Whitfield to speak to amendment 191 and the other amendments in the group.

Martin Whitfield: Amendment 191 is a simple one-line amendment that effectively removes a section for which the Government, in its own amendments, is proposing a different section. I will come to that in a moment. The reason behind amendment 191 follows on from general comment 24 made by the UN Committee on the Rights of the Child:

> "there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media."

I can really go no further than that in respect of amendment 191, but I would like to take the opportunity to explore the Government's invitation not to move amendment 191 because of amendment 42 and its proposed new section 106BA of the Criminal Justice (Scotland) Act 2016. I have a number of questions for the minister and, if her answers satisfy me, they will lead me to not move amendment 191.

The first question is in relation to proposed new section 106BA(2), regarding the sheriff making an order

> "on the application of a person other than the child who wishes to publish information relating to the child".

Does the Government envisage any boundaries with regard to who that person might be?

Proposed new section 106BA(3) is possibly the start of the most crucial section in my questions. The power rests with the sheriff, and it gives persons an opportunity to make representation—a representation is more than a simple application—and those persons are:

> "(i) the person who made the application,
>
> (ii) the child to whom the information relates,
>
> (iii) any other person the sheriff considers to have an interest in the application."

Given that the public interest test and the best interest test overlie the environment in which the sheriff has to make the decision, are you looking

at an objective or a subjective assessment by the sheriff that would need to be justified?

Also, proposed new section 106BA(4) makes reference to "conditions" and 106BA(4)(a)(ii) uses the phrase

"appreciates what the effect of making such an order would be".

Again, I inquire as to the extent to which the sheriff has the power to investigate and what resources will be made available to the sheriff to investigate the young person's level of appreciation. Is the Government expecting the current tests of the ability of a child to make a decision to be used in relation to the phrase "appreciates", or, under the best interest test, does it extend to looking for objective evidence that the young person appreciates the effect of the order?

The minister rightly pointed out the growing media landscape and the fact that once things are out, they are out, and getting them back in is impossible in reality. The minister also spoke about the international effect of the current media baseload that we have. Will the minister confirm that, in relation to the Government's amendments, full consideration has been given to the fact that so many of those cases will revolve around families, very small communities and extended families? She has spoken at length about the protections, but I ask her to put on record that that has been fully considered, subject to the further amendments that I understand may come at stage 3 with regard to some of the other amendments that we have.

I also put on record that it is very difficult to rest on the basis that we are relying on the court to make a decision and that some of the Government's amendments would allow people the opportunity to go to court—in particular, the amendments to remove any ministerial or governmental role in decision making—but that other amendments say that there will be a financial cost for doing so. Some of the people whom I envisage seeking an order or to have an order overturned or amended will be those who find themselves in very precarious financial positions; therefore, they might not have open to them the avenue that the Government proposes as a way out of those problems.

I will leave it at that, convener.

The Convener: Minister, perhaps you can address those points when you are winding up.

Ruth Maguire (Cunninghame South) (SNP): I will make more substantive remarks in the later group, with your permission, convener. At the moment, I will say that the focus of the bill is children and their rights. Children can cause harm or be victims of criminal harm, either directly or as a result of a sibling or family member being harmed. All of those children matter, no matter what they are experiencing that has led them to come into contact with the care or justice system.

They should be equally entitled to their rights. I acknowledge that balancing rights is not straightforward, and I hear all the reasons to not take action, but it cannot be beyond us to uphold and promote the rights of all children. This must not be put in the too-difficult box because of the challenges around finding a solution to what is most definitely a problem that causes trauma and stress to families and siblings. That is all that I want to say just now.

The Convener: I invite the minister to wind up.

Natalie Don: I will try to get through all Mr. Whitfield's points. In relation to his first point about allowing people to apply for the order, as I outlined in my opening comments, that provision is extremely important to allow the police and the prosecutor to publish the information when that is required. New section 106BA(2) is left open so that others can apply—it is not restricted.

The sheriff would look at matters objectively and weigh up all the factors. Obviously, that would be done on a case-by-case basis, and it would be for the sheriff to make decisions based on each case individually. It would be for the sheriff to consider how best to consider the views of the child, depending on the circumstances of the specific case and the age of the child.

The opportunity to make representation is, again, wide, and it will be for the court to decide who has an interest, based on the specifics of the case. The court involvement should minimise any risks of the child being, or being perceived to be, coerced into consenting to a third party publishing identifiable information about the child. It is about safeguarding the child in that respect.

As I said, I am more than happy to have further discussion with Mr Whitfield about some of his more specific points, but I believe that the Government amendments provide what is required as well as the appropriate protections for children and young people. I urge Mr Whitfield to support the Government amendments.

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)

Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 21 agreed to.

The Convener: The next group is on "Reporting restrictions: time restrictions take effect". Amendment 22, in the name of the minister, is grouped with amendment 46.

Natalie Don: Amendments 22 and 46 will mean that reporting restrictions will apply from the point that a child aged under 18 becomes a victim of, or a witness to, a suspected offence, and will continue to apply until the disposal of any criminal proceedings, even where the victim or witness has subsequently turned 18. That will provide parity with the provisions for child suspects and accused, and will avoid a situation in which a child suspect or accused and a child victim or witness both turn 18 prior to the commencement of proceedings but do not both have the protection of reporting restrictions remaining in place, including in the event of subsequent court proceedings.

The change will bring greater parity of protection and address concerns that were raised by stakeholders, particularly victim support organisations. At introduction, the bill was framed to enable childhood victims and witnesses to self-identify in adulthood. However, following amendments 20, 24 and 48 to 50, which were debated in the previous group, the bill will now allow victims and witnesses of childhood offences to self-identify at any point in proceedings without breaching reporting restrictions.

The provisions in amendments 22 and 46 are more consistent with our trauma-informed and person-centred approach and will ensure that those who are victims or witnesses when aged under 18 have their privacy protected, regardless of the date of publication or when criminal proceedings are commenced, if they are commenced.

I move amendment 22.

Amendment 22 agreed to.

The Convener: The next group is on "Reporting restrictions: deceased victims". Amendment 124, in the name of Ruth Maguire, is grouped with amendments 126, 125, 127 to 136, 139 to 146 and 152 to 154. I remind members that pre-emptions apply in this group.

09:45

Ruth Maguire: I will lay out what my amendments intend to do. They can be grouped into four main categories. They intend to extend the reporting restrictions that the bill would apply in respect of victims aged under 18 so that they also apply to deceased underage victims; give the court the same power to extend reporting restrictions in respect of an underage victim, alive or dead, as the bill confers in respect of an underage offender; provide a mechanism by which offenders, whether suspected, alleged or convicted, live victims or the close family of deceased victims can request an order requiring the takedown of information that would have been covered by a reporting restriction while an offence was suspected or during proceedings; and provide a mechanism by which offenders, whether suspected, alleged or convicted, victims or the close family of deceased victims can request an order reinstating in whole or in part reporting restrictions.

Folk will have seen the open letter sent from 65 families urging change, but committee member colleagues will remember that it was a letter from an individual family member that first drew our attention to the area. It laid out the significant impact that continued and traumatising press and social media coverage had on them, and asked MSPs to be mindful of the impact of our words and to not name victims when discussing the topic.

Since then, Victim Support Scotland has led the way in campaigning for change, and I commend it for its work in ensuring that the voice of victims has been heard. I fully understand that this is not a straightforward matter to solve and I understand that, in legislation, we have to be alert to unintended consequences. I acknowledge that the committee has not taken extensive evidence on the matter, but I am absolutely certain that there is a need to address the matter—not just to discuss it further but to actually address it.

The evidence that we have for change is compelling. A parent who lost their child to murder said:

> "When my child died as a result of murder, every detail of their life, their siblings and school was in the public domain. This was put under further microscopic detail during the trial, while the perpetrator was afforded significant privacy and protection. The media intrusion which followed my child's death further compounded the trauma I was already experiencing. My children cannot be children because of the constant fear of what the media will print next. It still goes on to this day, and I am constantly worried when and how my other children will find out more distressing details about their sibling's death."

They went on to say:

> "I have had several articles and pieces of inaccurate information removed from the mainstream press and social media, but the coverage feels never ending. Every day I am

constantly reminded about the traumatic nature of my child's death. This could all have been prevented had my child's name not automatically been released to the public when they died."

I acknowledge and thank the minister for her words about further discussion and engagement. She mentioned a round-table event, which I think would be hugely important. It is crucial that the voice of victims is at the table, and I seek reassurance that those with direct experience of the trauma that is caused to surviving siblings will be part of the discussion.

Michelle Thomson (Falkirk East) (SNP): We appreciate that the round table is an important part of the discussion. Would you look for equitability of representation of victims as well as the accused, rather than simply representation?

Ruth Maguire: That is a hugely important point.

The committee heard from an academic who gave very helpful and specific reasons with regard to the challenges. There was one sentence about the human cost of this. I think that we all want to have those with expertise at the table, but we must never forget the people who are affected. Everybody dealing with the topic needs to be looking in the eyes of the families who are affected. I seek assurance from the minister on that matter.

I will leave my remarks there for now.

I move amendment 124.

Natalie Don: I will begin, as I did in group 13, by reiterating that I absolutely recognise the intention behind the amendments in this group, which is to reduce the trauma that is experienced by those who lose a child as a result of crime, and I understand Ms Maguire's motivation for lodging them. I reiterate that the Government is committed to considering the issue in more detail and in discussion with those with lived experience, but—

Michelle Thomson: Will the minister give way?

Natalie Don: Yes.

Michelle Thomson: Is the minister able to respond to my earlier question about there being equitable representation from victim groups and those of the accused at the round-table event?

I appreciate that the Government will give consideration to the matter—I agree that it should do that—but I want you to flesh out the nature of that consideration. As my colleague Ruth Maguire alluded to in the earlier group of amendments, balancing rights is a challenge, but representation must be equitable.

Natalie Don: I will address that in a second.

As I was saying, I reiterate the commitment to considering the issue in more detail. I appreciate Ms Maguire's comments about wanting action, not just discussion. I believe that the steps that the Government is taking are leading towards that. The round-table event is focused on deceased victims. As far as I am aware, victim support organisations will be at the event. I am not organising it, but I am more than happy to seek out information on who will be in attendance and provide that to the committee.

The amendments as drafted have the potential for unintended and adverse consequences that could negatively impact on the very people whom they seek to support. It is for that reason that the Government will work closely with Ruth Maguire and other members as we fully consider these matters.

Amendments 124 to 136, taken together, seek to extend reporting restrictions in relation to publication of information that could identify deceased child victims of a crime and their families prior to any court proceedings, thereby providing a right of anonymity. As I said, I have concerns about how certain aspects of the amendments could work in practice. For example, they would require bereaved relatives to go through the emotional and financial costs of applying to court to be able to publicly identify their deceased child as a victim of crime. Also, they could risk criminalising, for example, the child's peers who wish to publicly express their grief at the loss of their friend in such terrible circumstances and who may not understand that there are any restrictions—

Ruth Maguire: Will the minister take an intervention about the use of social media by peers or aunties, for example?

Natalie Don: Convener, I have gone against my aim of taking interventions after I speak to all the amendments in a group—I will return to that approach, but I am happy to take this one.

The Convener: I will permit an intervention on this.

Ruth Maguire: Thank you, convener. Forgive me for that.

I understand the argument that is being put. However, if we think about rights and children's rights, surely we are not suggesting that a cousin's or a friend's right to broadcast their feelings about the deceased is more important than the right of the family of the deceased to privacy in family life? That is a challenge.

Natalie Don: It is absolutely a challenge, and I have committed to further discussion on that, because we must overcome those challenges. It is not about placing more importance on one member of a family over another; it is about considering how we get this right.

It is essential that we learn from the experience of other comparable jurisdictions that have had to actively amend or repeal legislation on anonymity for deceased victims following changes made in haste and without proper consultation with all those affected. Bereaved families in such jurisdictions—for example, in Ireland and in Victoria in Australia—have likened such laws to gag clauses and have expressed anger at not being able to speak freely about their loved ones.

Another concern is the potential for anonymity for deceased child victims to operate as a shield to protect the identity of those who commit offences. As I said in relation to the previous group of amendments, there might well be times when it would be hard to understand how you could identify one without that leading to the identification of the other. That, again, is something that needs to be considered further.

It is also unclear what would happen if there were no consensus among family members as to whether an application should be made to the court that sought to dispense with reporting restrictions in respect of a deceased child victim. Amendment 131 would enable a broad range of family members to apply for such a dispensation, including a parent, sibling, child, spouse or civil partner of the deceased child victim. Not all bereaved families will have a unified view on whether they wish the identity of their bereaved child to be made public. One family member might wish the child's identity to remain anonymous, while another might wish to speak publicly about the child, whether to remember and celebrate their life or to raise awareness and campaign. It is hard to envisage a non-traumatising process by which family members would have to apply to court and argue either for or against the waiving of anonymity.

Amendments 139 to 146 are in a similar vein in seeking to extend reporting restrictions in relation to the publication of information that could identify deceased child victims of a crime and their families once court proceedings are under way. The issues that I have already outlined apply equally to those amendments.

On amendments 152 to 154, which concern the court's powers in respect of the retrospective removal or reinstatement of published information that was not subject to reporting restrictions at the time that it was published, I have concerns about how such provisions could work in practice. I will not reiterate what I have already said about amendments 137 and 138 in group 13, but I will say that I have the same concerns about how amendments 152 to 154 would work in practice and their enforceability, which would impact on the benefits that they could bring to those whom they sought to aid.

I will, however, reiterate what I said in relation to group 13. The Government is keen to seek a solution to the issues that bereaved families and victim support organisations have raised and to engage on them in an open-minded way, but it is essential that we fully explore the complexities involved in order to avoid the unintended consequences to which I have alluded.

I would also note that the issue has potential implications, too, for the Victims, Witnesses, and Justice Reform (Scotland) Bill, which also includes provisions on reporting restrictions with regard to the protection of other victims of offences under the legislation. That bill is currently at stage 1. As I mentioned, the round-table event with a range of partners in February will provide the crucial forum for discussing experiences and options, and the cabinet secretary and I are absolutely committed to working with Ms Maguire and any other members on the matter.

For the reasons that I have outlined, I am unable to support the member's amendments, and I again urge her not to press or move them in return for the Government's commitment to having discussions and engaging on this extremely important issue. That would allow time for us to have the level of detailed consultation and consideration that such an important and complex matter warrants beyond the bill itself.

Liam Kerr (North East Scotland) (Con): I just want to be clear about what is being proposed. The minister has suggested that there will be a round-table event to allow people to go away and consider all the issues. Meanwhile, we will be passing the bill as proposed at stage 3, which presumably will happen before the conclusions of the round-table event have come back. Will those conclusions be included later as amendments to what at that point will be the act? Is that correct, minister?

Natalie Don: As far as I know, the round table is happening in late February, and I cannot confirm that stage 3 will be completed by then. There are other avenues for looking at reporting restrictions; that sort of thing would not necessarily be restricted to this bill, although it could be done in it.

I am not sure what the member is getting at. What I am laying out is that I want to have as much discussion and consultation as possible on this important issue, and the round table is a key part of that. If it seems right that that would be in time for stage 3, then it could be.

The Convener: I am getting notifications that, if we conclude today, there is a possibility that stage 3 could conclude by the end of February. That is the timeline. I think that members are just seeking some clarification on that.

10:00

Willie Rennie: My question follows on from Liam Kerr's point. We understand that more discussion is needed and we understand the complexity of the issue, but what often happens in such cases is that we agree to further discussion and consultation beyond the bill and then there is no vehicle for delivering it. If the matter will not be addressed in this bill, I hope that the minister has thought about what bill it would be addressed in—perhaps the Victims, Witnesses, and Justice Reform (Scotland) Bill. If so, has she had a discussion with the cabinet secretary about that possibility?

We want a degree of urgency about the issue. We know that it is complex, but, as Ruth Maguire said, it should not be beyond the wit of us to come up with a solution. My fear is that, as the minister has outlined it, we might be making perfect the enemy of good. She has highlighted some conflicts that there might be within families—of course there will be those; you get them in all legal cases, in many circumstances—but that does not mean that we should not go there. We need to make sure that the courts and the system are empowered to make the right decision in the best interests of what they believe is the balance of rights in the circumstances.

I want to be confident that the minister has thought through where the issue will be addressed, so that we are not here in five years' time, saying that we have missed the chance.

Natalie Don: This is not a case of the issue being kicked into the long grass. I hope that I have made clear how seriously I take the issue and that I appreciate the difficulties that it causes for many families. I have highlighted numerous times that, because of the importance and potential unintended consequences, it needs further consideration. My discussions with the cabinet secretary are on-going, and there absolutely are other vehicles for it.

Willie Rennie: Could you list what those vehicles are?

Natalie Don: The Victims, Witnesses, and Justice Reform (Scotland) Bill is one, and, as I said, there could be other vehicles for it.

Before I take any further interventions, I will highlight one account that perhaps emphasises the importance of getting this right. During the passage of a bill on the issue in Ireland, senators highlighted the negative impact that a related Court of Appeal judgment had had on bereaved families and why a bill was required to rectify the situation. Senator Fiona O'Loughlin explained:

"The mother of an 11-year-old boy who had been murdered was compelled recently to disguise her identity on television as though she was some type of criminal who could not be identified on the news. By revealing her identity, the identity of her dead child would also have been revealed. It is manifestly unfair to the families of deceased children that the law operates as it does."

That account demonstrates the complexities involved in legislating on anonymity and the need to understand how it will impact those who are affected. Although something might seem like the right thing to do, it is absolutely essential that it is done in the right way. It is not about kicking it into the long grass, but about ensuring that we get it right for the families concerned.

Liam Kerr: Something occurs to me that follows on from Willie Rennie's well-made point. Has the minister considered the possibility that the solution might be to remove the sections, have the round table and bring the provisions back in a final format in whatever the next vehicle is—the next bill that comes forward—in order to get it right, rather than to pass something that may need to be reviewed later?

Natalie Don: I am urging the committee to get it right. The bill, as it stands, makes provisions for victims and witnesses, but, as I said, deceased victims are not covered. We need to have further discussion on that, and there are vehicles in which we could make progress on it. I have been quite clear.

Pam Duncan-Glancy: As far as I can hear, a number of things are being suggested by the minister. The first is that another bill could be used for that, and the second is that there will be a round table to discuss it. I am getting a bit concerned, not least—given some of the concerns that we expressed earlier—because it is not this particular minister who is arranging the round table.

Who is arranging that round table, minister, and what conversations are you having with that person? Is it not possible to bring that forward so that the bill can be the best that it possibly can be? With respect, the committee is trying to do the best that it possibly can by ensuring that we do not miss an opportunity, as my colleague Willie Rennie highlighted, and that we do not subsequently have to revisit the bill.

Natalie Don: The Cabinet Secretary for Justice, Angela Constance, is arranging the round table. She has, I believe, had a series of engagements with numerous stakeholders on the matter. I cannot speak for her on the date for the round table; I know that a lot of different organisations and stakeholders have been involved in the process, and I cannot comment on why the date is when it is. Nevertheless, I assume that every effort has been made to get that done in a timely manner so that those discussions can take place as quickly as possible. There could be a number of reasons why it is taking place when it is.

Michelle Thomson: I have one further point, to sum up. Minister, you will have gathered that the committee has some concerns. I appreciate the position in which you find yourself with regard to what you are able to control, and I empathise with you in that respect. However, are you able to commit, off the back of this discussion today, to set out specifically, based on your discussions with the Cabinet Secretary for Justice, the basis on which the committee can, as individual members, go forward to stage 3?

I cannot speak for every member, but I sense that it is not enough for us to go on to stage 3 knowing only that the matter might be looked at in a further bill or that there will be a round table at some point, given the scale of the concern over the challenge of conflicting rights. Will the minister be able to write back to the committee once she has had a chance to affirm the specifics of the next steps, including dates and so on?

Natalie Don: Of course. The round table has been organised and it is going ahead. I am not talking about it this morning simply in order to delay things. As I said, organisations and stakeholders have been contacted. The round table is the result of a series of engagements between the cabinet secretary, ministers and the associated organisations and stakeholders.

The round table is on 20 February. I have been clear, both today and last week, that there are a number of different issues outside this one alone that I need to discuss with members with regard to further amendments or positions for stage 3. I want to ensure that we can consider issues in good time ahead of stage 3. I am not able to confirm the timings for that just now, but I will make efforts to ensure that we are able to discuss these matters prior to stage 3.

I am happy to write to the committee with any further information on the timeline for how things are going to go ahead.

Ben Macpherson: Minister, in order to assist you and colleagues with these important deliberations, I note that an important point—as colleagues have emphasised—is the need for opportunities for primary legislation, in order to act on any conclusions that come from the round table.

To state the obvious, law making is the most important bit of work that we do in this Parliament. If the timetable for stage 3 does not permit input from that round table to be acted on and the actions that are agreed through that process to be undertaken, I think that it would be appropriate and beneficial for the Parliament to receive reassurance from you ahead of stage 3 that those considerations, and any conclusions, would form the input for another piece of primary legislation in the current session of Parliament.

Natalie Don: The round table is a very important step in the process, but it might not be the be-all and end-all. Other things may come out of the round table that require further discussion. I do not want to rush the process to fit in with a timeline for stage 3. As I said, the most important thing is to get it right—

The Convener: Minister—

Natalie Don: Sorry, convener—I will just finish if I can.

I have made it clear that I am more than happy to work with the committee and other members on the issue and that I am open to considering further legislative opportunities for the matter to be addressed. That is not to say that stage 3 of this bill is not the place to do that; I am simply saying that there are options to consider in that regard.

Pam Duncan-Glancy: I appreciate that, and I appreciate that the timetable is the timetable, but can the minister explain why the round table will not take place until 20 February, given how important it is to the bill that we have in front of us?

Natalie Don: I have already outlined the fact that I am not the person who is arranging the round table. It is the result of a series of discussions between the cabinet secretary, stakeholders and other organisations. I believe that they are positive about the fact that the round table is to take place. There might be a number of reasons for its not taking place until 20 February, but I am not able to go into those at the moment.

The Convener: Thank you, minister. You can tell that the committee is very involved and interested in this grouping.

I invite Ruth Maguire to wind up and to press or withdraw amendment 124.

Ruth Maguire: The first thing that I want to say to colleagues is that it is not just the Government that gets to decide how legislation is formed. Any round table must involve the families—it absolutely must. Victims' organisations will be more than happy to share contributions, but the issue will be too easily dismissed if the victims' families are not there. Therefore, I urge that the families be there.

We could probably go round in circles talking about the media stuff, but I make the point that it is not all media outlets that report in detail the harms that have happened to children. Many behave responsibly. Legislation would create an even playing field for them to continue to behave in a responsible manner.

I do not accept that the fact that there are international examples of where things have not

worked out is a reason not to legislate. I think that that is a gift, because it shows us what not to do. We can learn from that. Therefore, I do not accept that argument.

This is quite challenging because, to be frank, I have not heard a sense of urgency from the minister, and I feel that colleagues around the table are getting restless. I say to them, to the families who might be watching and to the victims' organisations that have worked with them that I will take what the Government has said in good faith and will not press amendment 124 or move my other amendments. I also urge colleagues not to press amendment 124 or to move my other amendments.

However, we will not stop the campaign for the proposed changes or the awareness raising. If progress is not made, I will bring my amendments back at stage 3, because minds need to be sharpened and they need to be focused on the action that needs to be taken.

I appreciate the complexities. This is not easy—nothing that is worth doing is easy—but there are children who are being harmed by our legislation. The Children (Care and Justice) (Scotland) Bill is absolutely the right place to make sure that the rights of children who are involved in our care and justice system are upheld and championed.

Martin Whitfield: Ruth Maguire makes some very powerful points. Does she share my concern that the processes that we have in Parliament for dealing with proposed legislation at stage 3 are perhaps not the best vehicle for enabling young people's lived experience to be reflected or for them to express their views and input evidence? I say to the minister, with the greatest respect to her and the Scottish Government, that the round-table format is perhaps not the most fortuitous way for young people to be able to express their concerns.

Ruth Maguire: Our processes are the vehicle that we have in order to legislate. I draw members' attention to the letter from Victim Support, which was signed by 65 families. It is a small number of families—thankfully—who are affected, but that letter provides access to direct lived experience, and we can see the impact. I do not think that there needs to be a whole fresh consultation. We know what the problem is, and there is access to people with lived experience. We just need a bit of urgency to get folk round the table and work our way through the issue. It is not beyond us—it cannot be beyond us.

Amendment 124, by agreement, withdrawn.

10:15

The Convener: We move to the group on "Reporting restrictions: identity of workplace". Amendment 23, in the name of the minister, is grouped with amendment 47.

Natalie Don: Provisions in sections 12 and 13 set out the "relevant information" that would be within the scope of reporting restrictions, whether prior to or during any criminal proceedings, respectively. That includes information about a person's name and address, the identity of any school or other educational establishment that they attend, and any still or moving picture of the person.

The amendments in this group would ensure that information identifying the place at which the person works would be within the types of information included in reporting restrictions. Amendment 23 amends section 12 in that regard, and amendment 47 does likewise in relation to section 13. The two amendments ensure that a fuller range of identifying information is included in the "relevant information", which is important in ensuring maximum benefit from the reporting restriction safeguards for children.

That change is also important given that the bill contains provisions enabling reporting restrictions to apply or be extended beyond the age of 18 for a child suspect or accused and, by virtue of amendments that have already been debated in group 13 and that will be debated in group 17, for child victims and witnesses. It is likely that individuals of that age will be in employment. That is consistent with the reporting restrictions that have been included in the Victims, Witnesses, and Justice Reform (Scotland) Bill in relation to victims of certain offences listed within that bill.

I move amendment 23, and I ask members to support the other amendment in this group, amendment 47.

Amendment 23 agreed to.

Amendment 24 moved—[Natalie Don]—and agreed to.

Amendments 126 and 125 not moved.

Amendment 25 moved—[Natalie Don]—and agreed to.

The Convener: We now come to the grouping on "Reporting restrictions: minor and technical". Amendment 26, in the name of the minister, is grouped with amendments 27 to 29, 41, 53, 56 to 59, 63, 64, 80 and 83. I point out that, if amendment 191, which was debated in the group headed "Reporting restrictions: powers and public interest test", is agreed to, I cannot call amendment 41, through a pre-emption.

Natalie Don: Convener, I know that you want to get through a lot of business today. All the amendments in this group are minor and technical. I am more than happy to go through them in detail

and explain any of them, if committee members desire that, but I am equally happy just to move amendment 26.

Amendment 26 moved—[Natalie Don]—and agreed to.

Amendment 127 not moved.

Amendment 27 moved—[Natalie Don]—and agreed to.

Amendment 128 not moved.

Amendments 28 and 29 moved—[Natalie Don]—and agreed to.

Amendment 129 not moved.

The Convener: Amendment 191, in the name of Martin Whitfield, has already been debated with amendment 21. I remind members that, if amendment 191 is agreed to, I cannot call amendments 30 to 40, 130 to 135 and 41, as is shown in the groupings, because of pre-emption.

Martin Whitfield: Given the Government's undertaking to discuss the issue, I will not move amendment 191 at this stage.

Amendment 191 not moved.

Amendment 30 moved—[Natalie Don].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 30 agreed to.

Amendment 31 moved—[Natalie Don].

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 31 agreed to.

Amendment 32 moved—[Natalie Don.]

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 32 agreed to.

Amendment 33 moved—[Natalie Don.]

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 33 agreed to.

Amendments 130 and 131 not moved.

Amendment 34 moved—[Natalie Don.]

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 34 agreed to.

Amendment 35 moved—[Natalie Don.]

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 35 agreed to.

Amendment 36 moved—[Natalie Don.]

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 36 agreed to.

Amendment 132 not moved.

Amendment 37 moved—[Natalie Don.]

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 37 agreed to.

10:30

Amendment 38 moved—[Natalie Don].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 1.

Amendment 38 agreed to.

Amendments 133 and 134 not moved.

Amendment 39 moved—[Natalie Don].

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 1.

Amendment 39 agreed to.

Amendment 40 moved—[Natalie Don].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 40 agreed to.

Amendment 135 not moved.

Amendment 41 moved—[Natalie Don]—and agreed to.

Amendment 136 not moved.

Amendment 42 moved—[Natalie Don].

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 42 agreed to.

The Convener: We will take a short suspension until I find my place here.

10:35

Meeting suspended.

10:36

On resuming—

The Convener: We are now back online after that brief suspension—we are back on track.

Amendment 43 moved—[Natalie Don]—and agreed to.

Amendments 137 and 138 not moved.

Section 12, as amended, agreed to.

Section 13—Restriction on report of proceedings involving children

Amendment 44 moved—[Natalie Don].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 44 agreed to.

Amendment 45 moved—[Natalie Don].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 45 agreed to.

Amendment 46 moved—[Natalie Don]—and agreed to.

Amendment 139 not moved.

Amendments 47 and 48 moved—[Natalie Don]—and agreed to.

Amendment 140 not moved.

Amendments 49 and 50 moved—[Natalie Don]—and agreed to.

Amendments 141 and 142 not moved.

Amendment 51 moved—[Natalie Don].

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 51 agreed to.

Amendments 52 and 53 moved—[Natalie Don]—and agreed to.

Amendment 143 not moved.

Amendment 54 moved—[Natalie Don].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 54 agreed to.

Amendment 55 moved—[Natalie Don].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 55 agreed to.

Amendment 144 not moved.

Amendments 56 and 57 moved—[Natalie Don]—and agreed to.

Amendment 145 not moved.

Amendment 58 moved—[Natalie Don]—and agreed to.

The Convener: I am looking at the clock, and I know that we are on a bit of a run here, but I think that we need to take a break as scheduled. I will suspend for 15 minutes.

10:46

Meeting suspended.

11:00

On resuming—

The Convener: After our short break, we go back to where we left off.

Amendment 59 moved—[Natalie Don]—and agreed to.

Amendment 146 not moved.

The Convener: Amendments 60 to 64, in the name of the minister, have already been debated. I invite the minister to move amendments 60 to 64 en bloc.

Amendments 60 to 64 moved—[Natalie Don].

The Convener: Does any member object to a single question being put on amendments 60 to 64?

Pam Duncan-Glancy: Yes.

The Convener: Is there a specific amendment that you are objecting to?

Pam Duncan-Glancy: It is my intention to abstain on amendments 60 to 62 and to vote for amendments 63 and 64, if that is helpful, convener.

The Convener: I intend to put a single question on amendments 60 to 62. Are we agreed?

Members *indicated agreement.*

The Convener: The question is, that amendments 60 to 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendments 60 to 62 agreed to.

Amendments 63 and 64 agreed to.

Amendment 147 not moved.

Amendment 65 moved—[Natalie Don].

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 65 agreed to.

Amendment 66 moved—[Natalie Don].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 66 agreed to.

Amendment 67 moved—[Natalie Don].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 67 agreed to.

Amendments 148, 192, 149 and 150 not moved.

The Convener: Amendments 68 to 84, in the name of the minister, have already been debated. I invite the minister to move amendments 68 to 84 en bloc.

Amendments 68 to 84 moved—[Natalie Don].

The Convener: Does any member object to a single question being put on the amendments?

Liam Kerr: I do.

The Convener: I ask the member to say which amendments he is objecting to.

Liam Kerr: I could do, convener, but, with respect, I think that you just need to call the amendments. You proposed putting the question to the amendments en bloc, and I have objected to that.

The Convener: That is what I just did.

Right—we will just do them all individually. The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 68 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 1.

Amendment 69 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 70 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 71 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)

Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 1.

Amendment 72 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 73 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 74 agreed to.

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 75 agreed to.

The Convener: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 1.

Amendment 76 agreed to.

11:15

The Convener: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 77 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 78 agreed to.

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 79 agreed to.

Amendment 80 agreed to.

The Convener: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 1.

Amendment 81 agreed to.

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

Members: No.

The Convener: There will be a division.

For

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kerr, Liam (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Rennie, Willie (North East Fife) (LD)
Thomson, Michelle (Falkirk East) (SNP)
Webber, Sue (Lothian) (Con)

Abstentions

Duncan-Glancy, Pam (Glasgow) (Lab)

The Convener: The result of the division is: For 9, Against 0, Abstentions 1.

Amendment 82 agreed to.

Amendments 83 and 84 agreed to.

Amendments 151 to 154 not moved.

Section 13, as amended, agreed to.

Section 14—Steps to safeguard welfare and safety of children in criminal proceedings

The Convener: The next group is on the rights and welfare of children who are involved in criminal proceedings. Amendment 193, in the name of Martin Whitfield, is grouped with amendments 194 to 205.

Martin Whitfield: Section 14 of the bill deals with the steps to safeguard the welfare and safety of children in criminal proceedings. My amendments include provisions to take better account of young people, and to insert in various parts of the bill the obligation to consider not just the welfare and the safety of young people but the rights of young people.

A number of the amendments are short, but amendment 196 would add a provision to section 14 of the bill—which, in turn, adds a section to the 1995 act—to allow

"the child an opportunity to express the child's views in"

a way that the young person prefers.

As we have already heard in relation to a number of amendments this morning—and this is the position of the Scottish Government—the young person, including their role, maturity and ability, needs to be taken into account. As a consequence, we must also take into account the manner in which the young person can express their preferences and understanding. That would extend to having regard to the child's views, taking into account their "age and maturity" in particular. I have already pressed the Government in respect of the test that would be applied to that and it has offered to discuss that.

All of my amendments refer to the importance of a young person being able to understand what is happening to them and being in a position in which they can, as far as is practicable, be comfortable with those around them so that they can express their views. It is important that they are able to understand the consequences of decisions that they might be asked to make in circumstances in which they would, understandably, be concerned, stressed and emotional. Given the purpose of the bill, it is important to have a requirement to make their journey not only as comfortable as possible but as understandable as possible to the young person in a way that is appropriate to their age and their levels of understanding.

I could go into some detail with regard to specific amendments, but, having detailed amendment 196, I will just mention that amendment 198 and subsequent amendments would remove "may" to insert "must" so that the requirement is that the adults—not just those immediately around the young person but those who are involved in the administrative processes—must take account of the young person.

I have nothing further to add, but I will respond to any questions that members might have, and I will respond to any comments that the minister might make subsequently. I will move all of my amendments in this group when required.

I move amendment 193.

Pam Duncan-Glancy: I support the amendments in this group in the name of my colleague Martin Whitfield. It is incredibly important that any young person is supported to fully understand the process that they are going through, and I echo all that he has said so far.

My amendment 205 would require that, when a child who is subject to proceedings is residing with an individual who has committed a domestic abuse offence or when the child has been witness to domestic abuse, a referral must be made to a specialist domestic abuse support provider. That is in recognition of the fact that many young people—60 per cent—who are remitted at ages 16 and 17 to young offenders institutions have witnessed domestic violence.

The provision acknowledges the unique vulnerabilities of children who have been in an abusive environment. In speaking to similar amendments in earlier groupings, I highlighted that children who witness abuse may also suffer emotional, psychological and developmental challenges. I emphasised then, and I re-emphasise now, the need for targeted specialist support and intervention that is delivered in a safe and secure environment, so that the child is able to express their feelings and experiences, to process emotions, to build resilience and to develop coping mechanisms.

As I said earlier, it is really important that as many touch points with the state as possible, such as this one, are used as an opportunity to identify where support could be needed in a domestic abuse situation and to provide it at the earliest opportunity. That will be critical in mitigating the potential long-term effects on mental and emotional wellbeing and contributing to the child's overall health and recovery from trauma.

On that basis, I urge committee members to support my amendment 205 and the others in the group in the name of Martin Whitfield.

Natalie Don: I appreciate the intent behind the amendments, but I have concerns and issues with each of them, which I will lay out now.

Amendments 193 and 194 are similar to amendment 165, which the member withdrew last week, in respect of the children's hearings system. The amendments seem unnecessary, as the courts already have extensive obligations under the ECHR and the UNCRC. Additionally, the task of balancing a child's rights and their welfare can be even more challenging in the criminal justice system. For example, a child's right to liberty is not a definitive one and can be interfered with, if that is justified, under the ECHR and UNCRC. Although the child's rights and welfare are, of course, a primary consideration, they are not always the paramount consideration. Therefore, the amendments would be unworkable.

Amendments 195 to 197 seem to be based on provisions from the Children (Scotland) Act 2020, which the amendments would insert into the Criminal Procedures (Scotland) Act 1995. However, the provisions in the 2020 act were drafted to account for the views of younger children, particularly those under 12, in the unique context of children's hearings proceedings. Inserting those into the criminal justice environment fails to account for the inherent differences between the two forums.

Martin Whitfield: Will you take an intervention, minister, or would you rather take it at the end?

Natalie Don: I would rather take interventions at the end.

Amendments 195 to 197 are also an ill fit for the criminal setting, because the courts, unlike the children's hearings, will not be dealing with the prosecution of children under the age of criminal responsibility. Therefore, it is not necessary for there to be presumptions regarding their capacity to give a view in such situations. Furthermore, under article 12 of the UNCRC, a child has the right to express their view freely and must be provided with the opportunity to provide their view in any judicial proceedings. The court is required to act compatibly with ECHR and UNCRC.

The intention behind amendments 193 to 197 is already realised via existing legislation or the application of internal obligations. On that basis, I am opposed to those amendments.

Amendments 198 to 202 roll back the flexibility afforded to the court in section 14 of the bill to decide, on a case-by-case basis, whether it is appropriate to sit in a different building, to sit on a different day or to put in place closed-court measures. Those amendments would require the court to do those things on a blanket basis.

We have discussed the proposals with criminal justice agencies, and there would appear to be various issues with those. First, the amendments place duties on courts with limited or no flexibility or discretion, so they are unduly prescriptive. There is a risk that the amendments would interfere with the court's powers to consider each case in an appropriate and rights-compliant way, given potential rights considerations of all parties, including the adult co-accused, thereby potentially interfering with judicial independence.

Secondly, the changes have not been fully consulted on with the Scottish Courts and Tribunals Service or the judiciary—the very agencies that the changes would affect. However, based on contact with SCTS, including its response to the consultation on the bill and that of the Summary Sheriffs Association, it is unlikely to be supportive. We must be careful that we do not encroach on the independence of the judiciary and that we do not constrain its discretion. The courts are best placed to make case-by-case decisions, and the amendments appear to overstep their responsibility and expertise in that domain.

11:30

The amendments would have corresponding resource implications. They could result in delays in a child's case being progressed if, for example, a case could be held only on different days from cases in other courts in that building. That would have implications not just for the accused but for the victims and witnesses.

The amendments would have serious implications for a court's programming and for capacity more broadly, thereby impacting more widely than just on cases involving a child accused. The changes would be challenging, if not impossible, to implement in each court, particularly in smaller courts that have only one court room available, or where there is only one sheriff who already has criminal business set down for the day. The SCTS clearly expressed those concerns in its consultation response, and it has reiterated them to my officials in respect of those amendments.

Although some of the proposed amendments are already requirements in certain cases, they would present particular challenges in respect of solemn proceedings. Additional considerations in those cases, such as the need for juries and the fact that a limited number of buildings in Scotland are set up to accommodate jury trials, as well as the requirements for police presence, access to cells and holding areas before or after court appearances, would inherently limit where those cases could take place.

There would also be challenges where, for example, a child was in custody and the timescales prescribed in legislation would require the case to call on a particular date or before the expiry of a particular period. If other court business was already scheduled and required to happen on that particular date, and if the child's case could not take place in the same building or on the same day as other court business and no other appropriate facilities were available, the courts would need to decide which case should take place, in the knowledge that doing so would mean that legislative requirements would not be met. That could be a particular issue in smaller or more remote courts. The amendments would also seem to apply to every court hearing, from the first calling until the case concludes, which would only compound the challenges further.

Amendments 200 and 203 are problematic for a number of reasons. Those include that, in this context, the rights of the co-accused would appear to be given less weight than those of the child. In human rights law, a right does not require "serious" interference in order to be infringed, so the amendments would, arguably, distort existing legal protections. In contrast to section 14 of the bill, the amendments would unduly constrain the court's discretion to make decisions case by case, in line with its duties under the Human Rights Act 1998 to do all of that in a rights-compliant way. Given those risks, I cannot support those amendments.

Amendment 204 would insert a new subsection into section 305 of the Criminal Procedure

(Scotland) Act 1995 to expressly provide that the High Court may, by act of adjournal, also make

"provision ... for the purpose of ensuring that criminal proceedings involving a child are concluded in a way that accords with the needs of the child."

Again, although I understand the intent behind the amendment, that raises a number of issues. The judiciary has not been consulted on the matter, and the High Court is responsible for making acts of adjournal. Amendments to court conduct, practices and processes in respect of children can already be made, informed by a combination of existing legislation, practice notes, court rules and procedure and guidance. Those considerations and amendments for children at court, by virtue of their age, are in addition to other supports that may be provided owing to a child's vulnerabilities.

On amendment 205, last week, the committee discussed a similar amendment concerning referrals in the children's hearings system. In those circumstances, I agreed to discuss further with the member the definitions that are contained in that amendment. I reiterate that I fully agree with the member on the fundamental principle of ensuring appropriate and timely access to support services in cases of domestic abuse. However, I would not support amendment 205. First, I do not think that what it sets out is an appropriate responsibility for the court. It would not seem to be a role of a judge or sheriff, or of the Scottish Courts and Tribunals Service, whose function is to provide administrative support to our courts and tribunals and to the judiciary. The number of children that the amendment would cover could also be significant.

I talked earlier about appropriate and timely access to support services in cases of domestic abuse. With that in mind, I refer to the victim information and advice service, which the Crown Office and Procurator Fiscal Service already provides in criminal court cases. When a case is received, the COPFS will consider it and can refer any victims who should receive extra support to victim information and advice services, including any child victim or victim of domestic abuse. It can, in such cases, already put the child in touch with other services that offer practical and emotional support. It would be for the individual to decide whether they wished to access that support.

Pam Duncan-Glancy: Will the member take an intervention?

Natalie Don: If I can continue with my points, I will be happy to take it once I finish them.

Last week, the member asked where responsibility for referring a child should sit. When an offence is reported to the police, the police will usually provide information about victim support organisations, although I note Police Scotland's previous evidence to the committee that that is not always the most appropriate time at which to provide such information. The key must be to ensure that there is access to appropriate support throughout the child's journey through the justice system, not just at the point when it meets the court process, surely.

On all occasions requiring police attendance, when children are present during a domestic incident, or when they reside in a household where such an incident takes place, regardless of their presence, officers in attendance will consider all information, including previous incidents, to assess whether there is a child wellbeing or child protection concern. That response is outlined in our child protection guidance.

Domestic abuse is always a wellbeing concern. Although I cannot get into a full discussion about information sharing as set out, for example, in the getting it right for every child guidance, information can be shared in a lawful, appropriate and proportionate way, if there are concerns about protecting a child or a young person's wellbeing. Reasonable efforts must be made to inform the child or young person and appropriate family members that that information has been shared.

Almost all local authorities operate multi-agency risk assessment conferences—MARACs—as part of multi-agency risk management work for domestic abuse cases. MARACs also allow for the sharing of relevant risk-focused information in a safe environment to support the development of a co-ordinated multi-agency safety plan to increase victim safety. Any specialist support that a victim might require can be part of such considerations. Such cases might involve child protection concerns, if there is evidence that significant harm has occurred or may occur, with clear multi-agency procedures that are based on national guidance requiring to be followed in such cases. The response could include referral to specialist support services.

I cannot, therefore, support the amendments, and I urge members not to press or move amendments 193 to 205. I encourage the committee to reject them if they are moved.

The Convener: Minister, you said that you would take questions from members now.

Natalie Don: I am happy to.

The Convener: Martin Whitfield, I believe that you were first.

Martin Whitfield: Do you want me to sum up on amendment 193 as well?

The Convener: No. This is the opportunity to ask questions. You had some points that you wanted to raise, and the minister said that she would take them at the end of her comments.

Martin Whitfield: I am grateful, convener. Is the minister prepared to share the response that her officials have received from, in essence, the judiciary? The minister raised a number of matters that fundamentally boil down to the Scottish Government's apparent disagreement to adding "and rights" after the word "welfare" throughout the bill. When we are talking about legislation, we are talking about the rights that are given or, indeed, taken away in response to the coming together of a young person and the criminal justice system, the welfare system and most aspects of a young person's life.

The rights of a child sit above that. We debated the UNCRC long and hard in this Parliament over a long period of time, and, across the chamber, there was very strong agreement about the hierarchy of protections that young people have. Sitting at the top are rights, but there has always been the question of a challenge between one individual's rights and another individual's rights. The entire process of the court system and the environment of that decision making is about balancing those rights, but we heard across the chamber during the enactment that, across Scotland, we put children's rights at the top of that. That does not mean that those rights will be applied every time, but it means that those rights will have to give way to other individuals' rights only in exceptional circumstances and for exceptional reasons. Even with the amendments that I have proposed, there are facilities whereby that can happen.

With regard to comments about the court and resources, I say with respect that, again, the minister appears to be saying, "We can't do this because of resource." Of course there are challenges, but there are always challenges. There were challenges when a number of courts across Scotland were closed, with people making representations in that respect, but it is a very dangerous position to take if we are saying to our young people, "The resources aren't there for the particulars of your case, so it's not important."

That issue arises particularly with regard to amendment 204, which relates to the co-accused and the acts of adjournal in the courts. Even with my amendment, there would still be exceptional circumstances in which the court could act according to what is right, but the presumption would be that the procedure adopted by a court should accord with the child's needs, which I would suggest in a co-accused case must always take priority over the needs of an adult co-accused. I have thought and struggled long and hard to find a situation in which the rights of an individual child who has been co-accused with an adult would give way to the rights of an adult, simply from the point of view of competency, understanding and age.

In this space for questions—I am sorry, convener; I am adjourning—

The Convener: I was hoping for a question, Mr Whitfield.

Martin Whitfield: It is difficult, convener, but I understand. I will leave my comments there. My summing up will be much shorter.

The Convener: Do you want to respond to some of those points, minister?

Natalie Don: I would be grateful, convener.

The judiciary's response to the consultation is already publicly available, but I am more than happy to share it after the meeting. As for the comments about the balancing of rights and the words "welfare and rights" not being included, I would point out that the rights of the child are currently enshrined in the ECHR and the UNCRC—and I know that the member is aware of that—but the courts have a duty to act on those and I am confident that that is what they will do. It will be for the courts to look on a case-by-case basis at these cases, acting on their responsibilities under the UNCRC and the ECHR.

Pam Duncan-Glancy: Will the minister accept an intervention?

Natalie Don: I am sorry, but I am already responding to another intervention.

With regard to the resource challenges that Mr Whitfield referred to, I understand what he is saying—indeed, I do not want to say, "No, we can't do this." However, for the reasons that I have outlined, if the amendments were to be agreed to in their current form, they could impact on children's rights today and tomorrow, and I am not comfortable with that. Might that be something that we need to look at as we move forward? Absolutely, but, as I have said, the amendments could impact on children's rights immediately.

As for the co-accused issue, it will again be down to the court to look at that on a case-by-case basis. I think that the amendments are problematic for a number of reasons, including, as I have said, the fact that the co-accused's rights appear to have been given less weighting than the child's rights. I appreciate the member's comments in that respect, but, again, it should be down to the courts to make that decision on a case-by-case basis instead of our putting it in statute. As I said in my opening comments, under human rights law, a right does not require serious interference to be infringed, and I think that this particular amendment distorts the existing legal protections and confuses matters.

Summing up, I believe that a lot of what is covered in the amendments is already covered under the ECHR and the UNCRC, and we have to

give the judiciary and the courts discretion to look at matters on a case-by-case basis. As a result, I do not support the amendments.

The Convener: As these are stage 2 proceedings, I really want to encourage as much debate as possible. I will therefore bring in Pam Duncan-Glancy and Liam Kerr to ask questions, and I hope that the minister will address them.

11:45

Pam Duncan-Glancy: I appreciate that. It feels a bit peculiar that it is more like a statement as opposed to a debate in which interventions are taken. That makes it difficult to have a detailed discussion on very detailed parts of legislation, which, of course, this is about.

To the substance of my intervention: on the amendments in Martin Whitfield's name, the minister seems to be saying that part of the concern is not about the particular overreach into the judiciary, which I will leave for a moment, but that the effect could be to delay processes because there might not be enough buildings or the case might have to be moved. I look forward to debating my amendment on the numbers of panel members, because that, too, could frustrate and delay some aspects of justice—I hope that the minister will take a similar view on that.

I am a bit concerned that the minister is relying on the fact that the ECHR and the UNCRC are enough. Although the ECHR is international legislation to which we hope that the courts would adhere, there are reasons why we introduced domestic legislation in the area, such as the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. This is an opportunity to include in the bill part of the UNCRC, which may not cover all aspects of the bill because of the recent amendments that had to be made to the 2024 act. That concerns me.

I cannot see, from the points that the minister made about my amendment 205 on domestic abuse and violence, why my amendment to the Domestic Abuse (Scotland) Act 2018 would be a problem. It appears to me that all that it would do would be to strengthen the ability of the state to provide support. It is well known that failures can happen in the justice system, particularly for women who have experienced domestic violence. Therefore, at every point at which we have an opportunity to address that, we should do so. I believe that my amendment 205 does that and I see no reason, on the basis of what the minister has set out, why she would not support it.

Natalie Don: Just to be clear, my statements are quite long, but I am more than happy to take interventions and to have a debate.

The Convener: But you did not take the intervention, minister.

Natalie Don: I am sorry, convener, but I was responding to comments from another intervention, so it was just a bit difficult there.

On Ms Duncan-Glancy's comments, I have been clear that I believe that the amendments would result in duplication and complexity. I have laid out the reasoning for not supporting Ms Duncan-Glancy's amendment 205. I believe that that support should be in place prior to the point at which it meets the court process, and I have laid out the avenues for that to be possible. If Ms Duncan-Glancy is saying that that is not always happening or that it needs to be improved, then we need to look into that. However, I think that the support for domestic abuse is required at a much earlier stage than the point at which it meets the court process.

Pam Duncan-Glancy: I appreciate that. My amendment does not undo any of that. It literally adds another point at which someone could be caught from the system—another safety net, as it were—to ensure that that support would be in place.

Liam Kerr: I would like to clarify something. Earlier in your statement, and particularly during your response to Martin Whitfield, you said that you were "confident" that the courts will do something, that one of the amendments will possibly "impact on ... rights" and that you think that the

"amendment distorts the existing legal protections".

Can you help the committee to understand whether you have received any formal legal advice that gets you to that position to reject the amendments, or is that just what you think?

Natalie Don: I believe that I said in my comments that officials have been discussing the matter with key stakeholders and that I am more than happy to share details of that.

Liam Kerr: That is not quite what I asked, minister. I asked whether you had received formal legal advice when arriving at your position of confidence and thinking that the amendment distorts things.

Natalie Don: Yes.

Liam Kerr: Thank you.

Michelle Thomson: I will pick up on a tiny point regarding the issue of rights. In the event of the UK Government wishing to remove us from rights—for example, the ECHR—which has been presented as a very real possibility if not a threat, have you considered the extent to which that would implicate the rights provisioning in the bill?

Natalie Don: That would be very concerning, and the implications would stretch much further than the bill. However, we would still be compliant with the UNCRC in that regard.

Michelle Thomson: Have you had advice on that? I am just probing a bit more about the rights-based element and the extent to which you can be confident in all potential legal scenarios. Are you confident that the advice that you have received thus far takes cognisance of that possibility, from the point of view of children's rights?

Natalie Don: Yes.

The Convener: I invite Martin Whitfield to wind up and to press or withdraw amendment 193.

Martin Whitfield: I am concerned, because my amendments are to the Criminal Procedure (Scotland) 1995 Act, which, unless it is expressly brought within it, will not be covered by the UNCRC. Young people will have to rely on the existing vehicles, which, as Michelle Thomson has highlighted, might not be available in the future.

I am quite disappointed by the approach that has been taken with regard to my amendments, because they were lodged in good faith. The Government has sought to rely on the support of the Children and Young People's Commissioner Scotland as authority to pass its amendments, but my amendments are also supported by the commissioner. With that in mind, I will press amendment 193.

The Convener: The question is, that amendment 193 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 193 disagreed to.

Amendment 194 moved—[Martin Whitfield].

The Convener: The question is, that amendment 194 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 194 disagreed to.

Amendment 195 moved—[Martin Whitfield].

The Convener: The question is, that amendment 195 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 195 disagreed to.

The Convener: I call amendment 196, in the name of Martin Whitfield, which has already been debated with amendment 193.

Martin Whitfield: Given the result of the division on amendment 195, I will not move it.

Amendment 196 not moved.

Amendment 197 moved—[Martin Whitfield].

The Convener: The question is, that amendment 197 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)

Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 197 disagreed to.

Amendment 198 moved—[Martin Whitfield].

The Convener: The question is, that amendment 198 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 198 disagreed to.

Amendment 199 not moved.

Amendment 200 moved—[Martin Whitfield].

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 200 disagreed to.

Amendments 201 and 202 not moved.

Amendment 203 moved—[Martin Whitfield].

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 203 disagreed to.

Section 14 agreed to.

After section 14

Amendment 204 moved—[Martin Whitfield].

The Convener: The question is, that amendment 204 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 204 disagreed to.

Amendment 205 moved—[Pam Duncan-Glancy].

The Convener: The question is, that amendment 205 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)

Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Amendment 205 disagreed to.

Section 15—Referral or remit to Principal Reporter of children guilty of offences

12:00

The Convener: The next group is on "Remit to children's hearing from criminal courts". Amendment 85, in the name of Roz McCall, is grouped with amendments 86 to 88, 206 and 89 to 91.

Roz McCall (Mid Scotland and Fife) (Con): Thank you, convener. This is the first time that I have spoken today.

The group of amendments that I have lodged balance previous amendments that came up last week but that, in the end, were not moved. My amendments in this group are designed to allow the courts to refer to the children's hearings process, if deemed appropriate to the child's treatment, when the child pleads guilty or is found guilty of an offence in solemn proceedings. They are designed to ensure that the child's welfare is at the centre of decision making and to allow the support network provided by the children's hearings system to be provided in such cases. However, given that the previous amendments were not moved last week, these amendments—that is, amendments 85 to 88—will have to be withdrawn or not moved.

I move amendment 85.

The Convener: I will ask you to withdraw or not move the amendments as part of the formal proceedings, Ms McCall, but thank you for giving us notice.

I call Liam Kerr to speak to amendment 206 and the other amendments in the group.

Liam Kerr: Again, with the committee's indulgence, I will speak to amendment 206, in Russell Findlay's name. Mr Findlay apologises for not being able to be with us today due to other committee business.

Victims must be heard. Recently the Criminal Justice Committee heard powerful and moving accounts from six rape survivors. Those women described being

"treated as a bit of evidence",

"not respected", "treated with contempt", feeling as if "I did not matter" and feeling like "collateral damage". They also described the court environment as "threatening", and one said:

"the justice system failed me more than the perpetrator".—[*Official Report*, *Criminal Justice Committee*, 17 January 2024; c 6, 37-8.]

It was astonishing testimony about what were all recent cases.

The Criminal Justice (Scotland) Act 2003 gives victims of certain crimes the right to make a statement on the crime's impact, to be submitted to court after a conviction and prior to sentencing to inform the judge or sheriff in their sentencing decision. That has since been extended, with victim impact statements now commonplace.

As I said last week, more serious cases will be dealt with by the panel, and the number of cases will inevitably increase with the raised age limit. One would think it obvious that a victim should be heard, regardless of whether they have been assaulted by an 18-year-old sent to a panel or someone older who is in court. Looking back, therefore, I would say that the arguments for victim impact statements as a principle have been made and accepted. Victims must have their say, regardless of the forum, and amendment 206 would ensure that their voices are heard and that important rights are not seen to be eroded.

Ross Greer (West Scotland) (Green): I understand and entirely share the motivation behind the amendment, but will it lead to duplication? As I understand it, under the current system, victims already have the opportunity to make a victim impact statement before the case is referred to the children's hearings system. As a result, the panel will already be in possession of it. If I understand correctly, the amendment essentially repeats that process, and I am concerned about the impact on victims of having to recount their trauma repeatedly, after being given the opportunity to do so and given that the panel itself should already be in possession of that statement.

Liam Kerr: I am grateful for the intervention, but I do not think that the amendment would create that duplication. First, it would allow the statement to be made when the court has remitted a case following conviction, and secondly, it would allow the passage of time to be observed. We should remember that the amendment would give the victim the opportunity to make a victim impact statement, instead of imposing an obligation in that respect. That choice will still be there, but the amendment provides an important right to the victim. Should they need to update any previous victim impact statement as a result of, say, some post-traumatic event, it gives them the opportunity to do so.

As I said, I am grateful for the intervention, but I think that I have answered the point in my response.

The Convener: I invite the minister to speak to amendment 89 and other amendments in the group.

Natalie Don: I thank Ms McCall for her explanation of her amendments.

The remittal of a child's case to the hearings system provides the opportunity for them to be afforded more age-and-stage-appropriate, welfare-based and holistic support to meet their needs. In the consultation on the bill, the majority of respondents supported further exploration of the proposal to enable all children under the age of 18 to be remitted from a court to the principal reporter. The rationale was that it would lead to improved outcomes for children in recognition of the trauma, abuse and other adversities experienced by so many children who are in conflict with the law.

Respondents also recognised that reform in this area would allow the rehabilitative potential of the children's hearings system to be maximised. Fundamentally, amendments 85 to 88 would remove the ability of 16 and 17-year-olds in solemn proceedings to have their case remitted to the PR to arrange for the disposal of the case by a children's hearing. I understand that Ms McCall intends to withdraw or not move those amendments.

Turning to Russell Findlay's amendment 206, I note that there are parallels with amendments debated last week that sought to take and have regard to views of the person who has been affected by the child's offence or behaviour in the children's hearings system. I note in particular that amendment 168 was not supported in the vote of the committee. I do not believe that amendment 206 is appropriate.

The legislative framework for victim impact statements, which concerns the criminal justice system, provides that they can be made in certain courts and in relation to certain prescribed offences only. In cases in which it would be possible for such a statement to be provided, as we have heard, the statement might have already been received and considered by the court ahead of the case being remitted.

Amendment 206 does not specify which offences it is intended to apply to. If it is all offences, it would go even wider than the existing measures in the criminal justice system. In addition, the purpose of victim impact statements is to inform sentencing and, as the committee is aware, remittal to the children's hearings system does not constitute a sentence, and nor does the hearing impose a sentence.

Ruth Maguire: I absolutely understand what the minister is saying. Given that the children's hearings system is a welfare system, I wonder whether restorative justice would play a part in understanding the impact that actions had had on the other child who had been harmed.

Natalie Don: Yes, I would say so. As I will come on to, there are already vehicles in the children's hearings system to allow the impact on a victim to be taken into consideration.

Michelle Thomson: Following up on that point, I accept what the minister is saying about amendment 206, and it might well be that it is a probing amendment and there is still further work to do. However, the principle has been established in terms of the current provisioning in the criminal justice system compared with the new provisioning in very serious cases, where we recognise that there could be an uptick, particularly around rape and serious sexual assault.

Is the minister willing to give further thought to how the voice of victims can be heard in the process, even if she does not accept the amendment? Clearly, there will be a marked difference in the opportunity for people to make their voice heard, which is important. It is even more important, I would argue, than providing a written statement, because, for a victim, it allows their voice to actually be heard. Will the minister give further consideration to that, even though I fully accept that the amendment might not be perfect in relation to the legislation?

Natalie Don: I could certainly explore that. The impact of the child's behaviour on a victim is currently a consideration in the hearings system. As the member noted, as the amendment is currently drafted, the victim impact statement risks disproportionately influencing panel members' decision making. As we have said, the central plank of the hearings system is that decisions are taken in the best interests of the referred child. However, I could certainly explore that more.

Last week, I spoke about not turning hearings into a mini-court setting. We must be careful not to transform the ethos of the hearings system. The children's panel must consider which compulsory measures are necessary to safeguard and promote the welfare of the referred child and, in so doing, prevent the child from causing further harm to others. The impact of behaviour on victims can already be taken into account.

Amendments 89 and 91—

Liam Kerr: Before you move on, can I intervene? I will not get a chance to sum up, so I offer an intervention.

Natalie Don: Of course.

Liam Kerr: The minister suggested that amendment 206 does not specify which cases it relates to. How does that position hold up when, arguably, it is specified because it is about cases that are permitted pursuant to section 15? Will the minister address that point?

Will she also address the point about time, which was made when my colleague Ross Greer intervened on me and I responded? There are matters that could arise between the initial statement that the minister has spoken about and any further statement. Will she address that point?

Natalie Don: Can you repeat your second question?

Liam Kerr: Ross Greer intervened on me and I thought that it was a fair intervention. He said that, if a statement has already been made earlier in the process, it could be argued that we are asking people to relive their trauma. My response was that the amendment would simply give the victim the option to make a further statement. You did not address that point in your remarks, so I wonder whether you could give us your thoughts about that.

Natalie Don: My thoughts about that go back to the idea that the victim impact statement challenges the whole ethos of the children's hearings system. I really do not think that I can be any clearer about that.

Liam Kerr: With respect, minister, you can. I was saying that the amendment would give the victim a further opportunity. It is not about ethos; it is about offering a further opportunity. Why do you reject that opportunity being afforded?

Natalie Don: Because, as I said, the impact on the victim is already taken into consideration and because I believe that the option to have a victim impact statement in the setting of a children's hearing is not necessarily in keeping with the ethos of the hearings system. I have made that quite clear.

Mr Kerr asked about types of cases. The type of case is not exactly specified.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): You spoke earlier about how victim impact statements might have a disproportionate impact on panel members. Surely that would also give the panel the fullest possible information and the fullest possible understanding of all the facts and of the matter in its entirety.

Natalie Don: Absolutely. I have said many times that each referred child's case is different, so it is for panel members to decide what information they require to inform their decision. They would have appropriate avenues to gather that information from the various services that are involved.

Regarding the idea of having further information in the children's hearings system, the committee agreed last week that it was not appropriate to give further voice or to give that opportunity, so I am a little unclear as to why we are debating that again when the committee has already agreed that that should not be the case.

The Convener: With all due respect, minister, I have already referred to the fact that this is a committee debate and that I will facilitate as much discussion and debate as possible.

I call Roz McCall—

Natalie Don: I have not finished talking about my amendments, convener. I was just dealing with interventions.

On amendments 89 and 91, the Scottish Government is absolutely committed to tackling domestic abuse. Our approach to the bill has been to ensure that children who are in conflict with the law can access the age-appropriate hearings system where possible, in line with children's rights.

The remittal framework in the bill covers specific instances in which courts have levers that are not replicated in the hearings system. At stage 1, we listened to testimony from victims organisations. The point has been made that enabling more 16 and 17-year-olds to access the hearings system may mean that, because people in that age group are more likely to be in a relationship, that brings into consideration possible offending around domestic abuse. The Lord Advocate's guidelines will, however, determine the cases that can be referred, and the procurator fiscal will obviously retain the discretion to prosecute. The joint referral framework and guidelines will be updated and published after the bill is passed, as they would be following any act of Parliament.

12:15

Amendments 89 and 91 will enable courts to make a non-harassment order when the court is satisfied, on a balance of probabilities, that it is appropriate to do so to prevent a victim from harassment or, when the child has been convicted of an offence under domestic abuse legislation, to protect the victim of that offence, and to thereafter be able to remit the case for disposal at a children's hearing if that is considered appropriate.

Remittal in that case would not affect the non-harassment order, which would remain in place—for example, breach of a non-harassment order would still be a criminal offence that would be dealt with by the court. The briefing to the committee from the Children and Young People's Commissioner Scotland stated:

"Our view is that this will ensure that the child receives the support they need to comply with the NHO and will therefore strengthen protections for victims."

Liam Kerr: Help me to understand something on amendment 91, minister. The court that initially puts a non-harassment order in place has a victim impact statement to assist it, but, because the Government intends to vote down amendment 206, the panel might not be able to avail itself of the same level of information. Am I reading that right?

Natalie Don: As I have said, it will be up to the panel to determine what information it requires to deal with an individual child's case, and that will be done on a case-by-case basis.

Liam Kerr: Is it correct that a victim impact statement will be available in one forum but not the other?

Natalie Don: Yes, but that is because of the differences in the settings.

Pam Duncan-Glancy: Given that the minister did not support six of the amendments that I lodged last week in this space, which would have given victims the opportunity to ask to intervene at various points and which were slightly more narrowly focused than amendment 206, where does the minister intend victims to have their say, and at what point?

Natalie Don: As I have said very clearly, the impact of any act on the victim will already be taken into consideration by the panel, and decisions will be made by the panel on what they feel is the best approach. I cannot be any clearer about the ethos of the children's hearings system and how it is not a mini-court setting or, going back to my previous response, about how a victim impact statement could impact on the judgment on what is right for the child who is at the centre of the children's hearings system.

I am sorry, convener, but I really do not understand how I can be any clearer than that. As we debated last week, through the bill there will be increased support and information for the victim. However, we have to remember that the referred child has to be at the centre in the children's hearings system and that decisions are made to best impact on that child.

The Convener: I understand your point, minister, but the number of questions on the issue indicates that your responses have perhaps not been as clear as some of the committee members are seeking. Are you still speaking to your amendments?

Natalie Don: Yes, I have a little left.

Remittal in that case would not affect the non-harassment order, which will remain in place—for example, a breach of a non-harassment order would still be a criminal offence that would be dealt with by the court.

I am sorry—I repeated myself there.

On amendment 90, the committee will be familiar with the bill's remittal framework concerning road traffic offences. Driving disqualifications can occur when a person accumulates 12 or more penalty points on their licence within three years—the so-called totting-up provision in section 35 of the Road Traffic Offenders Act 1988—and the amendment will extend the court's ability so that it can impose a totting-up disqualification and still remit the case to the children's hearing for disposal if that is felt to be appropriate.

I urge members not to press amendments 85, 86, 87, 88 and 206. If they are pressed, I urge the committee not to support them. I will move amendment 89 and the other Government amendments in the group, and I ask members to support them.

Roz McCall: It is interesting to be winding up a debate that has moved on in such a way. As I stated, I will seek to withdraw or not move my amendments, but I have to say that I am concerned about the process that has been followed in the debate. It is, as I have said, interesting to sum up on what might be called an additional amendment, and I should say that, if I were in a position to do so, I would support amendment 206. I am concerned about the disparity in this respect and about the ethos in question holding true, perhaps to detrimental effect.

Martin Whitfield: Will the member take an intervention?

Roz McCall: I will.

The Convener: Please be brief.

Martin Whitfield: I am very grateful, convener, and I will be brief. Does the member share my concern that we seem to be having a tautological argument over the phrase "victim impact statement" instead of talking about what this should be, which is an understanding of the victim's experiences when either panels or, indeed, courts are reaching decisions?

Roz McCall: I agree with that.

At this point, I will just say that I wish to withdraw amendment 85.

Amendment 85, by agreement, withdrawn.

Amendments 86 to 88 not moved.

Amendment 206 moved—[Liam Kerr].

The Convener: The question is, that amendment 206 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Duncan-Glancy, Pam (Glasgow) (Lab)
Kerr, Liam (North East Scotland) (Con)
Rennie, Willie (North East Fife) (LD)
Webber, Sue (Lothian) (Con)

Against

Callaghan, Stephanie (Uddingston and Bellshill) (SNP)
Greer, Ross (West Scotland) (Green)
Kidd, Bill (Glasgow Anniesland) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)

Abstentions

Thomson, Michelle (Falkirk East) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 1.

Amendment 206 disagreed to.

Amendments 89 to 91 moved—[Natalie Don]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Remand and committal of children before trial or sentence

Amendments 92 to 94 not moved.

The Convener: The next group of amendments is on detention in secure accommodation post-18. Amendment 95, in the name of Roz McCall, is grouped with amendments 97, 103 and 104.

Roz McCall: My amendments in this group are probing amendments.

I am aware that, over recent years, councils have made decisions to reduce their residential estates. That begs a question on safeguarding. It is very important that we ensure that there is a prudent level of safeguarding in relation to our residential placements.

We could easily have a situation in which someone over the age of 18, who is legally an adult, is in secure accommodation because it has been deemed important that their liberty is withdrawn but they are living in the same secure accommodation as a child—in other words, someone under the age of 18—who has been placed there so that they can stay out of harm's way. That is an unacceptable position. Given the situation as regards residential placements and the state of the residential estate across the country, I would like the minister to outline the safeguarding measures in the bill and explain how she will ensure that that scenario will not arise in reality.

That is my general feeling as regards section 16. The intention of my amendments is to start a debate on the subject. I am not 100 per cent sure that the safeguarding measures that are in place are sufficient. I would be interested in hearing what the minister has to say on that.

I move amendment 95.

Natalie Don: The provisions in sections 16 and 17 of the bill as introduced on enabling children who have been detained in secure accommodation to stay in that accommodation after turning 18 are necessary in enabling us to keep the Promise. The independent care review concluded:

> "If a young person turns 18 during their time in Secure Care, there must not be an automatic transfer to a Young Offenders Institute. There must be more scope to remain in Secure Care for those who have turned 18."

Such a change was also recommended by a previous justice committee of this Parliament. The amendments in this group are contrary to that aim, which—although I appreciate that they are probing amendments—is disappointing, given the shared commitment in the Parliament to keeping the Promise to people who have experience of Scotland's care system.

The approach in the bill as introduced supports stability, continuity of care and support, and enduring relationships for children in secure care, as well as providing for gradual and improved transitions for children as they turn 18, which is crucial to supporting their reintegration and rehabilitation. Those benefits would be lost if Roz McCall's amendments were agreed to.

In allowing case-by-case decision making, the bill as introduced is consistent with the UNCRC and with international human rights standards. When decisions are made about whether to allow a young person to remain in secure accommodation beyond the age of 18, those decisions will be made on a case-by-case basis to ensure not only that they are in the best interests of the young person concerned, but that they are not contrary to the best interests of the other children in that facility.

Michelle Thomson: I apologise if this has already been covered. What consideration has been given thus far to a situation in which a young man in secure accommodation should elect to self-identify as being of a different gender? I ask that specifically from a safeguarding perspective. Has the detail of that been worked up? Obviously, that issue has been much discussed by the Criminal Justice Committee.

Natalie Don: I will touch on such matters later in my comments, but, as the issue is one for secure care centres to deal with on a case-by-case basis, I could not say today how that specific instance

would be dealt with. I will continue, and if Ms Thomson would like to come back in, I would be more than happy to allow her to do so.

The specific considerations will be detailed in the regulations, which will undergo parliamentary scrutiny and be subject to the affirmative procedure. If it is concluded that remaining in the secure accommodation will not be in the best interests of the young person or of any other child, the young person would not remain in that accommodation. I hope that that alleviates any concerns that the committee and others outside Parliament might have regarding any potential negative implications for the other children who are cared for in the secure accommodation setting.

12:30

Although secure care centres do not currently support children over the age of 18, they are supportive of the change. Discussions are on-going about how it will be implemented. Secure care centres are already working to prepare for implementation of that element of the bill, if it is passed, and to ensure that the needs of all children and young people in their care can be met. Those provisions also received positive support in the public consultation on the bill proposals in 2023.

There is no distinction on secure care that is based on gender, as I will discuss later. Each centre has its own considerations on each case and how that would be managed. As I said, discussions are taking place now. I am sure that, if the member wishes further information on the implementation, that could come at a later date.

Martin Whitfield: What is the balance between young people who are not in secure accommodation but are identified as needing secure accommodation and those who have reached 18 but might need to stay in secure accommodation? What is the balance between the push to get in and the need to stay in as young people travel past their 18th birthday?

Natalie Don: Do you mean if there was an overcapacity problem?

Martin Whitfield: Or an undercapacity problem.

Natalie Don: We have not met with that scenario in recent years. There has been capacity in the secure care centres. Again, we would have to deal with the issue at the time on a case-by-case basis in discussion with the secure care centres. It would be about what was best for the children involved. Although I can imagine that scenario—I am sure that Mr Whitfield can, too—I probably could not lay it out in black and white, because it would not be a decision for me as a minister to take.

Amendments 95, 97, 103 and 104 would remove the ability to allow children who are detained in secure accommodation before the age of 18 to remain there. Obviously, that would mean that those young people would be required to move to a YOI on their 18th birthday—we have seen that happen—regardless of their needs, vulnerabilities or best interests and regardless of how much or how little of their sentence remains to be served, which could be just a few days. I am sure that the committee agrees that it would be a lot of upheaval for a young person to be transferred to a young offenders institution for a matter of days.

There is no provision in law for children who are detained under sections 44 and 216 of the Criminal Procedure (Scotland) Act 1995 to be detained in YOIs. Therefore, on turning 18, they would need to be released or moved to another place. That would be chosen by the local authority but it would not be secure accommodation.

Ms McCall's amendments would mean that young people who were detained in secure accommodation would be subject to a cliff edge. However, I appreciate that she has said that she does not intend to press them. If they were pressed, I would not be able to support them.

Roz McCall: I was talking about a specific scenario, on which I am not 100 per cent sure that I got a response. It is about safeguarding. Although I understand that decisions will be made case by case and that it will be for local authorities to decide, there has to be absolute certainty that the financial provision and support to ensure that that happens are available.

I am not 100 per cent convinced by the answer that we have a failsafe in place. As much as I understand the position on young offenders institutions and that people will be concerned or even worried about the direction of some of the amendments that I have lodged, an option needs to be in place. I am really not sure that it is.

I will not press the amendments in the group, but I am still concerned and will discuss with the minister how we move the matter forward for stage 3.

Amendment 95, by agreement, withdrawn.

Section 16 agreed to.

Section 17—Detention of children on conviction

Amendments 96 to 98 not moved.

The Convener: We move to the group of minor and technical amendments. Amendment 99, in the

name of the minister, is grouped with amendments 101 and 115 to 118.

Natalie Don: As noted, the amendments in this group are all minor and technical. Although I am happy to explain any of them in detail, if committee members wish, I am equally happy to move amendment 99 and to invite members to support it.

Liam Kerr: They may be technical amendments, but surely the minister ought to put on the record why the amendments are necessary and have therefore been lodged, so that the committee at least can understand, and so that anyone who is reading the *Official Report* is able to understand in the future.

Natalie Don: Of course. I am happy to.

For those children who are detained under section 205, which is punishment for murder, and section 208, which is conviction on indictment, of the Criminal Procedures (Scotland) Act 1995, the Scottish ministers already have powers to direct the place and conditions of detention, although those powers will be subject to new section 208A, as inserted by section 17 of the bill, which provides that children may not be detained in a prison or a young offenders institution.

In respect of amendments 99 and 101, when a child is convicted and sentenced under solemn proceedings, under sections 205 and 208 of the 1995 act, the Scottish ministers direct where the child is to be detained. Under the provisions of the bill, children under the age of 18 will no longer be placed in a young offenders institution in any circumstances. As I have already noted, that change is essential for Scotland to keep the Promise.

Amendments 99 and 101 clarify that, although Scottish ministers cannot direct that a person while a child is detained in a prison or a young offenders institution, on turning 18 a person can be transferred from secure accommodation to a YOI, should they not remain in secure until the maximum age of 19, and, in due course, they can be transferred to a prison.

Amendment 116 clarifies the early release provisions that apply to certain children convicted on indictment and sentenced to detention under section 208 of the 1995 act. It amends section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The amendment is of a technical nature, rather than substantive. It ensures that children who are detained under section 208 of the 1995 act will be subject to the same early release provisions if they are then sentenced, while so detained, to a determinate term of detention or imprisonment of four or more years and, by virtue of section 27(5) of the 1993 act, such terms of detention or imprisonment are treated as a single term.

Amendment 115 is consequential on paragraph 7(3) of the schedule to the bill, which amends section 245A of the 1995 act to enable a restriction of liberty order—or RLO—to be made in respect of any child aged under 18, rather than under 16, as is currently the case. A local authority must provide supervision of, and advice, guidance and assistance for, a child during the period when a child is subject to an RLO. The amendment means that the relevant local authority must provide such support to any child aged under 18 who is subject to an RLO, as currently that duty applies only to children aged under 16.

Amendment 117 is consequential and removes from the schedule to the bill paragraph 12, which is no longer required because the change that is made by amendment 116 removes the reference to remand centres, which paragraph 12 seeks to repeal. There are no such facilities in Scotland and no plans to reintroduce them, as doing so would be inconsistent with the Promise.

Amendment 118 makes minor consequential amendments to local authorities' duties in relation to children who have been detained under the Criminal Procedure (Scotland) Act 1995. The amendment is in consequence of part 2 of the bill and is important in ensuring that there is effective oversight of the discharge of local authorities' duties to children who are detained by the different criminal justice routes. Such oversight is important, given the particular needs, risks and vulnerabilities that those children are likely to have experienced and the significant impact that being detained has for those children and their rights.

Local authorities have key duties towards those children. The amendment to section 5 of the Social Work (Scotland) Act 1968 ensures that Scottish ministers have the powers to issue directions to local authorities, not just for the children and young people who have been detained under section 51 of the 1995 act while awaiting trial or sentence, but for those children and young people who have been detained in summary proceedings under section 44 or detained for default on a fine under section 216 of the 1995 act. That important change ensures that such directions can be provided consistently in order to cover all the criminal justice routes through which a child may be detained.

The amendment to the Public Services Reform (Scotland) Act 2010 removes the existing definition of social work services, which is unnecessary due to other changes in the bill. The number of children who are subject to an RLO is relatively low at any one time, but, from April 2022 to March 2023, there were 43 new RLOs for under-18s. None of those were for children who

were under the age of 16, and 83 per cent of the orders that were made were for those who were 17 years old at the order start date. Only 17 per cent were aged 16 on the order start date. Although that may have some financial implications for local authorities, that is likely to be minimal, given the small number of children who are being made subject to those orders. I note that, owing to other changes in the bill, the demand that is placed by children on justice social work is likely to reduce. However, owing to the funding structures of justice social work, no transfer of those savings is possible at this time.

I invite members to support amendment 99 and all the other amendments in the group.

I move amendment 99.

Amendment 99 agreed to.

Amendment 100 not moved.

Amendment 101 moved—[Natalie Don]—and agreed to.

Amendments 102 to 104 not moved.

Section 17, as amended, agreed to.

After section 17

The Convener: Group 22 is on measures for children who have committed an offence. Amendment 105, in the name of the minister, is grouped with amendments 207 to 209.

Natalie Don: My amendment 105 aims to ensure that children and young people with a mental disorder who have been convicted on indictment and sentenced to detention are provided with the most appropriate level of care and treatment at the right time.

Currently, although a court can make a hospital direction in respect of some 16 and 17-year-olds—those who are not subject to a compulsory supervision order—a court cannot make a hospital direction in respect of a child who is under the age of 16 or someone who is aged between 16 and 18 years old who is subject to a CSO. The Scottish Government considers that that issue should be addressed, given the clear benefits to the child of going straight to hospital for mental health care and treatment as opposed to their being transferred to a hospital from another detention setting. Hospital directions are very rarely used for 16 to 17-year-olds. However, ensuring that they may be applied for in exceptional, defined circumstances for children is both desirable and necessary.

12:45

The inception of specialised facilities at Foxgrove, which is the first medium-secure national secure adolescent in-patient service in Scotland, changes the backdrop of how the complex mental health needs of children and young people are met in Scotland. The opening of Foxgrove later this year means that there will be age-appropriate forensic mental health provision for adolescents in Scotland, including those who are subject to hospital directions.

Amendment 105 makes no change to the nature of hospital directions or to the conditions that must be satisfied for them to be applied, other than by making them available to all children with a mental disorder aged 12 to 17 who are convicted on indictment and sentenced to detention.

Although I understand the intention behind Martin Whitfield's amendments 207 to 209, I do not support them.

Amendment 207 would place a duty on the Scottish ministers to promote the use of alternatives to the detention of children who are convicted of an offence and to report annually on the steps taken to achieve that. It is not entirely clear whether that is a general duty to promote alternatives to detention or whether Mr Whitfield wants ministers to promote alternatives in specific cases of individual children who have been convicted of an offence. If the amendment is intended to be general, which we assume to be the case, there is already provision in that regard. If the amendment is intended to be specific to an individual case, that would undermine the independence of the judiciary, and I am sure that Mr Whitfield does not intend that.

Except in respect of punishment for murder, the decision to deprive a child of their liberty on conviction is an independent decision of the courts. In doing so, the court is required to comply with the ECHR. For children convicted on indictment under section 208 of the 1995 act, there is a presumption against detention, ensuring that the court can impose a period of detention only if it considers that no other method of dealing with the individual is appropriate.

For those children convicted summarily under section 44 of the 1995 act, the court may order that the child be detained in residential accommodation for a period not exceeding one year. A presumption against detention is set out in guidance, including that published by the Scottish ministers. That is in line with the UNCRC, which says that deprivation of a child's liberty should be

"used only as a measure of last resort and for the shortest appropriate period of time".

Indeed, the use of alternatives to deprivation of liberty for children is a cornerstone of the Scottish Government's whole-system approach, in which alternatives to detention are already promoted. In practice, local authorities have available to them a

range of alternatives to depriving a child of their liberty that they can put to the court as options instead of detention.

The Scottish Government's vision for youth justice and the standards for those working with children in conflict with the law, which were both published in 2011, represent a foundation shared between the Scottish Government and partners to continue to support an approach that keeps children out of the criminal justice system and promotes the use of alternatives to detention. Data on the use of alternatives to detention for under-21s is published annually on the criminal proceedings in Scotland statistics page of the Scottish Government's website.

On amendment 208, restorative justice is a voluntary supported process of contact between someone who has been harmed and the person who has caused that harm. Both parties can withdraw consent at any time.

Section 5 of the Victims and Witnesses (Scotland) Act 2014 already gives Scottish ministers powers to issue guidance about the provision of restorative justice services. Guidance, which is aimed at service providers and facilitators, was published in 2017. It outlines the key principles of restorative justice to ensure that, where restorative justice processes are available, they are delivered in a coherent, consistent and victim-focused manner across Scotland. That approach includes children who are the victim or the alleged perpetrator.

In addition, the Restorative Justice (Prescribed Persons) (Scotland) Order 2021 was made under the 2014 act and provides a list of prescribed persons who must have regard to the guidance. The list includes

"the Scottish Ministers ... a local authority"

and

"any person who provides restorative justice services".

The Scottish Government is committed to ensuring that restorative justice services are available across Scotland, with the needs and voices of persons harmed being central to the process. Such services must be available at a time that is appropriate to the people and the cases that are involved, and they must be consistent, evidence led, trauma informed and of a high standard.

The Scottish Government has been working in partnership with Community Justice Scotland and the Children and Young People's Centre for Justice to deliver on that commitment. Information about restorative justice and the work that is being undertaken to achieve the vision is already published on the Community Justice Scotland website, which provides a means of reporting. In addition, the Scottish Government has committed to exploring or consulting on the recommendations in respect of restorative justice in the "Hearings for Children" report.

On amendment 209, measures in the bill already aim to enhance the rehabilitation and reintegration of children by ensuring that they can, when required, access age and stage-appropriate welfare-based systems, supports and services—namely, the children's hearings system and secure accommodation. They also enhance the safeguards that are available to children who need to go through the criminal justice system, including in respect of reporting restrictions.

Section 21 includes provisions to ensure that those detained in secure accommodation are treated as looked after for the purposes of sections 29, 30 and 31 of the Children (Scotland) Act 1995, and those provisions include aftercare up to the age of 19—and 26 in certain circumstances—to aid a child's transition to adulthood.

As is detailed in the bill's policy memorandum, the "Sentencing young people" guideline states:

"Rehabilitation is a primary consideration when sentencing a young person."

That is in line with article 40 of the UNCRC, which provides that all children under 18 who have been accused of committing a crime have the right

"to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

The rehabilitation and reintegration of children who have committed an offence is already a key tenet of the Scottish Government's whole-system approach to preventing offending by children and young people. A package of support should be detailed in a child's plan to help them to successfully integrate back into their community, and that is incorporated into the standards for those working with children in conflict with the law. Adding a duty for the Scottish ministers to report on something that is led by local authorities does not appear to fit with the role that the Scottish ministers play.

In summary, therefore, I cannot support the other amendments in this group and ask members not to move them.

I move amendment 105.

Martin Whitfield: I am conscious of the committee's time, so I will try to make my comments as short as possible.

Given that the purpose behind the amendments that I have lodged has, in some cases, been addressed already by the minister, I would suggest that, if the minister is open to this, I will just ask questions for her to respond to instead of making a submission. That approach might facilitate my decision on whether to move the amendments.

First of all, I welcome the Government's amendment 105. On amendment 207, in my name, which relates to alternatives to detention of children, the minister is right to suggest that it sets out a general requirement instead of specifically addressing any individual act, which would be completely inappropriate given the nature of assessment from the individual's point of view. That said, is the minister confident or certain that the reporting provisions that she has already outlined and the requirements under UNCRC mean that this particular information will be made available annually to the public? I realise that it might not come specifically from the Scottish ministers but will instead be found in a variety of places.

Natalie Don: I am confident about that.

Martin Whitfield: I am very grateful for that. That was helpful.

On the issue of restorative justice for children, such an approach can work only when all parties are open to it and maintain that openness as they go through the system. We have seen challenges arising with restorative justice in other environments in which there has been a misunderstanding as to what the restorative justice is, or rather a misunderstanding among those surrounding the individuals who take part in restorative justice. The minister was right to mention the 2017 publication. Is there an intention to revisit, to review or, indeed, to republish that guidance under the provisions of the bill that the committee has already amended? Will that be taken forward?

Natalie Don: Subsequent to the publication of the guidance in 2017, the provision of restorative justice services across Scotland was inconsistent and, in some places, potentially non-existent. Therefore, the Scottish Government subsequently published the "Restorative Justice Action Plan", which sets out a further vision for restorative justice to be "available across Scotland". I understand that the delivery of that plan has been slightly delayed. I believe that it was hoped that the services would be available by 2023 but that, in the work to date, great complexities have been revealed in implementing the plan. Coupled with the impact of the pandemic, that has held up delivery.

However, the commitment to establishing restorative justice services across Scotland remains. We need to consider how we get things right in relation to the complexities that have been thrown up, but the commitment absolutely remains. I am more than happy to discuss the matter further with the member or to update him on where we are with that.

Martin Whitfield: I am very grateful. Let me rephrase the question. Is it the Government's intention to review and republish what started as the 2017 guidance as soon as possible, given how important restorative justice is not just in relation to the bill but in the wider context across Scotland? Will the Government use its best endeavours to achieve that? Is it happy to do that?

Natalie Don: Yes, absolutely. We have been committed to exploring and consulting on the matter further, and, as I said, we considered that in relation to the children's hearings redesign report, too.

Martin Whitfield: I am very grateful.

That brings me to amendment 209, which deals with the rehabilitation and reintegration of children who have been guilty of offences. That is a very important matter, and I am grateful for the contributions that the minister has made. It is right that rehabilitation and reintegration are paramount in relation to how our young people can reintegrate into communities. During our discussions today and, indeed, during those that we had last week, we have heard about how that sits at the heart of what we are trying to achieve.

Regarding the reporting principles, is the minister absolutely confident that sources of reporting will be available to the public—albeit not necessarily through the Government—that can measure the success of the rehabilitation and reintegration of young people at the end of their period of involvement?

Natalie Don: I am confident about that, although, given the extra attention to the matter, with the whole-system approach, if it became something that I was not confident about, I would certainly look to take action or look at what could be done.

Martin Whitfield: I am very grateful for those assertions.

The Convener: Minister, you have had quite a good discussion with Martin Whitfield. I now ask you to wind up and to press or withdraw amendment 105.

Natalie Don: I have nothing further to say. I press amendment 105.

Amendment 105 agreed to.

Section 18—Meanings of "young offenders institution" and "young offender"

The Convener: I call amendment 108, in the name of Roz McCall—[*Interruption*.] Sorry—my eyes are tired. I call amendment 106, in the name of Roz McCall. Apologies to the people who are taking notes of this.

Amendments 106 and 107 not moved.

The Convener: Look at that—it is 12:59 and 41 seconds.

Sections 18 to 21 agreed to.

The Convener: That concludes our consideration of the bill at stage 2 for today. The committee will continue its stage 2 consideration at its meeting on 7 February. Thank you all for your time.

Meeting closed at 13:00.

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