OFFICIAL REPORT
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Equalities, Human Rights and Civil Justice Committee

Tuesday 16 December 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
30th Meeting 2025, Session 6

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)
*Paul McLennan (East Lothian) (SNP)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Paul O'Kane (West Scotland) (Lab)
*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jenny Gilruth (Cabinet Secretary for Education and Skills)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 16 December 2025

[The Convener opened the meeting at 09:30]

Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill: Stage 2

The Convener (Karen Adam): Good morning and welcome to the 30th meeting in 2025 of the Equalities, Human Rights and Civil Justice Committee in session 6. We have received no apologies this morning.

Our first and only agenda item is stage 2 consideration of the Children (Withdrawal from Religious Education and Amendment of UNCRC Compatibility Duty) (Scotland) Bill. I will briefly explain for anyone watching the procedure that we will be following in today's meeting.

Members should have with them a copy of the bill, the marshalled list and the groupings. These documents are available on the bill webpage on the Scottish Parliament's website for anyone observing.

I will call each amendment individually in the order on the marshalled list. The member who has lodged the amendment should either move it or say, "Not moved" when it is called. If that member does not move the amendment, any other member present may do so.

The groupings of amendments set out the order in which they will be debated. There will be one debate on each group of amendments; in each debate, I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all other amendments in that group. I will then call other members with amendments in the group to speak to—but not move—their amendments, and to speak to other amendments in the group, if they wish.

I will then call any other member who wishes to speak in the debate. Members wishing to speak should indicate as much by catching my attention or the attention of the clerk. I will then call the cabinet secretary, if she has not already spoken in the debate.

Finally, I will call the member who moved the first amendment in the group to wind up and to indicate whether he or she wishes to press or to withdraw the amendment. If the amendment is pressed, I will put the question on it. If a member wishes to withdraw an amendment after it has been moved and debated, I will ask whether any member present objects, and if there is an objection, I will immediately put the question on the amendment. Later amendments in the group are not debated again when they are reached. If they are moved, I will put the question on them straight away.

If there is a division, only committee members are entitled to vote. Voting is by a show of hands, and it is important that members keep their hands raised clearly until the clerk has recorded their names. If there is a tie, I must exercise a casting vote.

The committee is also required to consider and decide on each section and schedule of the bill as well as the long title, and I will put the question on each of those provisions at the appropriate point. Finally, I should note that the aim is to complete stage 2 consideration today.

Section 1—Pupil's involvement in decision about withdrawal from religious instruction or religious observance

The Convener: Amendment 9, in the name of Maggie Chapman, is grouped with amendments 9A, 10 to 14, 20, 15 to 17, 44 and 19.

Maggie Chapman (North East Scotland) (Green): Thank you, convener, and good morning to the minister and officials. Thank you for being here this morning and for the conversations that we have had about the bill in recent months.

Before I turn to my amendments, I want to briefly outline the approach of the Scottish Greens to the bill as a whole. Last year, we enshrined the United Nations Convention on the Rights of the Child in Scots law. Doing that was not the end, but the start of a process of protecting the rights of children and young people. We have committed to ensuring that every service that we provide for a child or young person, from school to social security, or from care to the children's hearings system, should put their rights under the UN convention front and centre. Where we have failed to do so, children and young people should be empowered to speak up and call for change, and we, as policy makers, should have to respond.

The bill before us today reflects what Together (Scottish Alliance for Children's Rights), the Children and Young People's Commissioner Scotland and others have been saying about the Scottish Government's approach to children and young people's rights more generally—namely,

that it comes from a place of the best of intentions but does not go nearly far enough. It is fundamental to the convention that the rights of children and young people should exist independently of those of adults, yet the bill allows for children to opt out of religious activities in schools only once their parent or guardian has already made a decision. Indeed, part 2 of the bill creates a framework for adults to override the convention only a year after it has come into force.

If we are truly to enshrine the convention, not only in law but in the everyday practice of the services that children and young people receive, we need to look again at quite large parts of the bill.

I turn to the amendments in this group. The principal amendment in my name is amendment 9, to which my other amendments are consequential. Like the original Education (Scotland) Act 1980, the bill conflates religious observance with religious education. Religious observance involves acts of worship, especially when one faith is prioritised over another. It should have no place in state schools. The Scottish Green position is quite clear: there should be a separation of church and state.

Paul O'Kane (West Scotland) (Lab): I am grateful to Maggie Chapman for taking my intervention so early on in her contribution. I recognise her view and that of the Scottish Green Party on the separation of church and state. Does that view extend to denominational provision in Scotland? Due to the 1980 act, we have a situation in Scotland that is, in some ways, almost unique in that we have what could be recognised as a social contract. Is it Maggie Chapman's view that there should not be denominational provision? If we are to decouple things, we have to look at both spheres of education—non-denominational and denominational.

Maggie Chapman: The Scottish Greens accept that, in many ways, the situation that we have in Scotland in which, as you outlined, we have such denominational positions, is almost unique. Although denominational schools exist, we need to have very clear mechanisms for ensuring that children and young people's rights are protected, regardless of where they go to school. It is the principal position of the Scottish Greens that we should have a total separation of church and state.

The 1980 act conflates religious observance with religious education, also called religious instruction. Religious observance comprises those acts of worship when one faith is prioritised. Religious and moral education—RME—is quite different. Learning about diverse religions and belief systems is an essential part of a broad education in a diverse society. Children and young people have a right to a well-rounded education, and their parent or guardian should not be able to override that. Young people cannot withdraw or be withdrawn from maths, science, history or English. That is for good reason—those subjects provide key knowledge bases and the skills that young people need to be successful learners, confident individuals, responsible citizens and effective contributors to society, as the curriculum for excellence wants them to be.

Religious and moral education is similarly vital in our view, and teachers agree. Dr Douglas Hutchison of the Association of Directors of Education in Scotland said:

> "religious and moral education should be seen as a curricular subject in the same way as any other subject."

He continued:

> "the idea that in a liberal democracy there is no place in the curriculum for religious education and there should be a right to withdraw from it does not make sense in 2025."—[*Official Report*, *Equalities, Human Rights and Civil Justice Committee*, 7 October 2025; c 27.]

I am aware of the Children and Young People's Commissioner Scotland's queries about how some of the amendments are worded, particularly in relation to the word "instruction". The commissioner refers to the United Nations Committee on the Rights of the Child's general comment 20, which distinguishes between religious education and "religious instruction", and states that there should be a right to withdraw from the latter, not from the former. The wording of amendment 9 was worked up collaboratively with the Scottish Government—for which I am grateful—but, ultimately, it reflects the original language of the 1980 act, and, as a consequence, the bill's approach of amending that language rather than the alternative approach of re-legislating, which is proposed by the commissioner. I share some of those concerns about language, but I ask the committee to support the principle of my amendment 9 and its consequential amendments. I will work with the committee and others if we need to fix any wording for stage 3.

I move amendment 9.

The Convener: I draw members' attention to the procedural information in relation to the amendments in this group, as is set out in the groupings.

I call Tess White to move amendment 9A and to speak to all amendments in the group.

Tess White (North East Scotland) (Con): Amendments 9A, 20 and 44, in the name of Stephen Kerr, would bring clarity and coherence to an area of education law that has become confused through age and custom. The amendments are grounded in what the committee

heard at stage 1, when the evidence repeatedly highlighted the need to clearly distinguish between religious observance and religious and moral education. That distinction is well understood in practice but is poorly reflected in the governing legislation.

Amendment 44 would introduce statutory definitions of "religious observance" and of instruction "in religion" or "in religious subjects". Those definitions reflect the reality of the curriculum for excellence and the experience of our schools. The term "religious observance" refers to "reflective" or "spiritual" activities, while religious and moral education refers to curricular learning about "world religions, belief systems" and "moral reasoning". Bringing those definitions into statute is not an attempt to change the curriculum but is simply an attempt to ensure that the law accurately reflects what teachers already deliver.

Amendment 20 would work hand in hand with that clarification, ensuring that any requests for withdrawal from religious observance or from religious and moral education would be treated as distinct processes. That point was raised by several contributors during the committee's evidence sessions. They noted that the bill as drafted risked conflating the two areas, which is something that has already been addressed. Amendment 20 would protect the curricular entitlement of every pupil in Scotland to a religious and moral education, while preserving the long-standing right of withdrawal from religious observance. It would restore coherence and prevent misunderstandings in implementation.

Amendment 9A would add a further technical clarification by confirming that the term "instruction in religion" includes denominational religious education. It would avoid any confusion about how the bill interacts with the existing denominational school settlement and would provide reassurance to parents and communities who rely on those long-established statutory rights.

I say to the convener, the cabinet secretary and the committee that those amendments would not challenge the intentions of the bill but would strengthen it by removing ambiguity and by setting out in clear terms what the law means. The amendments are principled in their purpose and respect the vital role of parents. They would protect the integrity of the curriculum and offer reassurance to teachers and to faith communities that the terminology used in statute will align with what actually happens in schools.

I move amendment 9A.

Paul O'Kane: I thank colleagues for their amendments in this group and for allowing us to have a wider debate about the scope of withdrawal rights and whether those should apply to religious education.

No issue in the bill better represents the complexity of the issues that have been brought up in the process. It is frustrating that we are having this debate at stage 2 and at a point where we have only three months of legislative time left in this session of Parliament given that it would have been preferable to work through the details more broadly.

I recognise, as I am sure many colleagues do, the frustration felt by many religious, moral and philosophical studies teachers at the idea that their discipline is somehow unique and that it is acceptable for a pupil to be withdrawn from that academic subject when that cannot happen with other subjects that are taught in school. Those teachers are subject professionals and are educating our children and young people with vital knowledge about religions and belief systems and about the encounters that those young people will have with those systems in the wider world, while equipping them with the skills to interrogate different moral and belief systems.

All of that is true in non-denominational school settings, but my significant concern is that the amendments do not seem to take cognisance of the different religious education that is offered in denominational settings. In Scotland, we find that predominantly in the Roman Catholic sector, although we find it in the Jewish and Episcopalian sectors as well.

Maggie Chapman: I appreciate Paul O'Kane's comments about his frustration that we are discussing this now—that frustration was clearly expressed during the committee's stage 1 evidence gathering.

During that evidence gathering, it was clear that even representatives from the denominational schools that you have just mentioned support the separation of religious observance and education. There is frustration that that broader education or "instruction", as the 1980 act calls it, is conflated with, essentially, worship. Those two things remain and should be distinct, and denominational leaders and teachers were comfortable with that. Some of them said, "There is that distinction and we can make it work." I am interested in hearing Paul O'Kane's response to that.

09:45

Paul O'Kane: I thank Maggie Chapman for that intervention. I will certainly revisit the evidence that was taken, as I was not on the committee at that time. However, my understanding from my conversations about the amendments and the stage 2 process is that there is concern in the denominational sector about how to separate RE

and RO in a Catholic school, for example, when the two things are interconnected. There are two aspects to that, which I was coming on to express.

First, RE in a Catholic school is, by its nature, Catholic. Although there will be study of other religions and moral systems, there will be a catholicity to what is taught in RE. RO in a Catholic school permeates the entire ethos of the school. It is not as it is in the non-denominational sector, where there will be set times for RO at periods during the year. In a Catholic school, there will be opportunities throughout the day to observe the Catholic religion. That is true of the Jewish school in East Renfrewshire as well—culturally, the religion will permeate the day in terms of prayer and things like that.

It is hard to decouple RO and RE in such settings, and many people in the denominational sector are concerned that we are taking, I suppose, a secular view of RO, or a view of it that would exist in a non-denominational setting, rather than looking at the interconnectedness of RO and RE in the denominational setting. There is concern for the value of both RE and RO in such settings. As I said, they have a unique place in those schools.

If we flip that on its head, I also have a slight concern that parents being unable to withdraw their child from RE in a Catholic school in particular is more problematic than we might at first have considered it to be. If someone wants to remove their child from very specific RE that is Roman Catholic, they will not be able to do that. It is more difficult for them to remove their child from RO in a Catholic school because, as I said, it permeates the life of the school. I have a concern about parental rights in that space.

I also have a wider concern that we are not talking about exactly the same thing when we discuss religious, moral and philosophical studies in a non-denominational school and RE in a denominational school. As I have said, there are complexities here, and that is particularly true of the amendments that we are discussing.

It is a long-standing matter of statute in this country that we have denominational schools and, in particular, that we have Catholic schools. It is my party's position and the position that I continue to hold that we support that long-standing definition. However, it is wrong to assume that only pupils and families of particular denominations choose and attend denominational schools. We probably all recognise from our regions that those schools are attended by a variety of young people for a variety of reasons. I reiterate the importance of ensuring that we take a careful and considered approach to how amendment 9 would work in the denominational sector.

I have raised those issues with the cabinet secretary, but I understand from Ms Chapman's comments that the Government intends to support her amendment. I caution that it is not right to support the amendment without understanding exactly how it will impact on denominational education more widely. Rather than having to try to fix something at stage 3, I would prefer that we take our time and take a considered approach to the matter, which we can then revisit at stage 3.

More widely, because of the many complexities that I have referenced, I cannot support the amendments in the group in the names of Maggie Chapman and Stephen Kerr. I have outlined my reasons for that. I would welcome further contributions in order to understand the Government's position.

The Cabinet Secretary for Education and Skills (Jenny Gilruth): As we have heard, the amendments in group 1 relate to the scope of rights concerning the withdrawal of pupils from religious observance and/or religious and moral education. I will therefore speak to them as a group.

Amendments 9 to 17 and 19, in the name of Maggie Chapman, would separate religious observance and religious and moral education, or RME, as it is known. That would mean that the parental right to withdraw would apply to religious observance only. Should those amendments be agreed to, it will no longer be possible to withdraw a child from RME. The amendments give effect to the committee's recommendation in its stage 1 report that religious observance and RME should be separated, so that the ability to withdraw would apply only to religious observance.

The committee made clear its recognition of the benefits of RME for community cohesion—particularly in the current times—and its importance as a core curriculum area. That view has also been echoed by a number of stakeholders, as we have heard this morning, including the Scottish Teachers Association of RME, and representatives of various faith and belief groups, including the Humanist Society Scotland.

I agree with the committee and the stakeholders. As well as being a valuable academic discipline in itself, RME supports and enables children and young people to learn about and from different religions and worldviews and explore ethical questions.

Contemporary RME is very different from the religious instruction of the past and in the context of the 1870s, when the parental right to withdraw was first introduced. RME is one of the eight core curriculum areas, and it is delivered in a manner that is objective, critical and pluralistic. The

amendments would also remove the oddity of RME being the only curriculum area with an associated legal withdrawal right.

However, I recognise the continuing need to provide non-statutory guidance and curriculum frameworks to safeguard the integrity of the subject. I will also be thoughtful about ensuring that those changes work in practice for denominational schools, as we have heard, which rightly have specific legal protections in relation to their faith character.

Paul O'Kane: I am keen to understand whether the cabinet secretary has thought about how that might happen. She will know, through her time as cabinet secretary and her career, that the experiences and outcomes in religious education in Roman Catholic schools are different and distinct. Will she talk about the connection between observing your faith and learning about it in the context of the world and other faiths? I am keen to understand what work she has done or is planning to do on that.

Jenny Gilruth: Following our discussion, I have discussed that matter in detail with officials. I give Mr O'Kane assurance that they have already started engagement with the Scottish Catholic Education Service, but we also want to engage ahead of stage 3 on how that will work in relation to the points that he raised about denominational schools.

I am also mindful of my engagement with SCES on the issue, during which it pointed out that we would be talking about extremely small numbers of pupils in a Catholic education setting, because parents will have chosen to send their children to that school for faith-based reasons. However, we do not think that it is insurmountable that we will be able to address those issues at stage 3.

I hear the concerns that the member has raised, and I hope that he takes some reassurance from the fact that we are already engaging with the Scottish Catholic Education Service. However, I am mindful of the committee's report at stage 1, which recommended that we clarify the differences between RO and RME, and that is what we have sought to provide.

I support Maggie Chapman's amendments, and I encourage members to do the same.

Stephen Kerr's amendment 9A would explicitly state that the section inserted by amendment 9 applies to religious education in denominational schools as well as non-denominational schools. I do not think that that amendment is necessary, because the provisions in the bill already apply to both denominational and non-denominational schools. Moreover, there is a risk that amendment 9A would create confusion regarding whether other provisions in the bill and relevant sections of the 1980 act apply generally to denominational schools, which they do. I therefore hope that Stephen Kerr might not press the amendment—or, rather, that Tess White will not press it on his behalf.

As we have heard, amendment 20 would require separate treatment of parental requests to withdraw a pupil from religious observance and RME respectively. Again, I do not consider that amendment to be necessary. However, if Maggie Chapman's amendments are agreed to, part of that amendment is in effect obsolete, given that the right to withdraw from RME would be removed.

It is worth pointing out that schools already make the differences between religious observance and RME clear to parents in discussions about withdrawal, and withdrawals are not always made from both. The legal requirement that exists to consider requests separately might result in additional burdens on schools, pupils and parents by requiring additional paperwork. I therefore encourage members to resist amendment 20.

Finally, I turn to amendment 44, which provides the legal definitions of religious observance and RME, which is referred to in the 1980 act and therefore in the amendment as "instruction in religion". As I said, I recognise the importance of drawing a clear distinction between RO and RME. Providing those definitions in legislation would reduce future flexibility for course content to evolve over time, as it does.

It is worth remembering that the provisions in the bill originate from the 19th century and that the curriculum has evolved in multiple ways since that time, even since the passing of the 1980 act. Furthermore, definitions of religious observance and RME are already provided in the non-statutory guidance. Those definitions differ from the definitions that are listed in Mr Kerr's amendments and, as they reflect Government policy, are preferable. Amendment 44 is therefore unnecessary and likely to create confusion, so I cannot support it.

In summary, I encourage members to vote for amendments 9 to 17 and 19. I hope that Tess White, on behalf of Stephen Kerr, will not press amendments 9A, 20 and 44.

The Convener: I call Maggie Chapman to wind up.

Maggie Chapman: I thank the cabinet secretary for her comments. I am sympathetic to some of the intention behind Stephen Kerr's amendments but, like the cabinet secretary, I do not think that the first two in this group are necessary.

I share the cabinet secretary's concerns about the constraining definitions in amendment 44.

What is listed in those two definitions is too prescriptive. We can have on-going conversations between now and stage 3 and see where we get to in that space if we can come to an agreement.

To wrap up, my amendments fulfil the committee's recommendation to separate religious observance and RME. They focus on the existing parental right to withdraw from RO and will no longer allow parents to withdraw their child from RME as a curriculum area. That recognises the value of RME as objective, critical and pluralistic and important in supporting young people to learn about and from different faiths, beliefs and world views.

For those reasons, and because of the wealth of evidence that we heard in this space in our stage 1 evidence gathering, I urge committee colleagues to support the amendments in my name in this group.

The Convener: I call Tess White to wind up and press or withdraw amendment 9A.

Tess White: What has just happened in this first group shows that there are fundamental issues that should have been ironed out before we got to this stage. We are talking about issues with the faith schools. The cabinet secretary might say that it is only a small number, but it is a very significant number, and those discussions should have taken place before now.

As it was described to us, the bill is very small—I think that it is five pages—but it has huge and wide-ranging ramifications. The amendments were lodged by Stephen Kerr to try to clarify and give some definitions, so I press amendment 9A.

The Convener: The question is, that amendment 9A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 9A disagreed to.

The Convener: I call Maggie Chapman to press or withdraw amendment 9.

Maggie Chapman: I press amendment 9.

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 9 agreed to.

Amendments 10 to 14 moved—[Maggie Chapman].

10:00

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 10 agreed to.

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 11 agreed to.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 12 agreed to.

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 13 agreed to.

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 14 agreed to.

Amendment 20 moved—[Tess White].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 20 disagreed to.

The Convener: Amendment 21, in the name of Tess White, is grouped with amendments 22 to 25, 5, 26 to 30, 6, 31 to 34 and 42. I draw members' attention to the procedural information in relation to the amendments that is set out in the groupings.

Tess White: My amendments are about ensuring that the process that follows a withdrawal request is clear, fair and workable for families and schools. At stage 1, we heard strong concerns that the bill as drafted will place schools in the middle of very sensitive family decisions, without enough clarity or support. The group of amendments responds directly to that evidence.

Amendment 21 would require schools to provide parents with written information setting out the steps that will be followed once a withdrawal request is made. At the moment, parents might not know what will happen next or how decisions will be taken. The amendment would provide clarity from the start and help to manage expectations.

Amendment 22 seeks to ensure that, where possible, all those with parental rights and responsibilities are informed and involved in the process. That is particularly important in cases of separation or shared care, and it would help to avoid situations in which one parent is excluded from decisions about their child without good reason.

Amendments 23 and 24 would make it clearer what schools will have to actively consider by requiring them to take account of the child's circumstances and the likely impacts of the request on their emotional wellbeing. That would help to ensure that decisions are thoughtful and child-centred, instead of there being a simple tick-box exercise, which the amendments aim to prevent.

Amendments 26 and 27 deal with the issue of capacity. The bill as drafted assumes that children of any age are capable of forming a view, unless proven otherwise. My amendments would

introduce a presumption that children under the age of 16 do not have the maturity to form a view and that a pupil who is aged 16 and over does, unless the contrary is shown.

Maggie Chapman: I am interested in what Tess White is saying about capacity and the presumption against expecting every young person who is under the age of 16 to understand or have capacity. How does she consider that that aligns with the principles—set out in the UNCRC and elsewhere across legislation that has already been passed by the Parliament—that assume capacity unless there are reasons not to? There is a presumption for, rather than a presumption against, as her amendment proposes. How do you see that aligning with our existing legal and other practices?

Tess White: We received evidence from the legal profession to say that the law is all over the place on age. In certain cases in the justice system, the age is 25; in other cases in Scotland, it is 18; and, in the majority of cases, it is 16. The Greens and Conservatives fundamentally disagree on that. In this case, we believe that parents have the right and the responsibility. I refer members to the parental responsibilities as set out in the Children (Scotland) Act 1995. In relation to a child, the parent has a responsibility to

"safeguard and promote the child's health, development and welfare",

and

"to provide, in a manner appropriate to the stage of development of the child ... direction"

and

"guidance".

There is a reason for that, which is why I have made those proposals through my amendments.

We fundamentally disagree about the age of maturity, but frameworks have to be set; otherwise, it is chaos. It is not fair for the teachers, who are not qualified or trained in this area, to make a decision about maturity. It is not fair on them when parents have the responsibility to decide on the guidance and on what is right for their child.

Maggie Chapman: Will Tess White take an intervention?

Tess White: No, I think that I have answered the question. I am going to proceed.

Amendments 26 and 27 deal with the issue of capacity. As we have discussed, the bill as drafted assumes that children of any age are capable of forming a view unless proven otherwise. The amendments would introduce a presumption that children under 16 do not have the maturity to form a view. I have said that again because that is our position. I have used the age of 16 because, as I have said, it is a well-established point in Scots law when young people gain an increased level of autonomy. Below that age, parents remain legally responsible for the child's upbringing and welfare. That needs to be properly reflected in the process; we cannot decide that, for one child, it is one age and, for another child, it is another age. A key point is that the amendments would not silence young children. Young children need to be respected and to have their voices heard. The amendments simply recognise that age and maturity matter and that schools should not be left making open-ended judgments without a clear framework.

Amendments 28 to 30 would change when decisions can take effect by preventing a withdrawal request from being acted on until the full process that is set out in the bill has been completed. That would avoid a rushed decision. It would press pause, particularly when there is a disagreement between a child and their parent.

Amendment 31 would introduce a requirement for written confirmation from both the parent and the pupil that sets out their respective positions. That is for the sake of good order. It would provide clarity about each person's view, avoid misunderstandings and give schools a clear record of the decision-making process.

Amendment 32 would introduce a mandatory 14-day cooling-off period before any withdrawal or change in withdrawal can take effect, during which any further views that are expressed by the child must be considered. That would allow time for reflection and help to ensure that decisions are not made in haste.

Amendment 33 would require key decisions to be taken by a panel that is made up of senior education staff and an independent advocate, instead of by a single individual. That would bring balance, experience and independence, and it would reduce pressure on teachers.

Amendment 42 would ensure that advice and assistance are available to both the child and the parent if agreement cannot be reached after discussion. The amendment is about support and fairness, not escalation or conflict.

I move amendment 21.

Pam Gosal (West Scotland) (Con): The bill currently presumes that every child, regardless of their age, is capable of forming a view unless proven otherwise. At stage 1, many parents and education professionals raised concerns that that would place unreasonable pressure on younger children and leave teachers to make difficult judgments about capacity without a clear framework. As drafted, the bill risks creating

conflict between pupils and parents and placing schools in a difficult position.

Amendment 5 would remove the automatic presumption and replace it with a more realistic test. It would require schools to be satisfied that a pupil can meaningfully express a view, taking account of their age, stage of development and understanding. That would reduce risk for schools and support teachers and still ensure that children's views are taken seriously where appropriate.

Amendment 6 would address the concern that, under the bill as drafted, a pupil's objection would normally determine the outcome of parental requests to withdraw. As the committee has recognised, parents are the primary guardians of their children and have legal responsibility for their upbringing and education. Amendment 6 would not remove the pupil's voice; it would require schools to take account of the pupil's views, and it would make it clear that the parent's request should be given effect unless the school is satisfied, having regard to the pupil's views, that doing so would be contrary to the pupil's best interests. That is a balanced and proportionate approach. It would protect children where there is a genuine welfare concern while avoiding a situation in which schools are routinely placed in conflict with parents over sensitive family decisions.

10:15

Paul O'Kane: I do not want to detain the committee too much by speaking to all the amendments in the group, but I want to speak briefly to the general issues that are raised by amendments 31 to 33 and others in the group on the operability of the changes that are proposed in the bill and how they might work in practice.

Thus far, the Scottish Government has not provided sufficient clarity on how the process of a pupil objection to withdrawal should be handled by schools in practice. Particularly given the risk of creating intra-family conflict and tension between pupils and parents who perhaps have distinct views on whether to participate in religious observance or education, the bill will put schools and teachers in the middle of that conflict.

Jenny Gilruth: The committee heard in evidence that conflict exists at present in relation to how the right to withdrawal operates. I am not sure that I follow that the bill will necessarily lead to further conflict in that regard.

In addition, I note that I set out at stage 1 that our approach will be to provide clarity in the guidance on the issues that Mr O'Kane has raised.

Paul O'Kane: I am grateful to the cabinet secretary for that intervention, mainly because my next sentence was going to be, "We need strong and robust guidance and directives on how the process can be managed." However, I say to her that, when we formalise a process, that can give rise to conflict. When we get into a process—in particular, one that feels legalistic—we can have a degree of more formalised conflict. However, I appreciate that the cabinet secretary is cognisant of that, and it is useful to hear her assurance on the guidance.

Teachers in our schools rely in no small part on the relationship of trust between pupils, parents and school staff in order to carry out fully the functions that we all expect to happen in our schools. Pushing teachers to make determinations about capacity, for example, could intensify the issue, which is often very personal to families and, indeed, to a person's religious beliefs and feelings and their sense of being on a journey around that. We need to be really cognisant of the challenges therein.

That also relates to one of the issues with amendment 24, which would require operators to consider pupils' wellbeing. As with many of the amendments in the group, there is a good intention behind that. However, given what we have just discussed in relation to conflict, we need to be careful about legislating for things that require a degree of nuance and conversations and dialogue in schools. I remain unclear about how we would define wellbeing and how we would understand the measures that would be taken in that space. I contend that much of this needs to be dealt with in the guidance, which will, I hope, empower teachers and schools to feel confident about what they are asked to do.

I am not clear that the right measures to provide that clarity and support are in place at this stage. As I have said, I hope that we will discuss the matter further as we approach stage 3 and, if necessary, that we will amend the bill at that stage.

Having said that I was not going to speak for a long time, I actually did that. I apologise, convener. Thank you.

Jenny Gilruth: The amendments in group 2 speak to the need for a balance to be struck between ensuring that a sufficiently robust process is in place and avoiding imposing undue burdens on parents, pupils and schools.

As we heard, amendment 21, in the name of Tess White, would require schools to provide parents with written information on how the withdrawal process will be handled. That is a proportionate and practical measure. Although schools are already required to include that

information in handbooks, anecdotal evidence suggests that parents are often not aware of their right to withdraw their child from RO or RME. Providing that written guidance when a withdrawal request is made would help parents to understand their rights and, potentially, also help to reduce disputes. It would not introduce significant costs or complexity as there could be a standard form that was included in and supported by the guidance accompanying the bill, as has been mentioned. I am therefore happy to support amendment 21.

Amendment 22 would require operators to notify all persons with parental rights and responsibilities when informing the pupil about a withdrawal request. The amendment is unnecessary and unhelpful, as the language used is not consistent with the 1980 act, which already provides a broad definition of a parent that includes guardians and others with parental responsibilities. Including a different and narrower definition risks confusion and inconsistency.

The duty in amendment 22 would also apply regardless of family circumstances, which means that unnecessary notifications would be made when both parents live together. In other circumstances, including where parents are separated and there is conflict about the child's upbringing, the school's operator would be required to notify the other parent regardless of any relevant agreements or court orders relating to the child's upbringing. I hope that members will see how unhelpful such a provision could be.

Amendments 23 and 24 would add a requirement to consider the pupil's emotional wellbeing when having regard to their views. Although that is an important consideration, the amendments would introduce subjective and undefined criteria that are at odds with the existing duties, which are covered by the wellbeing principles under getting it right for every child—GIRFEC—to ensure pupils' welfare. Adding that requirement is therefore unnecessary.

Amendment 25 seeks to prevent operators from expressing or implying a view about whether a pupil should object to withdrawal. Teachers are already bound by professional standards to act with integrity and to avoid bias, so the amendment is unnecessary and could undermine respect for teachers' professionalism. I mentioned in my stage 1 evidence that guidance will accompany the bill. I suggest that that guidance could usefully reinforce the importance of objectivity without suggesting that teachers would act counter to their professional standards. I hope that that reassures Tess White that she should not move amendment 25 on behalf of Stephen Kerr.

As we have heard, Pam Gosal's amendment 5 would replace the presumption that a pupil is capable of forming a view unless the contrary is shown with a test requiring the operator to judge whether the pupil can meaningfully express a view on the request,

"having regard to their age, stage of development and understanding".

The wording is quite unclear, and it introduces a higher assessment threshold and greater complexity for schools, which could encourage inconsistency across schools.

I tried to intervene when amendment 6 was being spoken to earlier. The amendment seeks to replace the current bill provision under which a pupil's objection will prevent withdrawal with a best interests test, and it would create an additional barrier to the pupil's decision being respected. It would mean that, when a pupil objects, their decision would be respected only if the operator judged that their withdrawal would be contrary to their best interests. The new test would seem to create further complexity for schools, would risk inconsistency and would increase workload because of mediating between pupil and parent. We have already heard some of the challenges associated with that from Mr O'Kane.

Amendments 26 and 27 seek to introduce a presumption of capacity at 16 and a presumption of incapacity below 16 for the pupil's right to have their views considered. That does not align with the UNCRC and recent domestic legislative precedents, and it is far removed from the capacity-based approach in the bill, which was supported by a majority of committee members. Ms Chapman made a point on that in an intervention. It would exclude the vast majority of school-age pupils, given the presumption of incapacity below 16.

Amendments 31 to 33 would introduce significant administrative complexity. Amendment 31 would require written confirmation from the parent and the pupil before withdrawal could proceed. Amendment 32 would impose a 14-day waiting period; it provides that, if the child expresses further views during the 14-day period, those views must be treated in the same way as their initially expressed views. Amendment 33 would require decisions to be made by a panel, which would include the director of education, headteacher and, as we have heard, an independent advocate. Those changes would create delays, introduce unnecessary barriers for parents and pupils, increase costs and add disproportionate burdens on schools and local authorities. Larger local authorities, in particular, might find that provision impossible to deliver.

Amendments 28 to 30 would make technical and consequential changes linked to amendments 31 to 33, which would introduce new conditions and processes. As the substantive amendments

are not supported by the Government, I urge members to resist amendments 28 to 30.

Amendment 34 would provide that nothing in proposed new section 9A of the 1980 act would affect the responsibility of parents for the upbringing, moral education and welfare of their children. The amendment seeks to make an unnecessary and inappropriate provision relating to parental responsibilities, and it restates a principle that is already well established in Scots law. There is a risk that the inclusion of the provision might imply that section 1 casts doubt over the principle that parents have primary responsibility for their children's upbringing, which it does not. The amendment would not create new rights or duties and would add no substantive value to the bill's provisions.

Finally, amendment 42 would introduce a statutory obligation to provide legal aid for disputes between pupils and their parents about withdrawal from religious observance. The amendment would undermine the fact that schools and teachers are experienced in having complex and sensitive discussions with parents and pupils on a regular basis and that they already have well-established processes for resolving disagreements. It would also result in significant financial and administrative burdens, and it could create an expectation of formal legal involvement in discussions that are intended to be carried out at school level.

In summary, I encourage members to support amendment 21 and vote against all the other amendments in the group.

Tess White: In summing up, I want to say a few words about Stephen Kerr's amendments and address the point that Maggie Chapman raised. I also want to address something that Pam Gosal said and the cabinet secretary's discussion with Paul O'Kane.

I start with Stephen Kerr's amendments 25 and 34, the aim of which is to provide clarity and ensure that there is fairness and balance. Amendment 25 would introduce a requirement for neutrality and ensure that the child's view is truly their own and not the product of subtle or unintended pressure from the school environment. Amendment 34 would provide an important reassurance in the wider context of family law. It does not contradict anything in the bill and would provide additional safeguards.

In relation to Maggie Chapman's question, there is a balance. There are conflicts of rights here. I quoted the Children (Scotland) Act 1995, which the cabinet secretary will be familiar with—she probably knows most of the paragraphs by heart. We should not take away parents' responsibilities, but the bill drives a coach and horses through those responsibilities. The bill does not cross-check other legislation or consider balance. If the cabinet secretary does not take account of issues such as that, it will lead to bad lawmaking and conflict will arise. Pam Gosal talked at length about parental responsibility and about teachers and schools being left to make really difficult decisions. There needs to be a framework, but the bill lacks one.

Finally, Paul O'Kane asked about conflict. The cabinet secretary said that conflict exists now, but it emerged in the stage 1 inquiry that there is insufficient data. The Scottish Government considered only three education authorities—it did not consider the whole of Scotland. It took a sample and estimated that there could be 4,000 cases. In making a fundamental decision, and in considering the balance of rights between parents and children, it is bad lawmaking to increase burdens on schools.

We will be discussing the importance of data in a further group of amendments, so I will stop there.

Amendment 21 agreed to.

Amendment 22 moved—[Tess White].

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 22 disagreed to.

10:30

Amendment 23 moved—[Tess White].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 23 disagreed to.

Amendment 24 moved—[Tess White].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 24 disagreed to.

Amendment 25 moved—[Tess White].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

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

Amendment 25 disagreed to.

The Convener: Amendment 5, in the name of Pam Gosal, has already been debated with amendment 21.

Pam Gosal: I am not convinced by the cabinet secretary's response in relation to having the right processes and framework in place, so I will move amendments 5 and 6.

Amendment 5 moved—[Pam Gosal].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 5 disagreed to.

Amendment 26 moved—[Tess White].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 26 disagreed to.

The Convener: Amendment 27, in the name of Tess White, has already been debated with amendment 21. I remind members that, if amendment 27 is agreed to, I cannot call amendment 15, due to pre-emption.

Amendment 27 moved—[Tess White].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

O'Kane, Paul (West Scotland) (Lab)

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

Amendment 27 disagreed to.

Amendment 15 moved—[Maggie Chapman].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 15 agreed to.

Amendment 28 moved—[Tess White].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 28 disagreed to.

Amendment 29 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 29 disagreed to.

Amendment 16 moved—[Maggie Chapman].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 16 agreed to.

Amendment 30 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 30 disagreed to.

The Convener: Amendment 6, in the name of Pam Gosal, has already been debated with amendment 21. I remind members that, if amendment 6 is agreed to, I cannot call amendment 17, due to pre-emption.

Amendment 6 moved—[Pam Gosal].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 6 disagreed to.

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 17 agreed to.

Amendment 31 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 31 disagreed to.

Amendment 32 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 32 disagreed to.

Amendment 33 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

O'Kane, Paul (West Scotland) (Lab)

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

Amendment 33 disagreed to.

Amendment 34 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 34 disagreed to.

The Convener: Amendment 1, in the name of Maggie Chapman, is grouped with amendments 18, 3 and 4.

Maggie Chapman: The child-facing version of the UNCRC states:

> "I have the right to be listened to and taken seriously".

However, the 1980 act allows children to be withdrawn from religious activities in schools

without their consent and without their views even being taken into account. That is clearly contrary to the convention, and I welcome the opportunity to correct that with this bill.

However, the bill, as it stands, will allow a young person who has previously been opted out of religious activities by their parents to opt back in, but not to opt out themselves. That directly contradicts the Scottish Government's draft children's rights scheme, which states that children should be given

"the knowledge and confidence to use their rights".

That rightly suggests that children should be able to use their rights proactively, rather than only after an adult has acted on their behalf.

The bill goes against the Children and Young People's Commissioner Scotland, who, in her letter to the committee, explicitly said:

"Part 1 in its current form does not achieve compliance with the UNCRC."

Her view is shared by others. The committee's stage 1 report also noted that a majority

"supported amending the Bill to provide children with an independent right to withdraw from RO."

That majority includes the Scottish Human Rights Commission and Together (Scottish Alliance for Children's Rights). Indeed, Professor Angela O'Hagan of the Scottish Human Rights Commission told the committee that without such a right, the bill will fail to meet its basic aim of achieving compliance with the UNCRC. In the 2023 concluding observations from the Committee on the Rights of the Child in the UK, the UN also called for withdrawal requests by children and young people not to be subject to parental consent.

10:45

If all that was not enough, a Survation poll recently commissioned by the Humanist Society Scotland shows that 66 per cent of Scots believe that pupils should be able to decide for themselves whether to take part in religious observance. The majority of supporters of every political party agree.

It is central to the whole notion of the rights of children and young people that those rights should not be subsidiary to the actions of adults. By allowing young people to override their parents' wishes but not proactively exercise their rights, the bill undermines its central purpose, which is to strengthen the fundamental rights to be heard, to be taken seriously and to be listened to.

I am grateful for the overwhelming support that I have received for my amendments from civic society, including people of faith and people of none. My amendments seek to give children and young people the right to exercise their rights under the UNCRC to choose whether to be subjected to religious observance. I urge committee members to follow the UN committee's recommendations, the evidence that we heard during stage 1 and the overwhelming supportive information that we have received, and to support my amendments.

I move amendment 1.

Paul O'Kane: I have followed the stage 1 debate and, having rejoined the committee for stage 2 of the bill, I must echo concerns expressed previously about trying to have a debate of this magnitude and depth with only three months remaining in the parliamentary session. It is perhaps for that reason that I want to try to explore some of the detail of what Maggie Chapman and others have been advocating.

Although I recognise what has been said about the UNCRC and the rights of children and young people, we have to look in full at the detail of the convention, particularly article 14. Paragraph 2 of that article, which is on the rights to freedom of belief and religion, states that:

"States parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

Throughout the process, people have been trying to achieve a degree of balance, which is important. Absolutely, there is a balance to be struck between hearing clearly the voice of children and young people, and giving due regard and respect to the rights of parents, particularly given that, for us as a state party, pre and post-devolution legislation clearly outlines the rights of parents to direct the child and support them in decisions that are taken.

I have to say that, in amendments 1, 18, 3, and 4, I do not detect any reference to the right of parents to be involved, or to the fact that each individual state party should take a view on what that involvement should look like or how it should take place. We need to be more nuanced in our approach and not ignore other significant parts of the UNCRC.

It would be helpful if Ms Chapman could clarify whether she disagrees with those provisions in the UNCRC and what place she feels there is for parents in the process. As I have noted, the UNCRC leaves those matters to the discretion of states parties, and, clearly, there is an established precedent in Scots law on the rights of parents to direct their child.

However, further discussion needs to be had about how we balance those rights and duties, and I would certainly be interested in having that

discussion as we approach stage 3. I am concerned that the amendments in the group might bring about the fundamental conflict between the competing—perhaps that is not the right word; I mean "interacting"—rights of both parents and children.

I am also concerned that there has not been a huge deal of scoping work on how widely any new right on the part of children might be used, on how it might impact on school leaders and teachers, and on some of the issues that we discussed in the previous group around the conflicts that will exist within school. We must be cognisant of unintended consequences with regard to how things might work in practice, particularly in denominational schools. I talked earlier about there not being clear distinctions between RE and RO, and about children choosing to opt out of one and not the other. I am concerned about those impacts.

There could be a number of unintended consequences. What has been highlighted with this bill is a sense of frustration at having to deal with such fundamental issues in a constrained bill and within a constrained timeframe.

Given all that, I am not able to support the amendment as it is before us today, but I am interested in having a further discussion about the balance of, and the interplay between, rights, because that is an important issue.

Jenny Gilruth: Amendments 1, 18, 3 and 4, in the name of Maggie Chapman, seek to introduce an independent right for pupils to withdraw themselves from religious observance in schools.

I have been clear in my evidence and in responding to the committee's stage 1 report that the bill as introduced seeks to strike a careful balance, as I think we have just heard from Mr O'Kane, by providing pupils with a right to object to their withdrawal but requiring that a discussion on that objection be sought between the school, the parent and the pupil. The changes uphold pupils' rights, while recognising the rights of parents to provide direction and guidance to their children, in line with their evolving capacities.

Also, as the committee noted in its stage 1 report, responses to the public consultation were far from definitive in their support for the independent right of pupils to withdraw from religious observance. Indeed, the committee recommended that further consideration be given to that option in future legislation, and the majority of the committee considered that the current approach in the bill would be

"more appropriate at this juncture".

I welcome that position and consider it the right approach.

The current provisions in the bill aim to chart a middle course through the spectrum of stakeholder views by introducing the requirement to consider the child's views as part of any withdrawal request. That approach aligns with the requirements of article 12 of the UNCRC and represents a clear improvement in the consideration of children and young people's views on withdrawal from religious observance and/or RME.

The introduction of an independent right to withdraw raises a range of questions about the interaction of parental and children's rights, as we have already heard, as well as about the delivery, timetabling and staffing of religious observance and alternative activities in school. Those matters alone warrant further analysis and formal consultation, including to establish the associated costs, which one would expect to be significant. Indeed, to allow these amendments to be debated at stage 2, we have had to provide a financial resolution. The fact that it has taken us over the threshold for requiring such a resolution is an acknowledgement of what it would cost to implement the amendments, if they were agreed to.

I have been happy to provide that resolution to enable this debate to take place. However, for the reasons that I have set out, I cannot support the amendments in the group, nor the introduction of an independent right in the bill for pupils to withdraw from religious observance.

The Convener: I call Maggie Chapman to wind up and to press or withdraw amendment 1.

Maggie Chapman: No young person should be forced to pray, and no young person or child should be forced to participate in activities of worship against their will. That is the principle to which the amendments speak.

Young people in Scotland's schools are still compelled to participate in acts of religious observance. With the right to withdraw being reserved exclusively to parents, some school pupils and young people are denied the right to be heard and are forced to pray against their own beliefs. That was the clear conclusion of the "Preaching is not Teaching" report that the Humanist Society Scotland published. The report also found that RO is still exclusively Christian and worship based in many non-denominational schools.

Twice, the UN has recommended that children and young people in Scotland be supported in exercising their rights by giving them the right to withdraw from RO. My amendments seek to answer that recommendation that the UN has made to us twice in the past eight years.

All the human rights experts who we heard from in committee were very clear: children and young people should be able to exercise their right to freedom of belief and expression. Faith groups, legal experts and human rights bodies have all told us that denying pupils the independent right to withdraw amounts to a breach of their human rights. My amendments seek to address that breach and to enable children to exercise their right to freedom of belief and expression.

I will press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gosal, Pam (West Scotland) (Con)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 1 disagreed to.

The Convener: Amendment 35, in the name of Tess White, is grouped with amendments 38, 39 and 43. I call Tess White to move amendment 35 and speak to all amendments in the group.

Tess White: The amendments are about basic transparency and making sure that we understand how the system is working in practice. At stage 1, we heard concerns that, without proper data, it will be difficult to know whether the bill is having unintended effects on children, families or schools, and the amendments address that gap.

Amendment 35 makes a small but important technical change by linking the reporting duty to the new definitions in the bill so that data on withdrawals is recorded consistently and clearly. That would help to ensure that information is accurate and comparable across schools and local authorities.

Amendment 39 would introduce a clear reporting requirement by requiring schools to report annually on requests for withdrawal from religious instruction and religious observance. It also requires reporting on how often pupils objected to a parental request and how often those objections were upheld. The amendment does not ask schools to record beliefs or motivations. It simply collects information on how the process is being used and where the disagreements are arising.

I move amendment 35.

The Convener: I call Paul O'Kane to speak to amendment 38 and other amendments in the group.

Paul O'Kane: I do not intend to speak for long, as many of the underlying arguments are similar to those that have been expressed by Tess White and Maggie Chapman.

The committee was concerned at stage 1 about the fact that, when it comes to religious observance practices and withdrawal from RO and RE, we do not have good or accurate data on what is happening in schools. That is a concern that I share and I believe that colleagues on the committee also share. It is important that we have something in the provisions of the bill to collate and collect that data in an appropriate way, so that we can understand what is happening across Scotland.

In her reflections on stage 1 evidence, in fairness, the cabinet secretary accepted that point and accepted that the data that is being collected is perhaps not sufficient and could be better. I am also mindful of putting further burdens on schools and local authorities, but we could find the most appropriate way for the Government and members of the committee to move the amendment forward.

I am willing not to move the amendment today if the cabinet secretary will provide an assurance that we can work together on the monitoring and transparency elements of the bill and perhaps come back at stage 3 with something that would fulfil what we all want, which is that we have an accurate picture of all those issues across Scotland.

The Convener: I call Maggie Chapman to speak to amendment 43 and other amendments in the group.

Maggie Chapman: All the amendments in the group are trying to do similar things in reporting on the exercise of rights to withdraw. It is right that we monitor how rights are being used and respected, and I support the intention of all the amendments in the group.

My amendment 43 is the most comprehensive in the group. Not only does it allow us to monitor things; it updates us on the use of religious observance. Some schools have followed Scottish Government guidance and have adopted a time for reflection model of religious observance. That more inclusive approach is less focused on prayer and religious worship and more on reflecting on a moral issue without being led in a particular way of thinking.

Schools tend to invite a range of speakers from different faith and non-faith backgrounds. However, research from the Humanist Society

Scotland shows that, in some non-denominational schools, RO is still wholly or largely delivered in a Christian manner. Assemblies are held in church and involve religious worship, prayers and hymns. Non-inclusive practices such as those can isolate and discriminate against pupils, parents, guardians and teachers who do not hold Christian beliefs. That is why it is important to monitor how RO is taking place in our schools, which is covered by paragraph (a) of subsection (2) in the new section that my amendment would insert in the bill. Where students do withdraw from RO, it is crucial that high-quality alternative provision is put in place so that those young people are not disadvantaged. That is covered by paragraph (c) of subsection (2). I hope that the committee will support my amendment so that we can ensure that the rights that we are creating in law are being used effectively across our educational system, and that religious observance in our schools is delivered in a way that is appropriate and inclusive and understands that we exist in a multifaith society.

11:00

Jenny Gilruth: I thank Tess White, Paul O'Kane and Maggie Chapman for explaining the rationale behind their quite similar amendments, although I acknowledge that there are some important differences. I also note the committee's conclusions on data and evidence, as set out in the stage 1 report. As we have heard today, the Government undertakes research to understand better how withdrawal is monitored and to monitor better the number of withdrawal requests. In response to the stage 1 report, I confirmed that I would give consideration to the committee's recommendations, which group 4 also speaks to. Although I welcome the intention behind the amendments, I have some difficulties with each of them.

Paul O'Kane's amendment 38 and Tess White's amendment 39 are very similar in that they seek to place a data gathering and reporting duty on operators of schools, which are asked to give specific items of data to ministers. That is accompanied by annual duties on ministers to collate that data and publish analysis of the report. Operators of schools are either education authorities—local authorities—or the charitable bodies that run our grant-aided schools. The specific part of Mr O'Kane's amendment that requires schools to monitor and then report on instances of religious observance would seem to be impractical. I note that he has acknowledged that point, but the bureaucratic burden on each school to report to each education authority on each occasion seems disproportionate.

In Tess White's amendment, the requirement to report on instances of pupil objections and where those are given effect may give rise to concerns about privacy, in particular given the estimated low frequency of withdrawals, even without a requirement for the Scottish ministers to publish that information. On that basis, I am unable to support amendments 35, 38 and 39 as drafted.

Maggie Chapman's amendment 43 seeks to tackle these matters through a very different method, via the commissioning of an independent report by the Government two years after royal assent and then every five years thereafter. That would cover the form and content of religious observance in schools, the operation of withdrawal rights from religious observance, the extent to which alternative education experiences are provided to pupils, compliance with the United Nations Convention on the Rights of the Child in relation to the form of religious observance that is provided, the arrangements for withdrawal from religious observance, and any other matters that are deemed important by the independent body that is tasked with developing that part. I understand the intention behind amendment 43, but it is not clear how the costs of providing such a report and the gathering of data and information to include in it would be funded. It is also unclear what the purpose of each element would be and whether it would have a benefit proportionate to the requirement to gather that data.

Maggie Chapman: Following on from what Paul O'Kane said, I would say that there were a lot of unknowns in the stage 1 evidence. A lot of the figures are projected or estimated. It is guesswork, quite frankly, because we do not have a picture of what is happening now, never mind when new rights come into play. What data-gathering mechanism do the cabinet secretary and the Scottish Government suggest would help us understand what is going on in this area?

Jenny Gilruth: I acknowledge the member's point. We need to be mindful that data gathering is proportionate. I am also cognisant of the fact that the statutory responsibility for the delivery of education rests with local authorities, which quite often sit with lots of data. Those who have debated with me on education matters in the chamber will know that data quite often rests at local level. I recognise the challenge in that regard. There is a need for better data gathering, as I recognised in my evidence to the committee at stage 1 and in the debate. We might be able to provide for that in a more proportionate way, and I will come on to talk to that in more detail.

Overall, although I agree that there should be appropriate monitoring on the matters that are addressed in the legislation, as I noted during the

stage 1 debate, I have difficulties with what each of the three amendments is seeking to cover.

I welcome the opportunity to consider the issue further, with a view to bringing back a suitable amendment at stage 3 that seeks to fulfil the committee's recommendation at stage 1. I therefore ask Tess White, Paul O'Kane and Maggie Chapman not to press or move their amendments on that basis.

The Convener: I call Tess White to wind up and press or withdraw amendment 35.

Tess White: Cabinet secretary, I hope that you will be pleased to hear that, based on what you have just said—that you will take the amendments away, consider them, review them and then come back—I will not press my amendment. Thank you for that, and I look forward to working with you on that.

Amendment 35, by agreement, withdrawn.

The Convener: Amendment 36, in the name of Tess White, is grouped with amendments 37, 41, 57 and 58.

Tess White: This group, which is on guidance on withdrawals, is about making sure that schools are properly supported to implement the bill and that families can expect a consistent approach across Scotland.

At stage 1, as a committee, we heard clear evidence from schools, local authorities and teachers that, without clear national guidance, the bill risks being applied differently from one area to another. My amendments respond directly to those concerns.

Amendments 36 and 37 seek to strengthen the existing guidance provisions by requiring schools to have a regard to guidance that is published by the Scottish ministers, rather than guidance that may be issued. That would ensure that guidance is not optional, giving schools a clear national framework to follow.

Amendment 41 seeks to place a clear duty on the Scottish ministers by requiring them to prepare and publish statutory guidance on how the new withdrawal process should operate. It also specifies what the guidance must cover, including how to assess a pupil's maturity, how to handle disagreements, what support is available, what training is needed and how the process will be resourced. Importantly, the amendment would also require the Scottish ministers to consult educational authorities, teachers and parents before the guidance is published, helping to ensure that the guidance is practical and grounded in real experience.

Amendments 57 and 58 would link the guidance directly to commencement. They would ensure that the main provisions of the bill cannot come into force until the guidance has been published. That would avoid schools being expected to implement complex new duties without the tools or support that they need.

I move amendment 36.

Paul O'Kane: The only comment that I wish to make on this group is to reiterate the comments that I made on group 2: the Government needs to provide clarity on how the proposed changes will be carried out.

I agree with the intent behind the changes that are proposed in the bill, but there are significant concerns about their implementation, so there is a clear need for guidance for our schools and teachers. I am supportive of a general amendment requiring ministers to set out guidance. However, I am not convinced whether the amendment as drafted by Tess White, which would prescribe the contents of the guidance, is the right way to go.

That said, the cabinet secretary now has another opportunity to set out whether she will produce and provide guidance, and, perhaps, to detail what she considers to be a necessary part of that, including any other support for schools and teachers in that regard.

Jenny Gilruth: Tess White's amendments in group 5 relate to the introduction of a new duty that would require the Scottish ministers to prepare and publish guidance for school operators on the process for withdrawing from RO and RME. That would replace the requirement in the bill for operators to have regard to any guidance that the Scottish ministers might give. Amendments 36, 37, 57 and 58 are consequential to amendment 41, so I will speak substantively only to that amendment.

The Government recognises the importance of guidance, as we have heard from Mr O'Kane, to support schools and teachers in implementing the changes, and recognises that there have been calls for the updated guidance to provide greater clarity. During my stage 1 evidence in October, I committed to publishing updated guidance. The principle of including a duty rather than a power to publish guidance is accepted, but the Government cannot accept amendment 41 as drafted. We would want to engage with stakeholders to ensure that the matters that the guidance is required to cover are the most appropriate, and to consider the consultation requirements so that, in preparing the guidance, we properly reflect the views of schools, parents and children. I therefore seek the opportunity to undertake that engagement and to consider further what a duty to provide guidance should look like and cover, and I would commit to bringing back a suitable amendment at stage 3.

For those reasons, I ask Tess White not to move amendment 41 and the associated consequential amendments.

Tess White: Subject to what the cabinet secretary has just said—that she is willing to take the issue away and look at it, that she recognises the importance of guidance and that she had intended to publish guidance—I will not press amendment 36.

Amendment 36, by agreement, withdrawn.

Amendment 18 moved—[Maggie Chapman].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gosal, Pam (West Scotland) (Con)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 18 disagreed to.

Amendments 3, 4 and 37 to 39 not moved.

The Convener: Amendment 40, in the name of Maggie Chapman, is in a group on its own.

Maggie Chapman: Amendment 40 has the same aim as my other amendments this morning and the same aim as the original bill had for the rights of children and young people. It would ensure that young people can be heard on any decision that is made by their parents to withdraw them from religious observance. However, the key difference is that the provision would be enacted as a stand-alone provision, rather than as an amendment to the 1980 act. Together argues that that places the bill outwith the scope of the 2024 act. It means that children will have no direct route to challenge breaches of their rights in relation to the new provisions, given our current situation with UNCRC incorporation. As well as the separation of religious education and observance, and the independent right to withdraw, that is one of the three key changes requested by Together in its letter to the committee of 13 October 2025 that are designed to ensure that part 1 of the bill fully aligns with UNCRC.

Although I appreciate that the commissioner has not taken a position on amendment 40, she has made the same call as Together for this right to be established separately from the 1980 act, for the reasons that I have outlined above.

I move amendment 40.

11:15

Jenny Gilruth: Amendment 40 seeks to remove section 1 of the bill and replace it with a new section that makes similar provision for seeking the views of pupils in response to the exercise of the parental right to withdraw their child from religious education but, as we have just heard, with a notable technical change.

The new section would create a stand-alone provision within the bill, rather than amending the Education (Scotland) Act 1980. The change would mean that the new section would fall within the scope of the compatibility duty in section 6 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. However, the parental withdrawal right itself would remain in the 1980 act.

Making it a freestanding provision would risk losing important definitions and safeguards that are contained in the 1980 act, such as those in section 28, which sets out the general principle that children should be

"educated in accordance with the wishes of their parents",

so far as possible. Splitting the process for pupils to give their views from other provisions relating to RME and religious observance would mean that the legislation would be fragmented and much less coherent.

The 1980 act is a major, long-standing piece of legislation that underpins Scotland's education system. It makes provision for religious observance in schools and the right of parents to withdraw their child from religious observance. Amending it so that the legal basis for religious observance, the parental right to withdrawal and the process for the child's involvement in the process are in one place is the most pragmatic approach for clarity, coherence and workability.

Maggie Chapman: I have a question. I understand what you say about the pragmatism in that approach, but drafting the bill in such a way as to ensure that compatibility with the UNCRC was not, or could not be, entertained seems odd—it is odd at best and problematic at worst. This is the first opportunity that the Scottish Government has had to expand children's rights and to do so in a way that allows the test against UNCRC compatibility to come into play, and you have chosen to take a different route. Can you give a little bit more understanding of why that was the case?

Jenny Gilruth: As I set out in my evidence to the committee at stage 1, we chose the 1980 act because it is the act that makes provision in relation to religious observance and RME, and the right to withdraw from that. That is the source that we need to look at. For all the reasons that Maggie Chapman rightly sets out in relation to the UNCRC, we are amending the legislation to ensure that children's rights are taken cognisance of in relation to the right to withdraw. However, we are not removing the parental right or creating a stand-alone opportunity to deliver on what we intend to deliver on, because, as I have already alluded to, we think that that would create incoherence. There are lots of other issues that the member will know of in the education sphere. Other members might be interested in legislating for those; our view is that we should legislate in relation to the source, which is the 1980 act.

Re-enacting those isolated provisions would risk a level of duplication and confusion. It would not be proportionate to move multiple sections of the 1980 act into this bill, particularly given the targeted and technical nature of the proposed changes. If we had tried to do that, it would have made it into a much bigger restatement project than the five-page bill that it currently is, and it would not have been possible to do that in the parliamentary time that we have left for the bill.

I acknowledge that, in the stage 1 report, a majority of committee members indicated their disappointment that the bill is proceeding outwith the scope of compatibility with the UNCRC act. However, their view concurs with the Government's view that making amendments at stage 2 to bring the bill into the scope of the UNCRC act would not be achievable easily. I recognise the concerns about part 1 of the bill being outwith that scope, just as the 1980 act is outwith its scope.

The 2021 judgment by the Supreme Court on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill highlighted the complexities of human rights incorporation in a devolved context. Those complexities are at the root of this issue. However, the Government recently committed to address the issue of the limited scope of the compatibility duty in the UNCRC act in the proposal for a children's rights scheme that was laid before the Parliament last month, on 20 November. That proposal states that we will progress engagement with the United Kingdom Government

"to explore the removal of any legislative restrictions that currently limit the Scottish Parliament's ability to enhance human rights protections across all areas devolved to Scotland."

In addition, the Government has set a deadline of November 2026—next year—for progress to be made

"in finding a more straightforward and effective route to extending protection for children's rights".

If sufficient progress is not made by next year, we will

"commission a review of provisions in"

the acts of the Parliament of the United Kingdom in devolved areas. That review would

"identify any key provisions that interact with children's rights to such an extent that it may be worth reenacting them in Acts of the Scottish Parliament to bring them into scope of the compatibility duty."

In the meantime, attempting to make this very limited change is not an effective way to address the issue and will create more complexity for parents, children and schools. For those reasons, I am not able to support amendment 40 and I urge members to resist it.

The Convener: I call Maggie Chapman to wind up and to press or withdraw amendment 40.

Maggie Chapman: I will be brief. It is worth stressing my and many others' disappointment that, by choosing to amend the 1980 act, the cabinet secretary has ensured that the provisions covered by the bill are out of scope of the compatibility duty in our own United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. That sends a worrying signal to people with an interest in this space. We should have taken the time and care to ensure that this legislation was in that scope. If that meant taking longer to do it, that is what we should have done.

However, given that we are where we are and we have this bill in front of us, we need to bring these rights into the scope of the UNCRC incorporation act. Therefore, I press amendment 40.

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

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gosal, Pam (West Scotland) (Con)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 40 disagreed to.

Section 1, as amended, agreed to.

After section 1

Amendments 41 to 44 not moved.

11:22

Meeting suspended.

11:30

On resuming—

Section 2—United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024: circumstances where incompatible action or failure to act is not unlawful

The Convener: Amendment 45, in the name of Stephen Kerr, is grouped with amendments 46 to 50 and 52. I call Tess White to move amendment 45 and to speak to all amendments in the group.

Tess White: Convener, cabinet secretary and committee, the amendments in this group seek to place clear and necessary limits on the scope of the exemption.

Several of the amendments would require that the incompatibility must be created by express and specific statutory wording, not by implication, interference or administrative preference. That is the purpose behind amendments 45, 46 and 48. If the Parliament intends to compel an action that is incompatible with the UNCRC requirements, it should do so openly and explicitly; it should not be left to public authorities to speculate or to interpret ambiguity.

Amendments 47, 49 and 50 seek to add a further essential safeguard. They would require that an exemption may be relied upon only where no reasonable alternative exists that would allow the public authority to act compatibly with the UNCRC. That reflects a basic principle of good governance. It should never be easy or casual for a public authority to set aside a compatibility duty.

Amendment 52 is a stand-alone provision that seeks to reinforce the principle that such exemptions cannot become a catch-all defence. It would prevent section 2 from being used in a way that unnecessarily weakens the compatibility duty or confers broad discretion on ministers or public authorities.

Cabinet Secretary, committee and convener, those amendments do not challenge the existence of a compatibility duty, nor do they challenge the Government's broad intentions in bringing forward the bill. They simply seek to ensure that an exemption from a human rights obligation is treated with the seriousness that it deserves.

The amendments offer what I hope the cabinet secretary will see as constructive solutions to a problem that the Government has not fully addressed. They would promote clarity, transparency and proportionality, which is a word that the cabinet secretary has used a few times today. They seek to preserve the integrity of the compatibility duty without undermining the Parliament's ability to legislate in areas where a conflict might genuinely arise. In short, they make section 2 workable, understandable and properly bounded.

I move amendment 45.

Jenny Gilruth: Constructive solutions from Stephen Kerr.

Let me speak to his amendments 45, 46, 47 and 52. They all seek to alter new section 6A of the 2024 act, which restates the existing exemption relating to incompatibility action required or authorised by legislation that originates from the UK Parliament. It is important to be clear at the outset that the exemption for UK Parliament legislation is not new, in that new section 6A restates section 6(4) of the 2024 act; the exemption is therefore already part of the 2024 act and is not changed in substance by the bill. New section 6A is included here only to restate the exemption for drafting clarity, alongside the new exemption relating to certain Scottish legislation in new section 6B of the 2024 act.

Members will recall that the exemption for incompatibility action required or authorised by legislation that originates from the UK Parliament was added to the 2024 act at reconsideration stage, following the Supreme Court judgment, and was developed following engagement with the UK Government. The amended United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill that was reconsidered and passed unanimously by the Parliament was designed to carefully balance three important considerations: one, protecting children's rights to the maximum effect possible; two, minimising the risk of another Supreme Court referral; and three, making the law as accessible as possible for users. Reopening wording or conditioning the use of the new section 6A exemption risks undermining the balance that was struck in order to secure safe passage of the 2024 act, and could risk a further Supreme Court referral on legislative competence grounds. The amendments are therefore problematic and put the 2024 act at risk.

Stephen Kerr's amendments 48, 49 and 50 seek to alter new section 6B of the 2024 act, which is the new exemption being introduced by the bill for

situations where a public authority is required by certain Scottish legislation to act incompatibly with UNCRC requirements. I was clear in my evidence at stage 1 that such an exemption should be used only where absolutely necessary. Accordingly, the exemption that the bill introduces is already deliberately narrow in scope. Amendment 48 would not narrow the exemption in practice—it would do the opposite. It would allow a public authority to rely on the exemption where it is entitled to act incompatibly, which gives the public authority more discretion to apply the exemption. Our approach to new section 6B means that the exemption can apply only where a public authority is required to act incompatibly, in order to maintain a tightly drawn exemption.

Our narrow approach was welcomed by the Children and Young People's Commissioner Scotland and by Together, whose interests in protecting and enhancing children's rights can be relied on. Again, it is worth considering the motivation behind the amendments, which in practice would make it easier for authorities not to act compatibly with children and young people's rights.

In relation to amendments 49 and 50, the exemption is already designed to operate only where an act of the Scottish Parliament leaves a public authority with no discretion to act compatibly. Public authorities and courts must already read and give effect to such legislation in a way that is compatible with UNCRC requirements, wherever that is legally possible. That approach is well understood in practice and reflects a long-established model under the Human Rights Act 1998. Adding further conditions—for example, to require

"express and specific statutory words"

or to introduce a separate test that the exemption can apply only where there are no alternative compatible means—does not add protection in practice, as those safeguards are reflected in the 2024 act's interpretation obligation. Instead, it risks departing from that established framework and undermining the legal clarity and certainty for public authorities that the bill is intended to provide.

For all the reasons that I have set out, I consider the amendments unnecessary and problematic, and I ask that Tess White does not press or move them on behalf of Mr Kerr.

The Convener: I call Tess White to wind up and to press or withdraw amendment 45.

Tess White: Before I decide whether to press or withdraw amendment 45, I would like to ask the cabinet secretary about paragraphs 131 and 132 of the stage 1 report. Paragraph 131 says:

"Fundamentally, many witnesses argued that the Scottish Government has not made a case for why Part 2 of the Bill is needed."

Dr Hill, who was a committee witness, told us:

"The amendments made in part 2 of the bill are trying to address a problem, the extent of which we are not really clear on, in a way that is disproportionate to the impact that it would have on children's rights."—[*Official Report*, *Equalities, Human Rights and Civil Justice Committee*, 30 September 2025; c 53.]

Paragraph 132 of the stage 1 report says that

"This view was echoed by Caitlin Fitzgerald of the SHRC."

She said:

"The Scottish Government's position seems to be that it does not think that there are any current incompatibilities. However, we respectfully urge some caution in accepting that position given that we have not seen the Scottish Government's working. That links back to the issue that we discussed about what the Scottish Government has done to assess what is currently on its statute book and how that fits with the UNCRC obligations. The more we might be speaking about unknowns, the more that exacerbates the issues that we have expressed about access to justice and the potential dilution of the rights in the 2024 act."—[*Official Report*, *Equalities, Human Rights and Civil Justice Committee*, 30 September 2025; c 58.]

I think that Stephen Kerr, as we have said, is trying to add something constructive so that you have something to hang on to. To many witnesses, the wording of part 2 feels like fog and they really cannot understand what it is about. I tried to lodge some amendments to part 2, but I was told that I could not, so I had to withdraw them.

Before I press or withdraw amendment 45, I ask whether the cabinet secretary has any views on that point.

Jenny Gilruth: In summation, part 2 of the bill provides a future-proofing power. We discussed that at stage 1. It mirrors some of the approach that is taken in the Human Rights Act 1998, although our approach is much narrower in scope. Tess White cited evidence from the stage 1 report, but it is important to record that a number of other organisations are supportive of the approach that the Government has taken. I gave examples in my earlier contribution: Together, the Children and Young People's Commissioner Scotland and the United Kingdom Committee for UNICEF are supportive of our approach to the exemption and they did not call for changes to the operation of the exemption, such as those set out in these amendments.

The Children and Young People's Commissioner Scotland explicitly welcomed that the proposed amendment applies only where a public authority is required to act incompatibly. Additionally, in our initial engagement with some public authorities, they said that Mr Kerr's

interpretation of the provisions and his amendments would add further complexity and burdens.

I hope that Ms White's stance perhaps reflects that position and that we can agree that the Government's narrower approach is more optimal.

Tess White: We are still perplexed and scratching our heads. We just cannot understand why part 2 of the bill is included. Clarity is required, so I will press amendment 45.

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 45 disagreed to.

Amendment 46 moved—[Tess White].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 46 disagreed to.

Amendment 47 moved—[Tess White].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 47 disagreed to.

Amendment 48 moved—[Tess White].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 48 disagreed to.

Amendment 49 moved—[Tess White].

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 49 disagreed to.

Amendment 50 moved—[Tess White].

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 50 disagreed to.

The Convener: Amendment 51, in the name of Maggie Chapman, is grouped with amendments 53, 54, 7 and 8.

Maggie Chapman: There is a certain amount of irony in the bill, given that, although it brings school religious activities into line with the UNCRC, part 2 provides for a very wide exception to convention rights when there is conflict between the convention and existing legislation, and not just in relation to the religion in schools issue but in relation to any issue at all.

Let us be clear about what is happening. We have just incorporated the convention into law, but we will now allow potentially very broad opt-outs from it. Instead of working out where there are incompatibilities and addressing them where we have the power to do so, we will allow for a blanket carve-out. I wanted to lodge and discuss much more detailed amendments to tackle that issue but, unfortunately, they were ruled to be out of the scope of the bill.

11:45

In dealing with the issue, the Children and Young People's Commissioner, Together and the Scottish Human Rights Commission have all warned that there is a need to tread carefully. My amendment 51 would help us to do that. The amendment would require that a body must notify the Scottish Government and the commissioner when it relies on the exceptions to section 6 of the 2024 act. The Scottish Government would also need to report annually on all the notifications that it has received, on how children's rights have been affected and on the action that it proposes to take.

Amendment 51 would provide safeguards for section 6. It would give us a clear sense of how often the exceptions were being used and why, which would allow us to then address incompatibilities. If we do not agree to amendment 51 or to something similar at stage 3, we will simply be living in ignorance as to how often the rights of children and young people that we have incorporated into law are not being fully upheld.

Amendment 51 has support from a range of organisations. Those organisations have also suggested further improvements, which I welcome. Together proposed that the Lord Advocate should also be notified, and the Scottish Human Rights Commission has asked to be included in the list of bodies that are to be notified. I would like to introduce amendments at stage 3 to give effect to those requests.

Together also advocates a small technical refinement to ensure that public authorities, or relevant bodies that are acting on behalf of children, can bring proceedings to seek a declarator under the relevant sections of the 2024 act. Those improvements would enhance transparency, reduce the burden on children to initiate litigation and ensure more effective oversight of proposed new section 6B in practice.

I note that the cabinet secretary has lodged amendments 7 and 8 to address a similar concern. However, the intimation provision will kick in only where there are live legal proceedings, and we need such a provision to apply prior to that—otherwise, when there are no court proceedings, we will not be aware that public authorities have identified potential incompatibilities. As the children's commissioner has noted, the cabinet secretary's amendments 7 and 8 are compatible with my amendment 51, and I urge the committee to support all three amendments.

As it stands, part 2 of the bill makes a mockery of the whole process of incorporating the convention into law. I remain uncomfortable with the whole principle of part 2, but the very least that we can do is ensure that we keep a close eye on how often it is used and then act to address any incompatibilities that arise. My amendment 51 would ensure that that happened.

I move amendment 51.

Tess White: I speak on behalf of Stephen Kerr. Amendment 53 would introduce a duty on public authorities to publish a clear statement whenever they relied on the exemption that section 2 of the bill sets out. That duty would require authorities to identify the statutory provision that compelled the incompatible act and to set out the reasons why no reasonable alternative existed.

The intention behind amendment 53 is to ensure that reliance on the exemption is open, accountable and justified. It would prevent situations in which an exemption was applied without explanation or in which a public authority quietly assumed that it had to act incompatibly without testing whether another route existed. The amendment would also ensure that the exemption was used only when necessary and that its use could be understood and examined by the Parliament, stakeholders and the public.

Amendment 54 would complement those provisions by placing a duty on ministers to review and report on the operation of the exemption within three years of its commencement. The

committee heard during stage 1 evidence that the Government had difficulty in articulating the circumstances in which section 2 of the bill would be needed. The explanatory material did not provide examples and the policy case was not fully set out. Against that background, it is only sensible that the Parliament should revisit the question once the provision is in force and it is able to see how often the exemption has been used and for what reasons.

The review requirement would help to ensure that section 2 did not drift into becoming a broad or routine mechanism for avoiding compatibility duties. It would give the Parliament the tools to assess whether the exemption remained proportionate and whether adjustments, tightening or even repeal might be appropriate in the light of experience. It would turn a theoretical exemption into a practical, monitored and evidence-based one.

The amendments would not frustrate the Government's policy intention; they would assist it by ensuring that public authorities had clear expectations and by protecting the credibility of the compatibility framework. They would strengthen the overall legislative scheme and provide reassurance that the exemption was not being misapplied or misunderstood.

Cabinet secretary, you can see that Stephen Kerr is passionate and views the issue as really important. Will you consider meeting him to discuss it in advance of stage 3?

Jenny Gilruth: For the record, I am always willing to meet Mr Kerr, but he has made no approach to my office that I am aware of. I am also willing to meet other Conservative members—I think that I met members of every other party in advance of stage 2. Ahead of stage 3, I would be happy to meet Stephen Kerr or other members who are around the table today. It is important that we do that.

All the amendments in the group seek to respond to the evidence that was heard and submitted at stage 1, which called for greater transparency in situations where the exemption that we have been discussing, and which the bill introduces, is relied on.

As we have heard, my amendment 7 will insert a new section 34A into the 2024 act, which will be triggered at the point in proceedings when we would expect a public authority to have taken legal advice and to be reasonably confident in its view that the exemption applies. That means that, when the question whether the exemption applies arises in legal proceedings, there will be a clear point at which notification must take place. In such cases, the Lord Advocate, the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission should be notified, unless they are already parties to the case. The Lord Advocate and the commissioner bodies will then have the opportunity to intervene on the question.

That approach will offer an effective safeguard that ensures that the Scottish Government, the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission are aware of every case in which the exemption is relied on in a court or in a tribunal. Crucially, there will be a clear and objective trigger point, as the duty will arise when the exemption is raised in proceedings. In my view, that will provide an effective and workable route to ensuring greater transparency, and it will allow the Government to identify and assess potential legislative incompatibilities. I consider the Scottish Government, the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission to be the most appropriate bodies to which a public notification should be made.

Amendment 51, in the name of Maggie Chapman, would place a duty on public authorities to notify the Government and the Children and Young People's Commissioner Scotland when authorities were of the view that an act or omission was not unlawful as a result of the exemptions in section 6A or 6B of the 2024 act. It also proposes a duty on Scottish ministers to report annually on those notifications, including reporting on the impact of the act or omission on children and on any action that ministers intend to take in response.

I have carefully considered what Ms Chapman is seeking to do with her amendment and tried to understand the rationale for how it is framed. It is important that public authorities have the space to deliberate about how to read and give effect to their legislative duties, about what is compatible and about whether the exemption may apply. A statutory duty of the type that amendment 51 proposes would risk inhibiting those deliberations, because public authorities might fear legal challenge—both if they report and if they fail to report to the Scottish Government—when, in their view, the exemption should apply.

It would also be difficult for a public authority to determine the precise point at which it was "of the view" that the exemption applies and, therefore, for public authorities to be held to account for a failure to adhere to the notification duty. That lack of clarity risks creating further uncertainty. It also raises questions about whether a legal duty would be meaningful in practice. We all have a responsibility to carefully consider the impact of placing further statutory duties on the public sector. That includes considering whether doing

so is proportionate to the perceived benefit and whether there is an alternative way of achieving the same goal.

Maggie Chapman: I thank the cabinet secretary for taking my intervention. Given the point that I made about when an incompatibility issue could be raised—and given that, under the provisions in your amendments, such an issue could be raised only when there were live proceedings—what options will be open to public bodies to raise issues of incompatibility without there having to be live proceedings in place? Could that happen informally? Is there any mechanism for doing that?

I take on board your concern about having a statutory responsibility and about the threat of legal action one way or another, but there is an issue about pre-empting live cases and how we could prevent stuff from going to proceedings.

Jenny Gilruth: I would agree with Ms Chapman's overall view. It is of course the Government's view that we would want to avert legal proceedings. However, the Government is of the view that a more proportionate approach could be delivered by amendment 7, which requires the statutory notification at the point when the public authority is seeking to use the exemption in court, as we have talked about.

I would like to talk about the children's rights scheme, which was laid before Parliament last month and which I mentioned in discussion of a previous group of amendments. The scheme commits the Government to ask public authorities, at least annually, whether they have identified any legislation that they consider to be incompatible or whether they intend to rely on the exemption. I think that that answers Ms Chapman's point. In addition, the statutory guidance for the 2024 act encourages public authorities to alert the Government when they have concerns about potential incompatibilities.

I hope that that gives Ms Chapman some reassurance. As I set out in relation to a previous group, we will review the impact of that next November and consider all the points that Ms Chapman has, rightly, raised today.

Amendment 53, in the name of Mr Kerr, makes similar demands of public authorities, and the same concerns that I have set out would apply. Although I cannot support a statutory notification duty on public authorities, I believe that my alternative is more proportionate and workable in practice.

I turn to the aspects of amendment 51 that would require Scottish ministers to publish a response to notifications, which, alongside Stephen Kerr's amendment 54, speak to a theme of reporting publicly and updating Parliament. I can understand and support aspects of what members are seeking to achieve with those amendments. However, requiring ministers to collate and publish information annually, as amendment 51 does, would create a risk that regular set timing of a Government response duty could lead to the Government being required to respond even when live disputes and litigation were under way or to take a view on issues that were more appropriately resolved by the courts and tribunals. It might also create the expectation that the Government should advise public authorities on how to interpret their statutory functions in a way that is compatible with the UNCRC while authorities' own consideration is still under way. The Government has no role in providing such legal advice.

Stephen Kerr's amendment 54 attempts to create a review mechanism, but there would be issues with including section 6A of the 2024 act in a statutory reporting requirement of that nature. Members will be aware of the sensitivity surrounding section 6A—it simply restates existing section 6(4) of the 2024 act, which was added following the Supreme Court judgment. The provision was subject to the careful analysis and scrutiny that were applied at reconsideration stage. It would have been useful to understand Stephen Kerr's motivations for seeking to revisit those matters in the bill, but I gather that he is now keen to meet me, so we can perhaps have that discussion in advance of stage 3.

I am sympathetic to much of what Mr Kerr is trying to achieve, but I am unable to accept his amendments as they are drafted. I acknowledge that, in my response to the committee's stage 1 report, I committed to updating Parliament on the operation of part 2 of the bill, so I ask members not to press or move their respective amendments in the group, which will allow me to consider any further reporting that we might offer in this space, alongside amendments 7 and 8. I consider that to be the right approach.

My amendment 7 creates a clear and appropriate trigger for notifications to be sent to the Government, which gives effect to the first part of what Maggie Chapman's amendment 51 is really seeking to achieve. If we agree to my amendment 7 and to my consequential and technical amendment 8, I can proceed to consider how and when ministers might update Parliament and report on the operation of the exemption.

Paul O'Kane: There was a degree of confusion and concern in the committee's stage 1 report and, indeed, in the wider debate about why this amendment to UNCRC incorporation duties was being sought to fix a problem that the Government is perhaps not aware exists. I do not want to go over what colleagues have said, because it has been well laid out, but I believe that it is important

that the Government and Parliament understand as soon as possible where and when potential conflicts between UNCRC duties and acts of the Scottish Parliament occur. Through early understanding, the Government and Parliament can step in and attempt to resolve the conflict, if that is desirable or needed.

12:00

I turn to the amendments in the group. I think that the cabinet secretary has conceded that the principle is that there has to be a form of notification and that it needs to be made as soon as a situation becomes apparent. Following the debate and discussion, I think that there is room to expand on the notification aspect.

I have sympathy with Maggie Chapman's intervention on whether amendment 7 applies too late in the process. As the children's commissioner pointed out, we would require a child to have navigated the complexity of the legal system and overcome quite a few barriers and proceedings before any notification would occur and, in reality, that is probably a fairly unlikely inflection point for the notification to occur at. I am open to various options for an early reporting mechanism, but I am yet to be convinced about what the right stage in the process should be and what the right amendment would be.

I appreciate that the cabinet secretary has said this previously, but will she confirm that she is open to considering the intervention points? Is she willing to work on a cross-party basis, if that is appropriate, to try to find a solution in advance of stage 3? I appreciate that she will probably repeat what has been said, but it would be useful to have that for the record, if she wants to intervene. I am sorry, convener—I appreciate that this is not an evidence session.

Jenny Gilruth: I am happy to intervene to provide clarity. I am keen to work on a cross-party basis on the points that Mr O'Kane raised.

Paul O'Kane: I am grateful to the cabinet secretary. On that basis, I am minded to support the Government's amendments, because they are a starting point for the work that is yet to be done and will allow for discussions in advance of stage 3 with colleagues from across the committee.

Maggie Chapman: I thank everybody for the helpful debate. There are still issues that we can explore further before stage 3, and I am not sure that I agree with the cabinet secretary's judgment on the potential consequences of my amendment 51, but I hope that there will be room for manoeuvre in the coming weeks.

Amendment 51, by agreement, withdrawn.

Amendment 52 not moved.

Amendment 53 moved—[Tess White].

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

Chapman, Maggie (North East Scotland) (Green)
O'Kane, Paul (West Scotland) (Lab)

The Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Amendment 53 disagreed to.

Amendment 54 moved—[Tess White].

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

O'Kane, Paul (West Scotland) (Lab)

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

Amendment 54 disagreed to.

Amendment 7 moved—[Jenny Gilruth].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

Against

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

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

Amendment 7 agreed to.

Amendment 8 moved—[Jenny Gilruth].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

Against

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

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

Amendment 8 agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 55, in the name of Tess White, is grouped with amendment 56.

Tess White: Cabinet secretary, convener and committee, these amendments are about making sure that we properly understand the impact of the bill before it comes into force, rather than dealing with problems after the fact. My colleague Paul O'Kane has referred to the fact that we have just over three months until the end of the parliamentary session and it feels that the bill is being rushed through, but it is not a simple bill.

At stage 1, we heard concerns about workload, resources and the effect on relationships between schools, parents and pupils. The amendments would ensure that those concerns are properly considered in advance. I have raised the point that only three educational authorities were consulted—I stress that, because it shocked me.

Amendment 55 would require the Scottish ministers to carry out and publish a pre-commencement impact assessment on the likely effects of the bill. That assessment would have to look specifically at the impact on families, parents, children, teaching staff and support staff. That matters, because the bill introduces new duties and new processes for schools, and those changes will affect real people in real settings.

Amendment 56 would make sure that the impact assessment is considered by a parliamentary committee with responsibility for education before the act is commenced. That would give Parliament an opportunity to scrutinise the findings and ensure that any risks or pressures have been properly thought through.

I move amendment 55.

Paul O'Kane: I do not have much to say on the amendments, other than that I understand the intent behind them. However, I am concerned that compelling a future parliamentary committee through primary legislation is probably not an appropriate use of legislation. To my mind, that is perhaps not a sensible way to legislate, and it is not prudent to try to bind successors of any committee of the Parliament. It is worth putting on record that, although I understand the intent of the amendments, I am concerned about the process.

Jenny Gilruth: Tess White's amendments 55 and 56, as we have heard, propose to introduce a statutory duty on ministers to carry out a pre-commencement impact assessment and link commencement of the act to that new duty. Amendment 55 would require ministers to undertake and publish a formal impact assessment, which would then have to be scrutinised by the Parliament's education committee, as we have heard, before the substantive provisions of the act come into effect. I note in passing that Tess White does not anticipate a role for this committee in that process. Amendment 56 would bring the section created by amendment 55 into effect on the day after royal assent.

Amendments 55 and 56 in effect create a duplicate requirement. The Government published a comprehensive impact assessment following the bill's introduction at stage 1, including a child's rights and wellbeing impact assessment, an equality impact assessment, an islands communities impact assessment and a fairer Scotland duty impact assessment. Those have been shared with members of the committee, who have had the opportunity to consider them and they still have the opportunity to scrutinise them and seek further clarity from the Government on any matter that any of those assessments raises.

Amendments 55 and 56 would frustrate and delay implementation of the bill's measures by making commencement contingent on the completion of a further impact assessment, which would then have to be considered by a relevant parliamentary committee. The amendments would introduce an unnecessary procedural hurdle and take up the valuable time and resource of the Parliament and its members. They would also impose additional costs and administrative burden on the Government. Fulfilling the duty would divert resources from implementation and development of the associated guidance that we have discussed today.

In short, adding another statutory impact assessment would provide no added value and, for those reasons, I cannot support amendments 55 and 56. I hope that Tess White will not press amendment 55 or move amendment 56. If she does, I encourage members to vote against them.

Tess White: I hear what the cabinet secretary says about a necessary hurdle, but paragraph 151 of the stage 1 report says that

"Very serious concerns have been presented to this Committee about both Parts 1 and 2 of the Bill",

and paragraph 154 says that

"That support is, however, still predicated on very significant amendments being made to the Bill",

which we have not really heard a lot about today. I suppose that amendment 55 would force a proper consultation and impact assessment.

I hear what my colleague Paul O'Kane says about placing a duty on a future education committee of the Parliament, and I understand that, but the two amendments are about good lawmaking and they would help to ensure that the bill is implemented in a way that is proportionate, workable and informed by evidence. I will therefore press amendment 55 and I intend to move amendment 56.

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

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 55 disagreed to.

Section 3 agreed to.

Section 4—Commencement

Amendment 56 moved—[Tess White].

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Gosal, Pam (West Scotland) (Con)
White, Tess (North East Scotland) (Con)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)
O'Kane, Paul (West Scotland) (Lab)

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

Amendment 56 disagreed to.

Amendments 57 and 58 not moved.

Sections 4 and 5 agreed to.

Long Title

Amendment 19 moved—[Maggie Chapman].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Chapman, Maggie (North East Scotland) (Green)
McLennan, Paul (East Lothian) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Against

Gosal, Pam (West Scotland) (Con)
O'Kane, Paul (West Scotland) (Lab)
White, Tess (North East Scotland) (Con)

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

Amendment 19 agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill and concludes today's meeting and our meetings for the year. I thank you all for your contributions this morning and during the year. I hope that you all have a good break over the festive period. I look forward to seeing you back here on 13 January, when we will return to consider the Scottish Government's response to our public sector equality duty report. I now close the meeting.

Meeting closed at 12:15.

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