OFFICIAL REPORT
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Equalities and Human Rights Committee

Thursday 31 January 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 31 January 2019

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
3rd Meeting 2019, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Oliver Mundell (Dumfriesshire) (Con)
*Gail Ross (Caithness, Sutherland and Ross) (SNP)
*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Maree Todd (Minister for Children and Young People)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 31 January 2019

[The Convener opened the meeting at 09:20]

Decision on Taking Business in Private

The Convener (Ruth Maguire): Good morning and welcome to the third meeting of the Equalities and Human Rights Committee in 2019.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 3 in private?

Members *indicated agreement.*

Age of Criminal Responsibility (Scotland) Bill: Stage 2

09:20

Section 1—Raising the age of criminal responsibility

The Convener: Agenda item 2 is the first day of stage 2 consideration of the Age of Criminal Responsibility (Scotland) Bill. We will go no further than part 3 of the bill today. I welcome to the meeting Maree Todd, Minister for Children and Young People, and her officials.

Amendment 2, in the name of Alex Cole-Hamilton, is grouped with amendments 1, 65, 68, 66, 71, 70, 72, 4, 3, 69, 67, 5, 7, 6, 9, 8, 11, 10, 13, 12, 15, 14, 17, 16, 19, 18, 21, 20, 23, 22, 25, 24, 27, 26, 29, 28, 31, 30, 33, 32, 35, 34, 37, 36, 39, 38, 41, 40, 43, 42, 45, 44, 47, 46, 49, 48, 51, 50, 53, 52, 55, 54, 57, 56, 74, 73, 121, 76, 75, 78, 77, 79, 81, 80, 59 and 58.

I advise members that amendments 2 and 1 are direct alternatives. I also draw members' attention to the information set out in the groupings on the other direct alternatives in the group. Direct alternatives are two or more amendments that seek to replace the same text in a bill with alternative approaches. In this case, amendment 2 proposes to replace "12" with "14", and amendment 1 proposes to replace "12" with "16". A vote will be taken on both amendments in the order in which they appear in the marshalled list. If both amendments were to be agreed to, the second amendment would succeed the first, and the first amendment would cease to have effect.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning. I have rather a lot to say, but members will recognise that the amendments in the group represent the fault line in the bill, so I hope that they will forgive me for taking the time to unpack and deploy my arguments. Before I address the more technical amendments, I will speak to the overall proposition of lifting the age of criminal responsibility to 14 or to 16, as set out in amendments 2 and 1 and in the interconnected amendments in the group.

The evidence that we took throughout stage 1—and in the foothills of stage 2—has been characterised by some very public and unprecedented interventions by the international community, expressing the imperative for us to go further than the age of 12, at least to the age of 14 and, arguably, further still to 16. That view is shared by the clear majority of witnesses who gave evidence to the committee.

The day after our stage 1 debate, the Children and Young People's Commissioner Scotland, Bruce Adamson, shared with our committee the intent of the United Nations Committee on the Rights of the Child to revise its "General Comment No 10: Children's rights in juvenile justice", which was issued in 2007, benchmarking the absolute minimum ACR at 12. It was confirmed to member states yesterday that the UN will uplift the baseline ACR to 14 in the coming days. That was reinforced by Professor Ann Skelton, who gave evidence to the committee from the United Nations a fortnight ago, when she said:

"the committee proposes in the new revision that 14 should be considered the minimum age".

She went on to say:

"To complete its well-respected system, Scotland should ensure that it conforms with international standards."—[*Official Report*, *Equalities and Human Rights Committee*, 17 January 2019; c 42, 44.]

That was not the only intervention in our deliberations. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, wrote to the minister, expressing in the strongest terms the view of the European Council that Scotland should seize the legislative opportunity to meet the minimum standards of international expectation and set, at the very least, a minimum age of 14. Minister, your response to the commissioner was nothing short of a national embarrassment. You sought to lean on a sense of perceived exceptionalism. Your response to the commissioner implied that the unique and welfarist approach to youth justice offered by our children's hearings system should absolve us of the need to meet the de minimis standards of international expectation.

I do not denigrate the children's hearings system; there is much in the system of which we can be justifiably proud, and it is held up as a world exemplar. However, when it comes to international minimum standards, we do not get a pass. I am also proud of the fact that, since the Kilbrandon report was first published in 1971, we have adopted a welfare-based approach to children's harmful behaviour. However, I say again, when it comes to international minimums, we do not get a pass.

Although this Government is, at last, using the word "love" in the narrative arc of the policy that it has created for children and young people, when it comes to international minimums—again—we do not get a pass.

That was summed up starkly in the commissioner's reply, in which she said:

"I appreciate the Minister's comprehensive explanation of those differences, and the positive elements of the Scottish approach. Many of these are considered good examples in Europe. However, I also note that many different approaches are applied across the 47 member states of the Council of Europe, making each national system unique, with specific advantages and challenges. It is important to underscore that international human rights standards, such as those referred to in my letter to the Minister, are developed precisely to provide minimum safeguards regardless of the diversity of states' laws, policies and practices."

I ask the minister to dispense with any further attempt to justify sticking at the age of 12 in the bill, as such lines of argument serve only to compound the Government's embarrassment further.

At First Minister's question time last week, my party's leader, Willie Rennie, asked for movement on the issue in order to meet the new international minimum. In response, the First Minister argued—as the minister might also—that there is a need to carry the population with us. She rightly pointed out that, in the consultation that took place prior to stage 1, 88 per cent of respondents supported an uplift in the age to 12. However, if you ask a binary question, you get a binary answer, and an uplift to 12 was all that the respondents—and, for that matter, the working group that preceded the consultation—were asked to offer a view on.

In the light of that and in the light of the international interventions, I am therefore grateful for the forbearance of the clerks and my fellow committee members in agreeing to reopen our consideration of evidence and consider an uplift to the age of 14 or 16, as in my respective amendments in this grouping.

As members know, the written responses to the call for evidence showed the desire of 86 per cent of respondents to go to the age of 14, at least, and most wanted to go to 16. Of particular interest was the response of Children's Hearings Scotland, which said that it stood ready to "implement whatever age" the Parliament arrives at, but that we should endeavour to go further. Minister, if your Government wishes to carry those who are interested in the issue on a journey to a further increase, you should know that they are already there.

The point that the First Minister used to justify sticking at the age of 12 was about capacity. She said:

"there are not just issues of principle but practical issues in terms of the sheer volume of cases that would be affected by the decision."—[*Official Report*, 24 January 2019; c 19.]

That was in direct response to Willie Rennie's question on an uplift to the age of 14.

Last week, every member of the committee received the helpful correspondence from the Lord Advocate, which broke down the statistics that make up the "sheer volume of cases" to which the First Minister referred. Of offences reported for those aged 12 or 13 last year, 27 cases were

referred to the procurator fiscal for criminal proceedings. Of those, only 11 cases went to court.

Understanding those numbers is important in gauging the magnitude of the task before us in seeking a further uplift in the age of criminality responsibility, and I put it to the committee that the term "sheer volume" cannot be used to describe 11 cases, when that is barely a handful.

Nevertheless, moving to the age of 14 would require careful consideration of how cases could be dealt with in the children's hearings system. I accept that—work needs to be done. The Scottish Children's Reporter Administration, which, incidentally, supports an uplift to 16, has explained in granular detail the consideration that would be required if the children's hearings system were to take on such cases. We might need to consider extending the panel's powers to deal with over-18s, or, for the most egregious cases, introducing a higher burden of proof that goes beyond the balance of probabilities.

That view was reflected by the Lord Advocate. He said that he would not set his face against a further uplift, but that further careful consideration would need to be given in respect of the handful of cases that would go to court.

The Scottish Government has suggested that the work described by the Lord Advocate is too vast to contemplate in the context of any further progress in the bill. I cannot accept that. This is the Parliament that passed the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in three days, readying this Parliament for the impact of Brexit on every aspect of its powers. Does the Government expect the committee, relevant stakeholders and the general public to believe that we cannot work out what to do with 11 kids in two years?

After ascertaining from stakeholders just how long we might need, I lodged amendments 65 to 69 and 77 to 81, to offer Parliament a sunrise clause in order to attain a new age of criminal responsibility of 12 on royal assent, but with a further uplift 18 months later, either automatically or following a vote in Parliament, to the age of 14 or 16.

09:30

Amendment 72, which is also in my name, would make provision for the re-establishment of a working group to undertake that task, with ministers being duty bound to bring any recommendation for a further uplift to a vote in Parliament

"no later than 31 January 2021."

Where there is a will, there is a way.

Aside from the international embarrassment of trying to argue for an exemption from the new international minimum, there is scope for domestic embarrassment as well. Before I came to the Parliament, I was proud to serve under Professor Alan Miller on the leadership panel for Scotland's national action plan for human rights, and I was heartened when he was appointed to head up the First Minister's advisory group on human rights leadership. He and his colleagues put in great effort to equip Scotland to act as a human rights leader on the global stage. Now, by refusing to move with the international community to embrace the new international minimum in this vital area of human rights, at a stroke, we have holed below the waterline any credibility that we might have had as an international human rights champion. Put simply, we have wasted the time of a good man and those around him.

For example, we often sit in judgment on human rights issues in China and Russia, but both those countries already have, or look set to have, higher ages of criminal responsibility than we do. As Willie Rennie said last week, when it comes to human rights,

"we cannot lead the world from the back of the pack."—[*Official Report*, 24 January 2019; c 20.]

If we do not achieve movement in the bill, I will no longer be able to stomach the Government's self-congratulatory posturing on human rights. It will not wash any more.

I do not have a great deal more to say, but I will say a word about my amendments to lift the age of prosecution and my amendment to lift the age of criminal responsibility to 16. Action on the age of criminal prosecution was a bellwether for the moves to lift the age of criminal responsibility in the bill. When the United Nations called on us to lift the age of criminal responsibility to 12, we raised the age of criminal prosecution, which acted as a kind of leader clause and eventually brought us here. If none of my other amendments passes, at least let us look to increase the age of criminal prosecution, as a signal of intent to the international community and so that nobody under the age of 16 should be criminalised.

With regard to my amendment to lift the age of criminal responsibility to 16, I set great store by the argument as to why we need to get to the age of 14, but it is important to state why I have lodged an amendment to get to the age of 16. I want to move the Overton window of debate to that subject.

During our stage 1 debate, Liam Kerr stated that, at 12, children have full capacity to make value judgments and understand the consequences of their actions. In an intervention, I asked him whether he agreed that we should

therefore reduce the voting age to 12—and he looked horrified. That is it: this country has accepted 16 as an age of majority, at which adult responsibilities are conferred. At that age, we credit young people with the maturity to decide whether to leave home, whether to marry, whether to have sex and who they want to run the country. There is widespread opposition to lowering the age of 16 for any of those things because many people feel that children who are under 16 lack maturity. However, people still believe that criminal capacity develops far earlier. That is incongruous. I cannot reconcile that disparity. In the eyes of the law, either people have maturity and judgment, or they do not.

All my amendments were drafted with Lynzy Hanvidge in mind. Every member in this room was moved by and has cited Lynzy's testimony. At the age of 13, she was arrested for kicking off on the night that she was to be taken into care. She spent a night in the cells, with all the trauma that that brings. Put simply, in the middle of one adverse childhood experience, the state handed her another. As it stands, nothing about the Government's bill would change anything about Lynzy's story. If we do not change the bill, we will have failed her and those like her.

I move amendment 2.

Mary Fee (West Scotland) (Lab): I support all Alex Cole-Hamilton's amendments. He has already said much of what I want to say, but some of it is worth repeating.

Alex Cole-Hamilton is right to say that his amendments represent the fault line in the bill. All the evidence that the committee has received supports raising the age of criminal responsibility higher than 12. The revision to the United Nations Committee on the Rights of the Child's general comment 10 to raise the minimum age to 14 is a recommendation that we should embrace. We should not choose to avoid doing so by saying that we deserve a pass because we have the children's hearings system. We should be—and we are—proud of the children's hearings system, but when it comes to incorporating guidance and legislation that comes from the UN, it does not give us a pass.

In the Parliament, we speak a lot about incorporating the United Nations Convention on the Rights of the Child. The bill gives us an opportunity to take a further step along the path of incorporation. The fact that we choose to pull back from that is, as Alex Cole-Hamilton said, a national embarrassment, and it should shame us all. I urge my fellow committee members to support the amendments in the name of Alex Cole-Hamilton.

Oliver Mundell (Dumfriesshire) (Con): We hold the view that the age of 12 strikes the right balance, and although we are sympathetic to some of the evidence and the arguments that have been made, that remains our position. We are sympathetic to the argument around exceptionalism, but it is better to be straightforward, as we have tried to be, and recognise that neither the system nor people who live in our country are ready for the age of criminal responsibility to move beyond 12. I highlight that not all the evidence that we have heard supports going beyond 12. In particular, I point to the further submission from Victim Support Scotland, in which it said that it did not support such a change at this time.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I put on record that I also do not think that 12 should be the age that we stick at. I agree that we need to go further—the committee received a lot of evidence that said that—and I do not believe that we should criminalise children. I seek an assurance from the minister that work to move beyond 12 is being, or will be, done. It is unfortunate that that work has not been done yet, and I would like to hear about what is being done to allow us to move beyond 12. However, if we vote for Alex Cole-Hamilton's amendments, which would take the age of criminal responsibility straight to 14 or 16, I believe that, given the work that needs to be done to get us there, we would stick at eight for longer than we need to. I do not think that that is a responsible position to take.

Alex Cole-Hamilton: My sunrise clause amendments would cover that concern. The Scottish Children's Reporter Administration made the point very strongly that we cannot delay any further. That is why my sunrise clause amendments would provide that, when the bill receives royal assent, there would be an automatic increase in the age of criminal responsibility to 12, as agreed by the committee, and a further increase to 14 or 16, depending on what the committee agreed, 18 months later. That would give the working group, or whomever would be charged with the task of making that happen, time to get everything in place before the automatic uplift in age.

Gail Ross: I thank Alex Cole-Hamilton for the clarification, but I think that it would be difficult to put an automatic uplift in age in legislation when we do not know what the working group would come back with. It is therefore with a heavy heart that I will not support his amendments today.

Fulton MacGregor (Coatbridge and Chryston) (SNP): My position is similar to that of Gail Ross. I have a lot of sympathy with Alex Cole-Hamilton's amendments and I think that we need to move towards at least 14. I do not necessarily agree with the tone of all of Alex's speech—some of the language about embarrassment is not right

at all. Speaking as someone who worked in the children's hearings system for a very long time, I think that the system is far from embarrassing.

Alex Cole-Hamilton: I am grateful to the member for offering me the opportunity to clarify. At no point did I suggest that our children's hearings system is a source of embarrassment; the minister's reply to the Commissioner for Human Rights of the Council of Europe was a national embarrassment.

Fulton MacGregor: I am sorry. To clarify, I know that Alex Cole-Hamilton did not say that about the children's hearings system, but he used the word "embarrassment" several times. I was stressing that the children's hearings system is a credit to Scotland.

As Gail Ross highlighted, Alex Cole-Hamilton's amendments have the potential to be irresponsible. They might not wreck the bill, but they are certainly reckless, because they would keep the age at eight. Alex Cole-Hamilton talked about a sunrise clause, but we do not know what a future group would come up with, what Government would be in place, what referendums might be held or what will happen with Brexit over the next wee while.

Alex Cole-Hamilton: Will the member take another intervention?

Fulton MacGregor: I am just about to finish.

For me, it would be too big a risk to not raise the age to 12, which is where the work has been done.

I ask the committee to excuse my voice; I have a bit of a cold. I will leave it at that.

The Minister for Children and Young People (Maree Todd): First, I thank the committee for taking additional evidence at stage 2 to inform consideration of this group of amendments. The evidence highlighted that the issue is very complex and needs to be considered fully in the context of our wider approach to supporting young people's harmful behaviour.

We can rightly be proud that the Parliament universally supported the principle of raising the age of criminal responsibility, but we should not forget the work that has been undertaken to arrive at this point, or that the work involved a long and considered collaborative approach with agencies and professionals and—crucially—engagement with children and young people. That has enabled us to reach a consensus that the age of criminal responsibility in Scotland should be raised.

Taking forward any further proposals would require a similar approach by considering all the implications and potential impacts. Although raising the age is clearly important, as the First Minister pointed out last week, how we deal with young people in the system overall is what is really important.

One of the things that I took from the full range of remarks and recommendations in the draft UN "General Comment No. 24: Children's Rights in Juvenile Justice" was that we are already doing, or going further than, what the UNCRC is calling on states to do. It is important that we do not lose sight of our track record in the whole area. Only yesterday, statistics were published that show that the number of young people who have been convicted of a crime or an offence has fallen by two thirds and is at its lowest level in 10 years. In Scotland, we already recognise and share a belief across all parties that heavy-handed or retributive criminal justice is counterproductive for children and young people. The vast majority of children aged 12 to 15 who offend are already dealt with by our welfare-based children's hearings system rather than by being prosecuted in court.

The UN's call for states to consider a higher minimum age of criminal responsibility is an important development. The Scottish Government will carefully consider the general comment in its entirety and will assess what future reforms might be needed as a result. However, I have two significant concerns about increasing the age of criminal responsibility through the bill.

The first of those concerns relates to our readiness to raise the age of criminal responsibility or prosecution beyond 12, given the key issues that were highlighted by the law officers in their evidence. As the Lord Advocate made clear, raising the age further would require us to be satisfied that the bill includes the right systems and safeguards to respond to the full range of possible cases, which statistics show are greater in volume, challenge and complexity. It is my firm belief that we should be sure on such issues, not least in terms of the duty of care that we owe to young people who engage in harmful behaviour and to victims of harmful behaviour. That is one of our key responsibilities as legislators.

The Lord Advocate highlighted the state's positive obligations under international law to maintain an effective system for investigating crime and securing the rights of victims. We can be reassured that the bill allows for any incident that involves a child who is under 12 to be investigated properly, for any victim to be respected and responded to and for children to be properly supported without being criminalised. The Lord Advocate and the Solicitor General demonstrated how we would not have that reassurance should we raise the age further now. A significant number of serious offences, which are currently not responded to in the children's hearings system, could not be responded to in the

system without further primary legislation. There are additional concerns about complex issues, such as delayed reporting of grave historic offences against other younger children.

09:45

In raising the age of criminal responsibility, we must have confidence that we have in place appropriate measures and mechanisms to address children's behaviour and to support them with appropriate interventions. For children under 12, we do. However, since 2011-12, 1,285 12 and 13-year-olds were involved in incidents that were reported to the procurator fiscal, including charges of murder and rape. Some of those cases, retained in the criminal justice system, resulted in disposals that go beyond a child's 18th birthday. That would not be possible currently in the children's hearings system, and primary legislation would be required to extend the jurisdiction of the hearings system to include all young people aged 16 and 17, and to provide for interventions beyond a young person's 18th birthday, if the age of prosecution or criminal responsibility was raised further.

Alex Cole-Hamilton: I recognise the statistics that the minister has just given the committee. Does she recognise that, on a yearly basis, fewer than a dozen cases referred to the procurator fiscal go to trial? That is not an insurmountable capacity issue. While primary legislation would be required, the committee could agree to amendments to the bill to empower the Government to extend to the panel by regulation the powers that the minister described.

Maree Todd: I believe that the changes are so substantial that they should be made in primary legislation and subject to the normal procedures and consultation required. The issue is so substantial that it should not be taken forward by regulation.

Legislative change would have to be supported by practice change by decision makers and by the professionals who would implement the new measures. As committee members have mentioned, that was made clear by Malcolm Schaffer from the Scottish Children's Reporter Administration and by representatives of the national youth justice advisory group, who highlighted concern about service capacity to address the full range of harmful behaviour of 12 and 13-year-olds if the age were to be raised to 14 immediately.

There are likely to be operational and implementational issues to be addressed that are not yet clear to us. We must be able to answer the hardest questions and to provide for all eventualities. To do so takes time, just as we gave the original advisory group the time that it needed to arrive at the recommendations that informed the measures in the bill.

I am acutely aware that young people who offend have often been the victims of harmful behaviour, abuse, neglect and violence, often from a young age, and are therefore also in need of care and protection themselves. For that reason, I understand the calls to increase the age further. I have said throughout the bill process that I will listen and consider the evidence. That evidence suggests that we should not increase the age of criminal responsibility or prosecution beyond 12 without being confident that our laws, systems, services and professionals are prepared and supported. They need to be ready and feel ready before we consider further change.

I cannot therefore support amendments to raise the age of criminal responsibility for the reasons that I have set out. I ask the member not to press his amendments. If he does so, I ask for them to be resisted.

The Convener: I call Alex Cole-Hamilton to wind up and press or withdraw amendment 2.

Alex Cole-Hamilton: I sought membership of this committee because I have had a long career in human rights and I believed that the committee would be a force for good in the human rights landscape. Sometimes, I really do not know what we are doing here.

In her remarks, the minister sought once again to lean on a sense of exceptionalism in our children's hearings system and the strata that we employ to deal with young people who commit harmful behaviour. That does not cut it with the international community. She referenced the general comments of the United Nations Committee on the Rights of the Child. A member of that committee gave evidence to us two weeks ago. Professor Ann Skelton said:

> "Although Scotland is to be commended for holding on to its welfarist approach ... that does not mean that you are not obliged to take note of and comply with international or regional standards."—[*Official Report*, *Equalities and Human Rights Committee*, 17 January 2019; c 43.]

If an uplift to age 14 is not a standard, I do not know what is.

Members of the committee and the minister have talked a lot about the work that needs to be done. That is why I lodged a sunrise clause amendment. We have interrogated with witnesses including the Lord Advocate and the children's reporter the question of what amount of work would be required to enable us to get to the age of 12 immediately. Fulton MacGregor suggested that my amendment would delay us getting to 12, but, actually, it would ensure that the minimum age was uplifted to 12 immediately upon royal assent.

Following that, within 18 months, we would do the work to get rules in place to ensure that our systems were ready, in the way that the minister describes. Through the affirmative procedure, if the primary legislation necessitated it, Parliament could ensure that there is the required scrutiny of issues such as an uplift to 18 or an increase of powers over 18—

Fulton MacGregor: On the issue of the sunrise clause, as I said, I am sympathetic towards moving towards 14; that is obviously where the member wants to go, too. Do you not think that it would be irresponsible of the committee to put into legislation a predetermined outcome?

Alex Cole-Hamilton: There are several iterations of the sunrise clause amendment. You are welcome to back whichever you please. In respect of that, there is an option in a number of my amendments to give Parliament a vote on whether we go ahead with the uplift. Importantly, amendment 72 demands that ministers bring back the recommendation of a reconvened working group to that end. There is a pot pourri of amendments that are designed to assuage any anxiety that you might have on that score. That is exactly why I lodged them.

Maree Todd: May I briefly address the sunrise mechanisms? The issue of requiring more time to consider all the implications and bring forward the appropriate criminal legislation is my second concern about amendments 80 and 81. Until we have considered the matters fully, the age of criminal responsibility stays as it is. The idea of taking a stepped approach is attractive, but 18 months is not sufficient time to consider the approach that we need, nor to bring forward any additional primary legislative changes such as the ones that were highlighted in particular by the Lord Advocate and Malcolm Schaffer. In setting arbitrary time limits, there is a risk that we will rush the process and fail to address all the matters that need to be considered. We need to take our time to get things right. We might not be in a position to commence these provisions, which, again, could keep the age of criminal responsibility at a lower age for a longer time. None of us wants that to happen.

Alex Cole-Hamilton: I come back to the fact that the Parliament dealt with the EU continuity bill, which covered every aspect of devolved competency, in three days. I cannot believe that it is beyond the capability of the working group, the children's reporter and the Crown Office and Procurator Fiscal Service to get round a table and, over the course of two years—that is the timescale that we are talking about, given how far we are away from royal assent for the bill—ascertain exactly what we need to do with regard to the 11 children who go to trial each year.

As far as I am concerned, two changes are needed: a change in relation to post-18 powers for disposals by the children's panel; and a change in the burden of proof from beyond the balance of probabilities to beyond reasonable doubt in the most egregious cases. We have already thrashed out the changes that might be required, and those are the only two. I cannot believe that the process to make those changes would take two years, if there is the political will behind doing so. Sadly, I do not believe that that political will exists.

Unamended, the bill is an embarrassment. The Government has no cause to speak of it with pride. I will vote for it only because the current age of responsibility in Scotland is, frankly, medieval—this Government has presided over that for the past decade. When I think of my amendments, I think of Lynzy Hanvidge alone and in the dark. If this legislation had been in place, unamended, before that happened to her, nothing about her story would have been any different, and we would have let her down. Unamended, the bill says to 12 to 15-year-olds, "This country will govern you with love, until you break the law, which is when the love ends."

The international community has already judged the Scottish Government on this. If we do not amend the bill, so, too, will history. More important, so will children and young people in this country, and I do not blame them. I press amendment 2.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 2 disagreed to.

Amendment 1 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 1 disagreed to.

Amendment 65 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 65 disagreed to.

Section 1 agreed to.

After section 1

Amendment 68 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 68 disagreed to.

Amendment 66 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 66 disagreed to.

Amendment 71 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 71 disagreed to.

Amendment 70 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 70 disagreed to.

10:00

Amendment 72 moved—[Alex Cole-Hamilton].

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

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 72 disagreed to.

Amendment 4 moved—[Alex Cole-Hamilton].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 4 disagreed to.

Amendment 3 moved—[Alex Cole-Hamilton].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

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

Amendment 3 disagreed to.

Amendments 69 and 67 not moved.

Section 2—Raising the age of criminal responsibility: consequential repeal and saving

Amendment 5 not moved.

Section 2 agreed to.

Section 3—No referral of child under 12 to children's hearing on offence ground

The Convener: I remind members that amendments 7 and 6 are direct alternatives.

Amendments 7 and 6 not moved.

Section 3 agreed to.

After section 3

The Convener: Amendment 101, in the name of Oliver Mundell, is in a group on its own.

Oliver Mundell: Amendment 101 is designed to give added protection to society as a whole. It recognises the important role that the Lord Advocate plays in providing a check and balance in the system. I believe that that is a role that he can continue to play and that he should continue to take an interest in harmful behaviour by children between the ages of eight and 12 when such behaviour gives rise to wider public safety concerns or undermines confidence in the justice system. We think that it would be wrong to lose his input and expertise, particularly in difficult areas around sexual offences and the loss of life.

I will be interested to hear what other members have to say.

I move amendment 101.

Alex Cole-Hamilton: I am grateful to Oliver Mundell for starting this debate, but I cannot support his amendment 101. There is enough in the bill that flies in the face of international expectation, and the amendment would just add to that. The intervention of the Lord Advocate or the equivalent is not required in other nation states of the United Nations that have already adopted a higher age of criminal responsibility, and I do not see why we should be exceptional in this case. For that reason, I will oppose the amendment.

Fulton MacGregor: I agree with Alex Cole-Hamilton. His amendments in the previous group, which we have just debated, were about a timing issue and how to get to a certain point. Agreeing to amendment 101 would be retrograde in that respect, and I will not support it, either.

Mary Fee: I cannot support amendment 101. I agree with the comments that both of my colleagues have made. Agreeing to the amendment would be a retrograde step.

Maree Todd: Although we must all have confidence in the changes that will be made through the bill, we need to be careful not to reverse reforms that have already been made, nor to introduce unintended consequences in trying to

create safeguards to address the most serious harmful behaviour that some children might engage in.

Amendment 101 would give the Lord Advocate powers that do not currently exist on decision making in relation to children under 12. It has potential to bring a broad, as yet unspecified range of under-12s into the ambit of the criminal justice system. It would undermine the role that the children's hearings system has had in relation to that age group since the age of prosecution was increased in 2011, and would return this age group of children to the criminal justice system for the first time in seven years.

We know that harmful behaviour involving children of primary school age is rare, and seriously harmful behaviour is even rarer. We also know that, at this age, a disproportionate number of children who are involved in offending have faced severe disadvantage and adversity in early childhood, and it is important that we make the welfare of these children the primary consideration and continue to deal with them exclusively under the children's hearings system.

The bill seeks to fully decriminalise all children of primary school age. Amendment 101 would undermine that approach and principle by creating a two-tier system in relation to some children in some circumstances by giving the head of the system of criminal prosecution a new power to consider their actions or behaviour. That would seem to be a retrograde step, as Mary Fee said, not least because of the implications for children's rights.

I acknowledge that, in the future, there may still be some instances of seriously harmful behaviour by a very small number of children of primary school age that will require an appropriate and serious response. The bill seeks to create measures that will allow such behaviour to be investigated and addressed. Amendment 101, if agreed to, would cut across those provisions and create an unhelpful innovation to our long-standing approach that is epitomised by the children's hearings system.

I therefore hope that Mr Mundell will not press his amendment. If he does so, I strongly urge the committee to resist it.

Oliver Mundell: I believe that the amendment is drafted in such a way as to capture only a very small number of individuals in extremely exceptional circumstances. It respects the fact that such children will no longer be treated as having committed criminal acts under section 1. However, it provides some reassurance for those people who are victims. I think that it provides a fair balance.

I have a great deal of faith in the independent and important role that the Lord Advocate has played in the Scottish legal system and I believe that we could respect the individual office holder and trust them to take the right decisions in the public interest. I therefore press amendment 101.

The Convener: The question is, that amendment 101 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 101 disagreed to.

The Convener: I will suspend the meeting briefly to allow officials to change places.

10:09

Meeting suspended.

10:10

On resuming—

The Convener: I welcome everyone back to the meeting.

Section 4—Disclosure of convictions relating to time when person under 12

Amendments 9 and 8 not moved.

The Convener: I remind members that amendments 11 and 10 are direct alternatives.

Amendments 11 and 10 not moved.

The Convener: Amendment 82, in the name of the minister, is grouped with amendments 83 to 89 and 96 to 98.

Maree Todd: The policy intention in the disclosure sections of the bill is that no person should have to disclose any information about pre-12 behaviour unless the independent reviewer has determined that it should be disclosed by the state. The bill as it stands does not fully provide for that, and this group of amendments seeks to improve protections for those who are subject to disclosure.

Amendments 82 to 89 relate to state disclosure by Disclosure Scotland and its interaction with the duty to self-disclose or acknowledge pre-12 behaviour where a disclosure check is used in connection with, for example, recruitment for a job. Amendments 84 to 87, which are the substantive amendments, put in place the important protection against the need to self-disclose relevant behaviour and any ancillary circumstances and replace the protection that amendment 83 seeks to remove. That positive step brings the protection into the same piece of legislation—the bill—that contains the provisions that establish the position of the independent reviewer.

Amendments 88, 89 and 96 to 98 are technical amendments that are consequential to the substantive amendments. Taken together, they will deliver benefits to the individuals and allow them to move on from their childhood behaviour.

I urge committee members to support the amendments in the group. If they wish me to discuss them in detail, I am happy to do so.

I move amendment 82.

Alex Cole-Hamilton: I am not clear how these amendments increase protection for those who are subject to disclosure. In fact, from discussions that I have had with stakeholders in the voluntary sector and human rights landscape, I know that they are mildly concerned by them. They feel that they represent backsliding and that they will create situations in which more information will be revealed than might have been allowed under the original bill. For that reason, I cannot support the amendments.

Maree Todd: Because pre-12 harmful behaviours are no longer considered, they are in a sense no longer protected under the Rehabilitation of Offenders Act 1974. The amendments not only rebuild those protections but go further, and they align with the duty to self-disclose—or not—when, for example, applying for a job. They are important protections against the need to self-disclose relevant behaviour and any ancillary circumstances, and bringing them into the same piece of legislation that sets out the position of the independent reviewer is a positive step. Again, I urge committee members to support them.

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

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

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

Amendment 82 agreed to.

After section 4

Amendments 83 to 87 moved—[Maree Todd].

The Convener: The question is, that amendments 83 to 87 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

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

Amendments 83 to 87 agreed to.

Section 5—Disclosure of information relating to time when person under 12

10:15

The Convener: I remind members that amendments 13 and 12 are direct alternatives.

Amendments 13 and 12 not moved.

Amendment 88 moved—[Maree Todd].

The Convener: The question is, that amendment 88 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

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

Amendment 88 agreed to.

Amendment 89 moved—[Maree Todd].

The Convener: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Mundell, Oliver (Dumfriesshire) (Con)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)

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

Amendment 89 agreed to.

Amendments 15 and 14 not moved.

Section 5, as amended, agreed to.

Section 6—Independent reviewer

Amendments 17 and 16 not moved.

Section 6 agreed to.

Section 7—Period and terms of appointment

The Convener: Amendment 90, in the name of the minister, is grouped with amendments 91 to 94.

Maree Todd: The amendments in the group were lodged in response to feedback from stakeholders and to ensure that the terms and conditions of the independent reviewer are sufficiently clear in the bill. I hope that the amendments also assure the committee and wider stakeholders that nothing in the bill gives the Scottish ministers, the chief constable or anyone else any power to direct the independent reviewer in the exercise of their functions.

Amendments 90 and 91 amend the period of appointment that is provided for in section 7(1), so that it is fixed at three years. That makes clear the definitive nature of the appointment and removes any uncertainty that the existing wording might have caused.

Amendment 92 adds the words "and conditions" to section 7(2) to reflect that a person is to be appointed as independent reviewer on such terms and conditions as the Scottish ministers determine, in line with similar provisions in other acts. I confirm that the usual public appointments rules, and therefore the terms and conditions that apply to other such appointments, will apply.

Amendment 93 outlines specific circumstances under which a person is disqualified from appointment or holding office as independent reviewer. It provides that elected politicians cannot be appointed as an independent reviewer. If the independent reviewer becomes an elected politician, they are automatically disqualified. Section 7(6) provides that

"Scottish Ministers may terminate the appointment of the independent reviewer".

Amendment 94 removes section 7(6) and replaces it with details of the specific circumstances under which ministers may remove a person from office and how that can be done. The aim is to make clear the limits of ministerial powers in that regard.

I hope that the committee agrees that the amendments in the group provide welcome clarification, particularly in relation to the measures that set out how the independent reviewer is intended to operate.

I move amendment 90.

The Convener: As no member wishes to speak to the amendments, do you wish to wind up, minister?

Maree Todd: I encourage committee members to support amendments 90 to 94.

Amendment 90 agreed to.

Amendments 91 to 94 moved—[Maree Todd]—and agreed to.

Section 7, as amended, agreed to.

Section 8 agreed to.

The Convener: At this point, I will suspend the meeting until half past 10 for a brief comfort break.

10:21

Meeting suspended.

10:30

On resuming—

Section 9—Referral of information to independent reviewer

Amendments 19, 18, 21 and 20 not moved.

Section 9 agreed to.

Sections 10 to 14 agreed to.

Section 15—Appeal against determination under section 13

The Convener: Amendment 102, in the name of Mary Fee, is in a group on its own.

Mary Fee: My amendment concerns the independent reviewer and the disclosure of information. Amendment 102 would make it clear

that, if an appeal to have information removed from a record is unsuccessful one time, that does not rule out a further appeal if the same information is to be released at a later date. This might seem like a small and insignificant amendment, but it is vital that there is no doubt that someone has the opportunity to appeal again where there is the potential for information to be released. We need to be absolutely and completely clear in the bill that, if circumstances change, such recourse is available to individuals. I urge the committee to support the amendment.

I move amendment 102.

Alex Cole-Hamilton: I support Mary Fee's amendment, which offers people further protection with regard to the disclosure of information.

Maree Todd: I appreciate and understand the intention behind Mary Fee's amendment. However, as the Government outlined in its response to the committee's stage 1 report, the independent reviewer makes a one-off decision for the purposes of the particular application. The reviewer's determination includes in consideration the reason why the disclosure is being applied for and all the other information that they are able to take into account at the time. If the independent reviewer decides that the information should be disclosed, that is not a continuing decision that it should be disclosed in relation to all subsequent applications. Any new application would be considered afresh. If the police considered that information about pre-12 behaviour was relevant to the new application and ought to be disclosed for the purpose of that new application, the independent reviewer would make a fresh decision. It therefore follows that the right to make an appeal to a sheriff would be available in relation to subsequent determinations even if they concerned the same information.

I share Mary Fee's aim to protect the rights of individuals in this process, particularly in relation to appeals, as I have outlined, but their rights are already protected by the measures in the bill. Although amendment 102 is not needed to protect appeal rights, it has the potential to obscure the clarity of the provision in section 15(4) that the sheriff's decision on an appeal against the independent reviewer's determination is final.

If it would be helpful, I would be happy to provide further assistance. Guidance or guidelines that will be provided for the operation of the independent reviewer's functions will address this matter and set out clearly how the law is intended to work in practice. I hope that, after hearing this explanation, Mary Fee will be satisfied and will not press amendment 102. If she does so, I ask members not to support it.

Mary Fee: I thank the minister for her comments. However, I believe that we must be absolutely clear and explicit about the right of appeal. I have a slight concern about some of the language that the minister used, particularly by referring to things that "ought to be" and "should be" considered, which is why I think that amendment 102 is so important. It will leave no doubt about the rights that individuals have and it will give complete and utter clarity. It will not, as the minister alluded to, obscure the clarity of rights for individuals. I will press amendment 102.

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 102 agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Guidance

The Convener: Amendment 95, in the name of the minister, is in a group on its own.

Maree Todd: In response to feedback from stakeholders, amendment 95 has been lodged to clarify the independence of the independent reviewer and to limit the extent of the Scottish ministers' powers, which I am sure the committee will welcome. The amendment makes it clear that ministers may not use statutory guidance that is issued to the independent reviewer to direct him or her on how to handle any specific review or reviews. I urge committee members to support the amendment.

I move amendment 95.

The Convener: As no member wishes to comment, I ask the minister to wind up.

Maree Todd: I hope that everyone will see amendment 95 as a positive step that responds to stakeholders' concerns by clarifying the Scottish ministers' role in relation to guidance. Therefore, I hope that the committee will support the amendment.

Amendment 95 agreed to.

Section 17, as amended, agreed to.

Sections 18 to 20 agreed to.

Section 21—Interpretation of Part 2

Amendments 96 and 97 moved—[Maree Todd]—and agreed to.

Section 21, as amended, agreed to.

The Convener: I suspend the meeting briefly to allow the minister's supporting officials to change places.

10:37

Meeting suspended.

10:38

On resuming—

Section 22—Provision of information to persons affected by child's behaviour

The Convener: Welcome back. Amendment 103, in the name of Oliver Mundell, is grouped with amendments 104 to 109, 112 to 114 and 116.

Oliver Mundell: The amendments in the group would make relatively simple changes to give us more confidence in part 3. We are keen to talk about actions as well as behaviour, because behaviour is often seen as being deliberate, whereas a more factual approach tends to be taken to actions. From victims' point of view, it is important to look at what happened without always attributing blame. Often, people look for information because they want to know what happened.

Amendments 106 and 108 would introduce the concept of "distress", which would set an easier legal threshold to reach. Establishing harm can sometimes be difficult, whereas distress presents itself more obviously, particularly when vulnerable individuals are involved. I have nothing further to say at this stage.

I move amendment 103.

Maree Todd: I thank Oliver Mundell for that helpful explanation of the intent behind his amendments. In section 22, we seek to balance the best interests of victims, including child victims, and the best interests of the child responsible for the harm, who remains the focus of the referral to the children's hearings system. I am reassured that, as stated in the stage 1 report, the committee's view is

"that the correct balance has been struck".

Section 22 already covers the provision of information in relation to offences committed by older children as well as in relation to harmful behaviour by under-12s, so I do not see the necessity for amendment 103. However, as it would not materially alter the section's purpose, I am happy to accept amendment 103.

Amendments 104, 105, 107, 109, 112, 113, 114 and 116 are linked and consequential. Those amendments would change the description of the behaviour of children under 12 by adding a reference to how a child "acted" or to "action" in addition to how a child has "behaved". Again, I am satisfied that "behaviour" and the law's understanding and interpretation of "behaviour" already captures actions and how someone has acted, so I do not see the need for the amendments. However, again, as they would not materially alter the intent or the effectiveness of any sections, I am happy to accept the amendments should Mr Mundell insist on pressing them.

Unfortunately, that is where I hope that Mr Mundell's winning streak comes to a halt, because I cannot accept amendments 106 and 108 and I hope that the committee will reject them once I have set out my reasoning. Those amendments would add "distress" as a wider description of the impact of a child's behaviour. That means that a person who is distressed or harmed by a child's behaviour may request information from the principal reporter. The policy intention currently is to ensure that information that is shared about a child under the age of criminal responsibility is proportionate and justified. Therefore, the bill makes those powers available to the principal reporter only in serious cases, as described by proposed section 179A of the Children's Hearings (Scotland) Act 2011. There is also the intention that "harm" already includes psychological harm caused by the behaviour of a child under 12. Amendment 106 would expand the category of behaviour that is caught by proposed section 179A to include certain behaviours that cause distress or harm to another person. That would mean that, although no harm might be caused to a person by a child's behaviour, any distress that is caused to any other unspecified person by the child's behaviour would suffice to ensure that proposed section 179A applied.

Amendment 108 would amend proposed section 179(4)(b) of the 2011 act, which provides that a person who is "harmed" by the behaviour that is described in proposed section 179A(2) of the 2011 act by a child under 12 can request information from the reporter. Amendment 108 would extend that provision to allow any person who is "distressed" or "harmed" by the behaviour of a child under 12 to request information from the principal reporter. It is not hard to see where we

might all have concerns about the disproportionate sharing of information with persons who are far removed from the harm of the behaviour and about the lessening of children's rights in favour of those unspecified persons who might feel distressed by what a child may or may not have done. I believe that we currently have the balance right between the rights of victims and their families, and those of children who have engaged in seriously harmful behaviour and their families. Indeed, that was the committee's view at stage 1.

Amendments 106 and 108 could result in unjustified interference with a child's rights under article 8 of the European convention on human rights. The disclosure of potentially sensitive information about a child is likely to be considered an interference with the child's article 8 rights. However, the bill's provisions will ensure that such interference is proportionate by, among other things, restricting the list of individuals who can request the information. The significant expansion of that list that would be caused by amendments 106 and 108 could result in a disproportionate interference with a child's article 8 rights. There would also be practical implications for the victim information service. It is not clear how amendments 106 and 108 would impact on available resources and it is easy to see how, because of a much wider obligation to provide information, the service's resources could be diverted away from ensuring that those who most need information receive it timeously and effectively. In my view, that would not be helpful. I therefore ask Mr Mundell not to press amendment 106 and not to move amendment 108, which is consequential to amendment 106. If he insists on doing so, I hope that the committee will reject the amendments.

10:45

Oliver Mundell: I am pleased that the minister at least feels able to support some of the amendments in my name in the group. However, I am disappointed that she does not think that those who are distressed by the harmful actions of others deserve any right to request information, because that is all that amendments 106 and 108 do—they allow someone to make a request. They do not speak to the nature of the information that should be provided or to whether that request should be accepted, and they do not set any new rules on what is proportionate. If the minister is worried about that, it suggests that the other protections that are written into the same section are insufficient, because the amendments simply allow people to make a request, which then has to be deliberated on and decided. People have a right to request information; they do not necessarily have the right to have that information provided, but they have the right to make a request.

I press amendment 103.

Amendment 103 agreed to.

Amendments 23 and 22 not moved.

Amendments 104 and 105 moved—[Oliver Mundell]—and agreed to.

Amendment 106 moved—[Oliver Mundell].

The Convener: The question is, that amendment 106 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 106 disagreed to.

Amendment 107 moved—[Oliver Mundell]—and agreed to.

Amendment 108 not moved.

Amendment 109 moved—[Oliver Mundell]—and agreed to.

The Convener: Amendment 110, in the name of Oliver Mundell, is grouped with amendments 111 and 115.

Oliver Mundell: Again, these are amendments that seek to improve victims' rights to information and to tighten up the requirements on the reviewer.

It is important that there is a presumption that people who are harmed by the actions or behaviour of children should have the right to information. That is a principle of justice. The fact that the actions will no longer be criminal does not mean that victims should have any less right to information.

I move amendment 110.

Maree Todd: The reporter has a wide discretion to take independent decisions to disclose information where it is appropriate to do so. I am concerned that amendment 110 will result in a disproportionate interference with the rights of the child under article 8 of the convention and with the independence of the reporter, by creating a presumption that disclosure is always appropriate,

before the specific circumstances of the case are considered.

Amendment 111 removes the principal reporter's ability to withhold information if disclosing it is not in the best interests of the child responsible for the harm or any other child involved in the case. It is not clear from the amendment why it would be appropriate to disclose information that would be detrimental to a child. I am further concerned that the amendment displaces the balance of rights of the child responsible for the harm and the rights of the victim of the behaviour.

Amendment 115 removes the ability of the principal reporter to consider other factors that might be appropriate when considering a request for information. That would mean that the reporter could consider only the factors listed in proposed section 179C(2)(a) to (d) of the 2011 act, and could not consider any additional factors, even if they were directly relevant to the issue of disclosure. SCRA has advised that there may be an additional factor in any given case that might mean that it would not be appropriate to provide information to the victim. I am therefore concerned that amendment 115 would further limit the discretion of the reporter.

The committee agreed that the bill currently strikes the best balance between the child and the victim. We recognise the need to support victims, to recognise the harm done to them and to respond to their needs. We have heard that victims want to ensure that no one else goes through what they have gone through and we are very sympathetic to members' concerns that victims should be at the heart of our consideration of the reform.

I suggest that there are other ways of providing that focus, rather than opening up a disclosure regime that would have a very negative impact on the child who has offended. I therefore ask the member not to press amendment 110 and not to move amendments 111 and 115.

Oliver Mundell: I do not find the minister's arguments convincing. It is right to limit the discretion of the reporter, because we are talking about rights that victims have. We cannot be seen to put the best interests of the child before a victim's right to information. Although the general tone of the bill seeks to strike that balance, amendments 110, 111 and 115, which relate only to information for victims, should put the interests of victims first. There has to be some balance and protection, but we think that the criteria set out in the bill provide sufficient opportunity and there should be no need to consider factors beyond that.

The Convener: The question is, that amendment 110 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 110 disagreed to.

Amendment 111 moved—[Oliver Mundell].

The Convener: The question is, that amendment 111 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 111 disagreed to.

Amendments 112 to 114 moved—[Oliver Mundell]—and agreed to.

Amendment 115 moved—[Oliver Mundell].

The Convener: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 115 disagreed to.

Amendment 116 moved—[Oliver Mundell]—and agreed to.

The Convener: Amendment 117, in the name of Oliver Mundell, is in a group on its own.

Oliver Mundell: Amendment 117 relates to the duty on the principal reporter to make a report in cases of loss of life. Those are the most serious cases that are likely to be subject to victim information requests. More than that, in cases involving loss of life, there is a wider public interest and it is important that we investigate what has happened and the particular circumstances. A report should automatically be made available to inform Scottish Government ministers, the Lord Advocate, and the families about what has happened in those cases. The actual content of such a report would be subject to further regulation, but it is an important principle that we should have an explanation of what has happened when someone has died.

I move amendment 117.

Gail Ross: Perhaps I missed it, but I do not remember taking any evidence on the issue, and I do not believe that it was included in our stage 1 report. I seek clarification on where the issue has come from.

Oliver Mundell: That is a valid point, but a number of amendments have been lodged on which we have not taken specific evidence. Looking at part 3 of the bill as a whole, it is my view that this amendment is an important protection for victims and sometimes it is important to put such things in the bill. I would not want the serious cases and offences that we heard about, in part from the law officers, to result in a situation in which victims and those who have overall responsibility for the safety of people in this country do not know what has happened.

Alex Cole-Hamilton: I support the provisions in the bill that give victims or those who are affected by harmful behaviour information that gets to the bottom of what happened. There is provision enough in the bill for that. To make it the norm that a report is produced de facto after loss of life runs the risk—

Oliver Mundell: Will the member give way?

Alex Cole-Hamilton: I will.

Oliver Mundell: You say that it would be the norm for a report to be produced de facto after the loss of life in that age group. The relative number of such occurrences suggests that such a report would be produced in only a small number of cases, but I repeat that it would mean additional reassurance for victims, for members of the public and for those who are responsible for public safety.

11:00

Alex Cole-Hamilton: I understand that, and I leaned on the very small number of cases in that bracket in my earlier remarks. Nevertheless, if there is a duty on a principal reporter to make a report in any situation in which there is a loss of life, it will be the norm and it will run the risk of exposing that child to further attention or stigma, which might follow them through the rest of their life. For that reason, I cannot support the amendment.

Gail Ross: I am interested in what the amendment would do. Will the minister consider the issue in advance of stage 3?

Maree Todd: I thank Oliver Mundell for explaining the purpose and intent of amendment 117. Throughout the bill process, we have all been aware of the need to provide for the potential of very serious harmful behaviour by a tiny number of children who are below the age of criminal responsibility. As has been said, we know that such offences are currently extremely rare—thankfully so.

We must have mechanisms in place to allow for such behaviour—in the event that it happens in the future—to be appropriately investigated and addressed. I therefore understand what Oliver Mundell is trying to achieve with his amendment. However, it does not achieve his aim.

It is not clear what purpose such a statutory requirement for such a report would serve. My officials have had preliminary discussions with SCRA on the issue and I understand that the principal reporter would brief ministers in cases in which there is a loss of life and in which the child was below the age of criminal responsibility. That seems appropriate to me.

In addition, the Lord Advocate has a responsibility in Scotland to investigate any death that requires further explanation, which includes all sudden, suspicious, accidental and unexplained deaths. Again, that seems appropriate to me. I struggle to see why we need another statutory reporting mechanism, or how it could be achieved without cutting across those existing responsibilities and practices.

Clearly, if a child has been involved in behaviour that has resulted in more serious harm to another person, a wide range of agencies, including the Scottish ministers, must consider what happened, how it happened, what is being done to address it and what the role of public and statutory agencies was in the lives of those who were involved in such an incident.

Crucially—this is vital for victims—we would want to work out how we could prevent a similar incident from happening again. As well as taking

steps to prevent future harm, we would intervene to address the harm that had occurred.

As the Minister for Children and Young People, with wider responsibilities around protecting children from harm, I undertake to take the matter away and consider it more fully.

Fulton MacGregor: In the event of a tragic and unfortunate situation in which there was a loss of life as the result of the behaviour of somebody who was under the age of criminal responsibility, can the minister confirm whether—as it currently stands—the Lord Advocate could review that death?

Maree Todd: As I said, the Lord Advocate has a responsibility in Scotland to investigate any death that requires further explanation, which includes all sudden, suspicious, accidental and unexplained deaths. That seems appropriate to me.

I am far from convinced that a statutory reporting duty, as set out in amendment 117, is the right way to address the issue. I therefore ask Mr Mundell not to press his amendment and, if he does, I ask the committee to resist it.

Oliver Mundell: I thank the minister for the explanation of her position. However, sadly, I do not think that a briefing to ministers is adequate for those families who have lost a loved one.

Furthermore, on the minister's point about the Lord Advocate's duties, I do not think that a death that is the result of the action of another person and which has been subject to the children's hearings procedure would count as being unexplained and requiring further explanation.

Fulton MacGregor: Are you suggesting that you are not satisfied with the current arrangements in relation to what the Lord Advocate can do, as explained by the minister, and that you do not think that those arrangements are adequate? As we heard, the Lord Advocate can investigate any death that is sudden or suspicious.

Oliver Mundell: I am very satisfied with the current arrangements in the context of the purposes for which they are intended, which is the investigation of deaths that require further explanation.

However, I do not think that the current arrangements would allow the Lord Advocate to examine what had happened in a case that had been dealt with in the children's hearings system. Particularly in the light of the rejection of my amendment 101, the bill will remove the Lord Advocate from consideration of the actions of children who are younger than 12. If we are to maintain confidence in the prosecution system more broadly, the Lord Advocate should still know what is going on when one citizen of this country takes the life of another.

Subsection (1)(b)(iii) of the proposed new section that amendment 117 would insert provides that "a prescribed relative" would have access to the information. The minister's points related purely to the Scottish Government and prosecution service's interest. I think that a relative who had lost a loved one would expect a written report on what had happened. A statutory provision in that regard would strengthen the bill.

If amendment 117 is rejected, I will be happy to consider an amendment that the minister might want to lodge at stage 3. For now, I will press amendment 117.

The Convener: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division

For

Mundell, Oliver (Dumfriesshire) (Con)
Wells, Annie (Glasgow) (Con)

Against

Cole-Hamilton, Alex (Edinburgh Western) (LD)
Fee, Mary (West Scotland) (Lab)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Maguire, Ruth (Cunninghame South) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)

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

Amendment 117 disagreed to.

The Convener: Amendment 118, in the name of Oliver Mundell, is in a group on its own.

Oliver Mundell: Amendment 118 would insert a section that would place on the principal reporter a duty to produce an annual report setting out an overall picture of the offences covered in proposed new section 179A(1)(a)(ii) of the 2011 act. The report would provide useful information for parliamentarians and the Government as they monitor the area in future.

I move amendment 118.

Alex Cole-Hamilton: I was torn on amendment 118. Initially, I thought that it would help the cause of advancing the argument for further increasing the age of criminal responsibility, by showing—through the Parliament, so the proposed report would be in the public domain—that the scale of offending among the age groups that we are talking about is microscopic.

However, it then occurred to me that if we put something into the public domain we lose control of it. Elements of the press that take a dim view of a further increase in the age of criminal responsibility might focus on the very limited

number of severe offences that a very small handful of children commit, and the public's minds would then be concentrated on those crimes' egregious nature rather than their small extent. In the light of that, I will not support amendment 118.

Mary Fee: I, too, have a great deal of sympathy with amendment 118, but I share the concerns that Alex Cole-Hamilton has expressed. I am not sure whether a report could be produced in a way that would minimise the impact that Alex talked about. If an amendment could be worded in such a way as to provide for our being given more information without damage being caused, I would be happy to support it, but I cannot support amendment 118 as drafted.

Maree Todd: I understand the rationale behind what Oliver Mundell is asking for in his amendment, just as I appreciate the thinking that lies behind other amendments that seek reporting mechanisms to enable the monitoring of the changes made and the measures introduced in the bill. However, I have two concerns: a general one on amendments around reporting and a specific one with regard to amendment 118.

On amendment 118, I share committee members' concern about ensuring that we get the balance right for victims and their families. The bill clearly introduces important new responsibilities and opportunities for information to be shared by SCRA with victims in the most serious cases and it will, of course, be really important to monitor such a change. Such information would assist SCRA's work with Victim Support Scotland and its other key partners on the guidance that is being developed on the types of information to be shared under section 22 of the bill, and on the broader work of supporting and responding to victims.

Amendment 118, in effect, asks SCRA to duplicate the statutory duty that already exists for an annual report of its performance to be published, when what we want to ensure is that the information that we need to monitor the changes is being collated. Members will be aware that a group made up of key organisations and partners has already been set up to consider matters in relation to victims, and I will ensure that the group considers this issue and how best to achieve the intention behind the amendment in advance of stage 3. I will also give further consideration to what more we might do to support victims, including through the appropriate provision of information to them, and I am happy to update the committee on that before stage 3.

With regard to my general concern about reporting requirements, I am concerned that there will be an inconsistent approach, with some of the key aspects being monitored and others not. We need to take a strategic approach to collating and monitoring and reporting on changes and measures in the bill. I am happy to look at what amendments are needed in that regard and what can be introduced at stage 3.

I hope that what I have said is acceptable to Mr Mundell and ask him not to press amendment 118. If he insists on doing so, I ask the committee to resist it on the basis that I intend to consider more generally what reporting measures it might be useful to include in the bill through amendments potentially at stage 3.

Oliver Mundell: I am happy to accept the minister's reassurances that she will look again at this aspect of the bill at stage 3, but I must object to specific criticisms that have been made by other members and the minister. I am pretty astonished by the suggestion that we should not provide the public with clarity on what is going on here because it might be distorted by some aspects of the media. The public, parliamentarians and so on have a right to know what is happening in all aspects of our system, and my amendments have been lodged in the interests of transparency. I would hope that, when it came to the number of cases in which such behaviours had taken place, the information that had been provided would be picked up by any review mechanism.

For now, however, I am happy not to press amendment 118.

Amendment 118, by agreement, withdrawn.

Section 22, as amended, agreed to.

The Convener: That concludes today's stage 2 consideration of the bill. The deadline for lodging amendments to all remaining sections of the bill is 12 noon tomorrow.

I thank the minister, Maree Todd, and her officials for their attendance. The committee will next meet on Thursday 7 February, when we will continue our stage 2 consideration of the Age of Criminal Responsibility (Scotland) Bill. We now move into private session.

11:14

Meeting continued in private until 11:26.

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