OFFICIAL REPORT
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Equalities and Human Rights Committee

Thursday 20 June 2019

Session 5

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
17th 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:

John Finnie (Highlands and Islands) (Green)
Liam Kerr (North East Scotland) (Con)
Maree Todd (Minister for Children and Young People)
Adam Tomkins (Glasgow) (Con)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 20 June 2019

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Ruth Maguire): Good morning, and welcome to the 17th meeting of the Equalities and Human Rights Committee in 2019. I ask that all mobile devices be switched off and put away.

Item 1 is a decision on whether to take in private item 3, which is a discussion about our work programme. Does the committee agree to take that item in private?

Members *indicated agreement.*

Children (Equal Protection from Assault) (Scotland) Bill: Stage 2

09:00

The Convener: Item 2 is stage 2 consideration of the Children (Equal Protection from Assault) (Scotland) Bill. I welcome John Finnie, the member in charge of the bill, and Maree Todd, the Minister for Children and Young People. We are also joined by Adam Tomkins MSP and Liam Kerr MSP. You are all very welcome.

Everyone should have a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings of amendments, which sets out the amendments in the order in which they will be debated.

Adam Tomkins (Glasgow) (Con): On a point of clarification, convener, I lodged two amendments to the bill, which I understand that you decided not to select for debate. The only reason that I have been given for that is that you took the decision that the amendments were inadmissible. However, you did not give reasons why you thought that. Will you explain why my amendments were ruled inadmissible?

The Convener: I thank the member. Standing orders rule 9.10.4 states that it is for the convener of a committee to

"determine any dispute as to whether an amendment of which the Clerk has been given notice is admissible."

Rule 9.10.5 and part 4 of "Guidance on Public Bills" relate to the criteria for admissibility. One criterion is that the amendment must be consistent with

"the general principles of the Bill".

Another is that it must be "relevant to the Bill". Having looked carefully at the amendments that you lodged, I did not consider that they met those criteria. I therefore considered them to be inadmissible.

It is for the Presiding Officer to rule on admissibility at stage 3.

Adam Tomkins: I am grateful for that explanation, which I understand. However, I do not understand why my amendments were deemed to be contrary to the general principles of the bill. The general principles of the bill are set out in the policy memorandum that was published when the bill was published, which says that the purpose of the bill is

"to help bring to an end the physical punishment of children".

That view was endorsed and agreed with by the committee in its stage 1 report. In paragraph 4, the committee said:

"The Bill's purpose is ... to discourage the use of physical punishment."

The phrase "physical punishment", therefore, appears in paragraph 4 of the stage 1 report and in paragraph 4 of the policy memorandum.

My amendments were designed to ensure that "assault", for the purposes of section 1 of the bill, means only physical attack. Currently, in Scots law, someone does not have to physically attack a person in order to assault them. The bill will therefore criminalise behaviour of parents, carers and guardians of children that the proponents of the bill and this committee say is not intended to be criminalised.

My amendments sought to give clarity to the meaning of "assault", for the purposes of the bill, to achieve precisely the policy objective that is set out in paragraph 4 of the policy memorandum. That is why, with respect, I do not understand how the amendments could be ruled to be contrary to the general principles of the bill.

The Convener: It is a long-standing convention that the Presiding Officer and conveners do not explain their decisions on admissibility. However, to be helpful, I note that we will consider a number of amendments today that will give members the opportunity to debate, in full, the issues that the bill raises.

Of course, amendments that were ruled inadmissible at stage 2 can be lodged again at stage 3, when it will be for the Presiding Officer to determine admissibility.

I consider the matter closed. Let us move on.

There will be one debate on each group of amendments. 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 the group. Members who have not lodged amendments in the group but wish to speak should indicate that by catching my attention in the usual way. I ask that anyone who does that be succinct and ensure that their contribution is relevant to the amendment or amendments being debated.

I remind members that stage 2 is not a rehearsal of arguments on the general principles of the bill. Members will be able to comment again on the merits or otherwise of the bill in the stage 3 debate, in the chamber.

The standing orders give the member in charge of a bill and any Scottish minister the right to speak on any amendment. Therefore, I will invite the minister and John Finnie to contribute to each debate before I move to the winding-up speech.

The debate on each group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or withdraw it. If they wish to press it, I will put the question on that amendment.

If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee will immediately move to vote on the amendment. If any member does not want to move their amendment when called, they should say, "Not moved." Please note that any other MSP may move the amendment. If no one moves it, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote, and voting in a division will be by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

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

Section 1—Abolition of defence of reasonable chastisement

The Convener: Amendment 1, in the name of Oliver Mundell, is in a group on its own.

Oliver Mundell (Dumfriesshire) (Con): Amendment 1 is designed to be a simple amendment that seeks to draw together some points of consensus that emerged during the stage 1 evidence and to give reassurance to those in the Parliament and the public who continue to have concerns about the bill. I am particularly grateful to Mary Fee and Christine Grahame for their support for the amendment.

When putting the amendment together, I spent a considerable amount of time speaking to other members and interested stakeholders in order to capture some of the practice in Ireland and New Zealand, which were examples that came up frequently during stage 1 evidence.

When lodging the amendment, I became aware that there was considerable difficulty in finding a form of words that fitted the clerks' view of the scope of the bill. I am now concerned about paragraph (c)(ii) in the proposed new subsection, as there is a legitimate point about whether there is an existing explicit parental responsibility to prevent a

"child from committing a criminal offence."

That point has come to light since I lodged amendment 1, so I certainly want to revisit the amendment's drafting. There are also other areas where the language could be tightened up.

I am interested in hearing other members' thoughts on the amendment. I am not necessarily minded to press it myself, but I am interested in hearing views and building consensus around the principles that the best interests of the child should be taken into account, that there are on-going issues regarding restraint and that there are recognised parental responsibilities for maintaining a child's safety and wellbeing.

I move amendment 1.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I have a couple of questions about amendment 1. One is about the line that says

"prevent the child from committing a criminal offence."

I am looking for clarity about what that means. Most of the evidence that we took said that the removal of the defence of reasonable chastisement would provide clarity in the law. I am uncertain about amendment 1 because I think that it would take that clarity away again.

I also want to ask about the restraint element in paragraph (b). Do the words

"make physical contact with the child"

include forms of physical punishment, or are they purely about restraint? We took a lot of evidence that said that the bill would not affect the ability of parents to protect their children.

Oliver Mundell: The amendment seeks to introduce "for the avoidance of doubt" wording. It would not change the law or what is already in the bill; it would just provide some reassurance. It is not designed to supersede what sits above it. However, I am willing to look at the wording and, potentially, to lodge an amendment at stage 3 to make the intention clearer.

Gail Ross: I thank Oliver Mundell for that. I am pleased to hear him say that he might look again at the wording. I would be happy with that.

Mary Fee (West Scotland) (Lab): Good morning, everyone. I will say a few brief words in support of Oliver Mundell's amendment 1. It reflects the concerns that we heard from a number of witnesses, throughout the evidence sessions, about the removal of a person's ability to use parental responsibility to protect their child. It would go a long way towards allaying some of the concerns that were raised throughout the evidence sessions, and for that reason I am happy to support it.

Alex Cole-Hamilton (Edinburgh Western) (LD): I thank Oliver Mundell for reaching out to Opposition members in discussions about potential amendments for stage 2. I am sorry to say that I cannot support amendment 1, and I will unpack my reasons for that.

A word that we heard consistently throughout stage 1 was "clarity". We heard about the need for clarity and the fact that the landscape around physical punishment in Scotland is not clear. A large number of members of the public believe that it is already illegal to physically punish their children and are surprised when we tell them that it is not. The Scottish Parliament previously legislated on the matter in 2003, and the architecture around that involved only the prohibition of head shocks, shaking and the use of implements.

The bill is elegant because it draws a line under the equation, but amendment 1 would reverse the clarity that the bill affords.

Adam Tomkins: The member says that the bill brings clarity because it draws a line under the physical punishment of children—I think that that is what he just said. Does he not accept that "assault", which is the word that is used in section 1, is not restricted to the physical punishment of children and that the bill criminalises actions with regard to children that go well beyond physical punishment? I am sure that that is inadvertent, although it would be interesting to know whether it is deliberate. It is not what the policy memorandum says, but it is what the bill does.

The member says that he is seeking clarity, and I believe that he is. Let us all agree that clarity in the law—particularly in the criminal law—is a good thing. We need to clarify exactly what the bill seeks to criminalise. If it seeks to criminalise physical punishment, it needs to be amended to reflect that. As it stands, it is not clear.

Alex Cole-Hamilton: I am grateful to the member for his intervention, but I do not accept that premise at all. We are talking about the removal of a legal defence that used also to apply to the right of a husband to physically punish his wife or his servants. This is about a cultural shift in Scotland. We are not talking about the criminalisation of parents. We heard international examples from a range of witnesses, and the 54 countries that have already taken the step have not seen the mass criminalisation of parents, so I fundamentally do not accept that premise.

Oliver Mundell said that his amendment parallels the legislation on the subject in New Zealand, but his amendment and the New Zealand legislation diverge in that the law in New Zealand makes it explicit that physical punishment is not in the child's best interests.

Oliver Mundell: The member might be interested to know that I tried to lodge a version of my amendment with wording that was similar to that, but I was told by the legislation team that they feel that the bill already rules out the possibility of physical punishment, so there is no need for it to be restated. I do not know what more I could do to satisfy his concerns, certainly at this stage.

Alex Cole-Hamilton: I am grateful for the member's clarification on that point. It is very helpful.

When the member and I discussed potential stage 2 amendments—I am keen to foster consensus around the bill, so I welcomed his approach to that—we talked about the best interests principle, which is something that we should all agree on. It is a creature of Scots law and of international treaties, and it states that, in everything that we do, be it in public policy development or in legal judgments, we should always act with the best interests of children at heart.

To that end, I expected an amendment to be forthcoming that was more along the lines that, at the point of referral by a social worker or police officer—

09:15

Oliver Mundell: Will the member take an intervention on that point?

Alex Cole-Hamilton: I will do so in a minute. First, let me finish my point.

The amendment might have said that, at the point of referral by police or social work, the Crown Office might offer a judgment as to whether it is in the child's best interests to launch formal criminal proceedings against the parents. Perhaps a constituency or cross-stakeholder consensus could be built around that, if such clarity is needed in the bill. However, the amendment as it is worded diminishes that clarity. It almost suggests that, if a parent were to argue that the physical punishment of their child was done in the best interests of the child, it might represent a new quasi-legal defence.

I have another anxiety to discuss, but I will let in Oliver Mundell first.

Oliver Mundell: Again, I point out to the member that I tried that approach. I included a best interests test, which was my preferred approach. However, I was told that the bill is too narrow in scope and cannot give directions to courts or prosecutors. Given the member's support for and interest in the matter, perhaps the Presiding Officer will look at the issue at a later stage.

Alex Cole-Hamilton: I am grateful for that clarification.

I have another anxiety, in addition to the fact that the amendment undermines the clarity that the bill affords by arguably reinstating a nuanced route whereby a parent might justify the physical punishment of their child by reference to best interests. Perhaps the member can offer some clarity here. I was slightly alarmed to see that paragraph (c) of the proposed new subsection links the ability to

"fulfil the person's responsibilities (whether parental responsibilities or otherwise)"

to the wording in sub-paragraph (ii), which refers to the responsibility to

"prevent the child from committing a criminal offence."

From my reading of that wording, I take it that a law enforcement officer might be swept up in that. Arguably, we might accidentally create a situation in which it suddenly became okay for police officers to physically punish children in the street. Has the member considered that as an unintended consequence of his amendment?

The Convener: Before Oliver Mundell replies, I note that he will have the opportunity to wind up, so we should maybe keep moving.

Oliver Mundell: I will pick up those points in my winding-up speech, convener.

Alex Cole-Hamilton: For all the reasons that I have set out, I am afraid that I cannot support amendment 1.

The Convener: Does Fulton MacGregor still want to come in?

Fulton MacGregor (Coatbridge and Chryston) (SNP): Gail Ross and Alex Cole-Hamilton have covered the main points that I was going to make. I think that the intention behind the amendment is correct, and, following quite a heated stage 1 debate, I commend Oliver Mundell for lodging it. The fact that the amendment has the backing of Mary Fee speaks to its good intentions. However, the briefing from Barnardo's Scotland, Children 1st and NSPCC Scotland—those organisations are all experts in this field and have given evidence throughout the stage 1 process—shows that they, like me, have grave concerns about amendment 1.

I will not go over the points that were made by Gail Ross and Alex Cole-Hamilton. I simply say that the amendment would not bring clarity to the bill. It is also really concerning that we could find ourselves in a situation in which, legally, parents could argue that physical punishment is in their child's best interests.

For those reasons, I am not able to support amendment 1.

The Minister for Children and Young People (Maree Todd): I welcome the opportunity to speak for the Scottish Government in a very important debate for all children in Scotland.

We cannot support amendment 1 for several reasons. First, it purports to provide that

"nothing in this section affects the ability of a person having charge or care of a child to ... act in the best interests of the child".

It is not clear from that exactly who would decide whether or not the actions of a parent or carer were in the best interests of the child.

Oliver Mundell: I understand the point that the minister is trying to make, but given that the bill refers to the removal of a defence, it is pretty clear that those would be considerations for the court—which they would be anyway, as is clear from the evidence that we received from the Lord Advocate. Amendment 1 simply seeks to put

"the best interests of the child"

in the text of the bill.

Maree Todd: If amendment 1 is designed to provide that, in certain unspecified circumstances, a parent or carer could say that they used physical punishment because it was in the child's best interests, that goes against the bill's fundamental purpose—which was agreed to at stage 1 by the whole Parliament—which is to give children equal protection from assault.

In addition, section 1 of the Children (Scotland) Act 1995, which constitutes the central provision on parental responsibilities in Scots law, provides that parents have such responsibilities

"only in so far as compliance with this section is practicable and in the interests of the child."

Oliver Mundell: I thank the minister for giving way again. As I said to Alex Cole-Hamilton, I sought to make reference to the 1995 act in a previous draft of my amendment, but the scope of the bill is such that it was difficult to do so. The matter is worth considering, because section 1 of the 1995 act is Scots law that is well understood by practitioners, lawyers and other people, and a reference to it in the bill might offer a way of satisfying the best interests test in relation to parental responsibilities.

Maree Todd: There is already general provision on parents exercising their responsibilities in the interests of the child. The bill will not, in its impact on existing law, create any uncertainty or doubt that needs to be remedied. Indeed, the bill will not impact on existing law beyond making it clear that physical punishment can never be in a child's best interests, which is important.

Paragraph (b) of the proposed new subsection that amendment 1 would insert relates to restraint. I appreciate that Mary Fee has taken a strong interest in restraint throughout the passage of the bill. The Scottish Government acknowledges the points that were made in evidence about use of restraint in residential care and education settings. However, in its stage 1 report, the committee carefully considered the issues, under the heading, "Restraint in the home". The committee concluded, in paragraph 62:

"We do not agree physical punishment is required to protect children from harm. We conclude that the Bill as drafted will not change a parent's or carer's ability to restrain a child to keep him or her from harm."

The Scottish Government agrees with that comment, which is in line with the evidence that the committee received. We do not consider that the bill will stop parents using restraint to protect children from harm. As the Crown Office made clear, such restraint would lack the criminal intent that is needed in order for a person to commit the crime of assault in Scots law. As a result, we consider that limb of the amendment to be unnecessary.

Paragraph (b) would also create uncertainty. It refers to the ability of the parent or carer to

"make physical contact with the child".

It is not clear whether that could include forms of physical punishment. If it could, the approach—again—goes completely against what the bill is doing and what the Parliament has agreed.

Paragraph (c) refers to the ability to

"fulfil the person's responsibilities ... to ... maintain the child's safety and wellbeing or ... prevent the child from committing a criminal offence."

A fundamental argument for the bill is that physical punishment has a negative impact on children's welfare. The amendment could be read as meaning that physical punishment could be used to maintain a child's wellbeing. We reject that approach.

With regard to the responsibility to prevent a child from committing a criminal offence, we reject the idea that physical punishment is the way to prevent a child from stealing, for example. A better approach would be to separate the child from the property and tell the child that stealing is wrong. The evidence shows that physical punishment is not just harmful but ineffective.

All in all, far from removing doubt, amendment 1 would introduce ambiguity, create doubt and reduce the clarity of the law. For all those reasons, I invite Oliver Mundell not to press amendment 1. If the amendment is pressed, I urge the committee to reject it.

John Finnie (Highlands and Islands) (Green): Oliver Mundell's amendment 1 begins with the words,

"For the avoidance of doubt".

I seriously question, and ask committee members to reflect on, whether there is any doubt. I am not convinced that the evidence that the committee has heard can be taken to mean that the bill leaves any doubt, in which case Mr Mundell's provision is liable to do more harm than good, by adding material that could cause difficulties in interpretation.

Oliver Mundell: Does John Finnie accept that the fact that the Lord Advocate is going to address a number of points in guidance suggests that there is at least some doubt about how the public interest test would work? Does he also accept that, far from creating new provisions, the proposals in the amendment—with which, I accept, there are some problems—would take the considerations of prosecutors in court and move them forward in the process by putting them in the bill?

John Finnie: No, I do not accept that. I will talk about the Lord Advocate in a moment, but I will say that it is standard practice for the Lord Advocate to give the police guidance on a number of issues. We know that from what has happened with regard to legislation that we have had in recent times.

It is hard to see how anyone could apply the additional tests that are set out in the amendment in a consistent manner, given how vague and subjective they are. Evidence that the committee heard from the Lord Advocate, the Crown Office and Procurator Fiscal Service, the Law Society of Scotland and police and social work representatives all stated that the bill will simplify the legal position. Amendment 1 is likely, therefore, to have the reverse effect to what is intended: it will introduce doubt, rather than dispel it. For example, what would constitute

"the best interests of the child"?

How would physical restraint be judged and assessed? How broad would the idea of preventing a child from committing a criminal offence be?

The committee heard plenty of evidence that did not support the inclusion of such things in the bill. The committee heard that prosecutors will continue to consider the best interests of the child as part of the public interest test, and that relevant matters are already included in the prosecution code as things to be taken into account when investigating and prosecuting cases of assault on a child.

In terms of the proposed new subsections (b) and (c), which attempt to clarify examples of physical contact and responsibilities, I do not consider it to be necessary to set out such matters in the bill, because the established common-law offence of assault would apply, which brings with it consideration of the requisite criminal intent, along with consideration of the facts and circumstances of the individual case.

Those suggested provisions also raise issues that are relevant to the prosecutorial code, guidelines and so on, therefore the defence that is being abolished would not come into play. Again, that could confuse matters rather than clarifying them. The Lord Advocate talked to the committee about the prosecution code, which is a public document. He said that it includes factors that may inform the consideration of the public interest, including

"The nature and gravity of the offence ... The impact of the offence on the victim ... The age, background and personal circumstances of the accused"

and of the victim, and

"The motive for the crime".

He also said:

"The code sets out more detail under each of the public interest factors that are identified. Those factors will apply in relation to any report of any crime. Prosecutors are well used to applying them, and they do so currently when cases involving alleged assaults by parents on children are brought to their attention."

In response to a question from Oliver Mundell, the Lord Advocate said:

"The premise of your question is that the law of assault is unclear, but I would point out that it is applied daily by police officers and prosecutors. There is not a problem with the clarity of the law. At the same time, though, a case could be made that removing the defence with the qualification that currently applies would increase that clarity."—[*Official Report*, *Equalities and Human Rights Committee*, 6 June 2019; c 13-14, 7.]

I conclude by reiterating that amendment 1 addresses permissible physical restraint of children, apparently in connection with their safety and prevention of self-harm. That is not the focus of the bill, which deals with the use of force against a child in punishment. There is no policy intention to legislate on the circumstances around permissible physical restraint of children, or adults.

I ask the committee to reject amendment 1, which is in the name of Oliver Mundell.

Oliver Mundell: This has been a helpful discussion, in part. I do not accept that the bill, as drafted, is free from doubt. I think that there are legitimate and on-going concerns. I am concerned about the suggestion that it is the prosecution code that sets the law of the land. It is not; the law

of the land is what is in statute, and how that is interpreted by the courts.

Notwithstanding issues around the wording of amendment 1, it is difficult to see how anyone could object to the best interests of the child being taken into consideration. I do not think that anyone is objecting to that, so I do not see what possible objection there can be to including those words in the bill.

09:30

Alex Cole-Hamilton: Nobody would disagree with statement that the best interests of the child are paramount and that we should take them into account. However, in a way, amendment 1 twists that slightly to suggest that

"nothing in this section affects the ability of a person having charge or care of a child to—

(a) act in the best interests of the child".

It almost implies that, occasionally, a level of physical intervention with a child might be in the child's best interests, which flies in the face of any legal definition of "best interests of the child".

Oliver Mundell: With or without being offensive, I note that the clumsy wording that Alex Cole-Hamilton just used sums up my point. There are occasions when physical intervention can be in the best interests of the child. Having accepted the decision of Parliament at stage 1, I do not seek to say that physical punishment is in the best interests of the child, but there are situations in which physical intervention is in their best interests, and it is trying to—

Gail Ross: I am getting a bit confused. Will you explain the difference between physical intervention and physical punishment?

Oliver Mundell: Physical intervention might be forceful restraint—for example, holding a child's arm back, which happens regularly. What is difficult in the case of the bill—a point that I have been trying to make right from the start—is that the law of assault is a broad offence, as the COPFS confirmed in its written evidence. It is something that Pamela Ferguson, who is the chair in Scots law at the University of Dundee, has worked for the Scottish Law Commission and has drafted—

Maree Todd: We do not consider that the bill would stop parents using restraint to protect children from harm. As I have said, and as the Crown Office has made clear, such restraint lacks criminal intent, which is needed in Scots law for the crime of assault.

Oliver Mundell: Will the minister clarify when criminal intent is considered in our legal process? At what point in the process does that question arise?

Maree Todd: The law around assault is absolutely—

Oliver Mundell: That is not the question that I asked.

The Convener: Mr Mundell, I remind you that you are winding up now. The minister is not giving a speech.

Oliver Mundell: I apologise. Minister, I will let you intervene again to clarify when the issue of criminal intent comes up in the Scottish legal process.

Maree Todd: The prosecution code, which is a publicly available document, as John Finnie said, takes a number of things into account, including

"The nature and gravity of the offence ... The impact of the offence on the victim ... The age, background and personal circumstances of the accused"

and

"The motive for the crime".

Oliver Mundell: So, by the time a case gets to prosecutors for them to decide whether to prosecute, people have already been the subject of criminal investigation and could be the subject of criminal allegations. I want to be clear—for the avoidance of doubt; this is where amendment 1 comes from—that exercise of parental rights, which exist in common law and statute, will not be confused with assault. Assault can mean shouting aggressively at someone or acting in a threatening manner, which are subjective things. I do not deny that there is clarity around the law of assault, but I believe that it is a wide category of behaviour to be mixed with the concept of physical punishment.

The issue for me here is about trying to draw the distinctions up front, so that what is and is not considered to be relevant behaviour for the purposes of the bill is clear to members of the public, police officers, social workers and people who—with respect—do not look at the prosecution code.

The Convener: We want to have a full debate on everything. We are now 35 minutes into the meeting, so we have given amendment 1 a good airing. Will you draw your remarks to a close?

Oliver Mundell: I will draw my remarks to a close, because there is not a lot to say in addition to that point. I do not intend to press amendment 1, because I recognise that there are issues with its wording. I hope that other members of the committee will afford me the opportunity to explore that further and to lodge a new version of the amendment at stage 3.

Amendment 1, by agreement, withdrawn.

The Convener: The question is, that section 1 be agreed to.

Oliver Mundell: For clarification, convener, is it possible to say no? I still have fundamental problems with section 1, which I want to register.

Annie Wells (Glasgow) (Con): I do, too.

The Convener: Yes, you absolutely can.

Section 1 agreed to.

Section 2—Duty of Scottish Ministers to raise awareness

The Convener: Amendment 9, in the name of Liam Kerr, is in a group on its own.

Liam Kerr (North East Scotland) (Con): I am grateful to the committee for giving me the opportunity to speak to amendment 9.

Members of the committee will be well aware of my views on smacking: I do not believe that it is in the interests of the child. I do not resile from that position at all. However, I have serious concerns about the bill's implications and possible unintended consequences, particularly having listened to Mr Mundell's well-made comments about amendment 1. I—and, I suspect, members of the committee—do not want to see good parents criminalised and subject to the might of the state for inadvertent transgressions, which is a particular risk where there is ignorance of the law.

I acknowledge that section 2 makes provision for raising awareness of the change in the law. My view is that section 2 is not strong enough and would represent a missed opportunity if it were to be left as it is. We should take this opportunity to raise awareness of the parenting practices and alternatives to smacking that I have no doubt that all committee members wish to see.

Amendment 9 reflects the view that it is imperative that people know and understand the limitations that are placed on their behaviour, not only to promote the culture change that was referred to earlier but so that people are not inadvertently criminalised.

To that end, amendment 9 would mandate the Government to promote awareness of, inter alia, the existing protections from assault that children have, the rights and responsibilities of a parent, and good parenting practices, including alternatives to any form of violence or smacking.

Our goal should be to help parents to provide the best environment for their children, by furnishing parents with the knowledge and understanding that they need if they are to do so. That is what amendment 9 seeks to deliver, and I hope that the committee will support it.

I move amendment 9.

Alex Cole-Hamilton: I have some sympathy with what the member is trying to do with amendment 9, but I do not think that the matter that he raises is for primary legislation. It would be better addressed in the guidance around implementation.

We have learned a lot from international examples, given that 54 countries have gone before us in this regard. I remind members of the powerful testimony of former Irish senator Jillian van Turnhout. She told us that the amendment that she got through the Dáil, which ended physical punishment in Ireland, was just an amendment to a bill, with no budget attached to it. However, it worked. Parents changed. They understood that the legal position had been made clear and that they had to adopt different strategies for parenting.

Therefore, I do not think that we need to legislate in the bill for the matters that Liam Kerr talked about, not least because—and I am sure that this is not his intention—amendment 9 lacks definition. For example, it refers to "good parenting practices"; a phrase such as that in a bill demands clarification of what it means, which runs the risk of our having to attach to primary legislation pages and pages of academic text on what is meant by "good parenting practices".

Although I understand Liam Kerr's good intentions, I will not support amendment 9, because I do not think that the bill itself is the place for such provisions.

Fulton MacGregor: I, too, think that Liam Kerr has the right intentions. He is probably trying to allay fears, and the biggest fear that folk out there have—and that people have raised with us—is that there will be unnecessary criminalisation. However, I say to Liam Kerr, as he is not on the committee, that we heard a lot of evidence on the subject and received a lot of reassurance that, given the child protection processes that are already in place, the risk of unnecessary criminalisation is extremely low. I therefore think that the amendment is unnecessary.

The amendment does not have the scope that Alex Cole-Hamilton talked about, and I note that in the Irish model, not much publication of information was needed.

Liam Kerr: The question that I throw back to Mr MacGregor is: what if you are wrong and the risk of criminalisation is not, in fact, low? Surely we must take this opportunity to ensure that we reduce the risk as far as possible and do not leave it to chance.

Fulton MacGregor: I thank the member for his intervention. I do not think that the amendment would have that effect, and—

Alex Cole-Hamilton: Will Fulton MacGregor take an intervention?

Fulton MacGregor: Can I finish my answer to Liam Kerr first? [*Laughter.*] I will take the intervention in a moment.

I do not think that the amendment would have that effect. We have to base legislation on what we hear, and the evidence that we have heard in this regard was overwhelming. As a committee member, I am satisfied that the risk of unnecessary criminalisation is very low.

I will take Alex Cole-Hamilton's intervention now.

Alex Cole-Hamilton: Sorry—that was rather impetuous of me. I am grateful to the member for taking the intervention. Does he agree that there is no risk that people will not understand that physically punishing their child will now be an offence, because that is written in 80ft letters on Technicolor neon signs by every group that opposes the bill every time it is brought up in the public domain?

Fulton MacGregor: Yes. I also return to the point, which we have talked about a lot in the committee, that it is already an offence. The bill removes a—

Oliver Mundell: Will Mr MacGregor take an intervention?

Fulton MacGregor: Okay.

Oliver Mundell: It is a relatively friendly one. Given the member's experience before he came into this place, does he recognise the challenges that many parents face and agree that the sharing of best practice and advice may be helpful for some people? Very few people set out to deliberately harm their children, but we heard in evidence—and I have heard in the interactions that I have had around the bill—that there are people who have, for want of a better word, resorted to smacking because they have struggled to cope. Does he recognise that there might be a role for further guidance on good parenting practices?

Fulton MacGregor: I recognise that but, as I have consistently said during stage 1 and as we have heard from many other members and agencies, the bill does not change that. I have great faith in the agencies and the child protection processes that we have in place. The bill has allowed a conversation on how we support families who are struggling, and I do not think that anything in the amendment changes that. I take Oliver Mundell's point, but I cannot support amendment 9.

Maree Todd: Amendment 9 relates to the duty on the Scottish ministers in section 2 to raise awareness, and it would lay down a list of areas to be covered by that duty.

I say to Liam Kerr that the list of areas is slightly illogical. It includes the rule of law and the defence of reasonable chastisement, which would be repealed by the bill. It also refers to section 51 of the Criminal Justice (Scotland) Act 2003, on the physical punishment of children, which would also be repealed by the bill. Why would ministers promote the old law, which is being repealed?

I am also uncertain about why the amendment refers to

"parental responsibilities under the Children (Scotland) Act 1995".

The 1995 act makes detailed provision on parental responsibilities but, as was mentioned in the debate on the previous group, they are not being changed by the bill.

09:45

I am also concerned about the proposal that the Scottish Government should be required to produce formal statutory guidance on "good parenting practices". Our message has always been that we want to support mothers and fathers, not dictate to them how to be good parents. However, I agree that providing support for parents includes raising awareness of positive parenting practices, which do not include physical punishment. We already provide that kind of information through public resources and, as required by the bill, we will work with key partners and stakeholders to build on that. Part of the aim must be to support families to prevent or reduce flashpoints, so that interventions are not needed at all. That might not always be possible, but it is a reasonable objective.

The Scottish Government recognises the need for public awareness and will comply with section 2 of the bill. When doing that, we will consult our implementation group and take account of points that the committee made in the stage 1 report. However, amendment 9 seems to lay down requirements that, given the fundamental purpose of the bill, would hinder rather than help awareness raising. If Mr Kerr has concerns about what the public information in that area might focus on, I am happy to meet him. He is welcome to contact my office to make arrangements for that.

I invite Liam Kerr not to press amendment 9. If it is pressed, I urge the committee to reject it.

John Finnie: Although I appreciate Mr Kerr's intention in moving amendment 9, it is not clear how exactly the amendment would affect section 2. As drafted, section 2 requires Scottish ministers to

"take such steps as they consider appropriate to promote public awareness and understanding about the effect of section 1."

That is drafted so as to allow the Government to determine what awareness-raising steps would be appropriate. If the amendment is agreed to, the same would apply to the list that it adds. Amendment 9 would require the Scottish Government only to promote "public awareness and understanding" of those things to the extent that it considers appropriate, which could be not at all.

The inclusion of two of the points is unnecessary. Since the rule of law that section 1 refers to is being abolished and the relevant provisions of the 2003 act are being repealed, what is the point in either promoting those things or in promoting public awareness or understanding of them? For the purpose of promoting what the bill does, the extent that those two points need to be explained is already covered by section 2. Section 1 of the bill abolishes the rule of law in common-law provisions and explains what the rule of law is.

Further explanation can be found in paragraph 6 of the explanatory notes and section 51 of the 2003 act. Therefore, I do not consider it necessary to require the Government to promote "awareness and understanding" of those things or to promote them in any other way. Ministers already have a requirement to explain section 1 of the bill, which abolishes and repeals those things.

The other areas that the amendment requires the Government to promote awareness and understanding of are areas that the Government already provides information to parents on, including the 1995 act, which informs Scottish Government policy on relevant matters and will alter to reflect the new legislation. Again, I do not consider it necessary to have those things in the bill.

Moreover, as has been said previously, concepts such as "good parenting practices", "alternative parenting practices" and "disproportionate violence or assault" lack definition. Does the member have an example of proportionate assault?

I ask committee members to vote against amendment 9 in the name of Liam Kerr.

Liam Kerr: I am grateful to the members and the minister for their comments. Taking it from the top, I will respond to a few of them.

Alex Cole-Hamilton said that these provisions are not for primary legislation. It strikes me that, if we have a weak mandate at section 2, why would we not go further? John Finnie made the point that the Government's decision could be "not at all", which is exactly the problem: the Government could decide to do nothing. That concerns me, because, as we have seen, we would have a level of ignorance about what has changed, and people inadvertently being criminalised in the way that Oliver Mundell set out. It feeds into a wider concern that we leave too much to ambiguity.

If Alex Cole-Hamilton is right that the phrase "good parenting practice" is ambiguous, what are

"such steps as ... appropriate to promote ... awareness"?

That does not mean anything. If "good parenting practice" does not mean anything, neither does what is in the bill.

Alex Cole-Hamilton: The bill would allow ministers the flexibility to respond to and reflect the cutting edge of good parenting practice—it would not limit them in any way. I think that we should welcome that.

I would have had more sympathy with an amendment that placed on ministers a duty to report to Parliament what steps they had taken, so that the matter could not be left and we would revisit it. However, amendment 9 tries to write statutory guidance in primary legislation, which is never a good thing.

Liam Kerr: I thank the member for that clarification. I am wondering aloud—I will not seek a response on this—whether it suggests that he might vote for the amendment, with a view to further amending the provision at stage 3, which is an opportunity that would be open to him.

I turn to something that I heard Fulton MacGregor say, which I think is quite concerning on a wider level—not only in relation to amendment 9. He accepted that there might be some "risk of unnecessary criminalisation". Surely the job of the Scottish Parliament is to reduce such a risk to zero and we, as MSPs, must take all the steps that we can to achieve that. Amendment 9 represents one part of that process. It seems to me that if Mr MacGregor accepts that it is our job to reduce the risk to zero, he must support it.

John Finnie: I know that Mr Kerr was not present at the committee's evidence-taking session with Police Scotland and Social Work Scotland, but is he aware of their evidence on how the present arrangements work and their view that nothing substantial would change?

Liam Kerr: I am aware of the evidence, but it does not detract from my main point. I cannot accept that there might be some risk. People out there might be watching this right now and saying, "Hang on—these MSPs are about to pass a bill that leaves me with some risk of 'unnecessary criminalisation'". That is terrifying, Mr MacGregor.

Fulton MacGregor: I am intervening because Mr Kerr has misquoted me—or perhaps has not

quoted my words in context. I have said that there is a perceived risk of unnecessary criminalisation, and I believe that that is why Mr Kerr has lodged amendment 9. The committee has heard overwhelming evidence that that is unlikely to be the case and that the procedures and systems that we have in place, especially on child protection, are robust and already deal with such situations every single day. Therefore I do not accept the premise of Mr Kerr's remarks towards me. I do not think that the bill leads to a risk of unnecessary criminalisation; in fact, it strengthens the law on protection of children.

Liam Kerr: I think that the *Official Report* will be revealing in that regard. I understand that Mr MacGregor came back in on my point because I was quoting his words back to him, but—

Fulton MacGregor: You are quoting—

Liam Kerr: I will move on, convener—it is fine.

Failure to agree to amendment 9 will represent a massive missed opportunity to reduce risk and reassure parents—who I do not think will look at the explanatory notes, Mr Finnie—and the public, and it will make the bill better. I urge the committee to take that opportunity.

The Convener: The question is, that amendment 9 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 9 disagreed to.

Section 2 agreed to.

Section 3—Transitional and saving provision

The Convener: Amendment 2, in the name of Annie Wells, is grouped with amendment 3.

Annie Wells: My comments will be relatively short. Amendment 2 is a clarifying amendment that is intended to make clear the rights of parents. Section 3(2) states:

"The Scottish Ministers may by regulations make such further transitional, transitory or saving provision as they consider necessary ... in connection with ... section 1."

Amendment 2 seeks to ensure that

"For the avoidance of doubt",

it should be made clear that anything that is introduced above and beyond the bill will not inhibit parents' existing rights in accordance with the Children (Scotland) Act 1995. That would include, for example, the rights of a parent to prevent harm to their child, whether that involves preventing a child from running across a road or the need to administer life-saving medicine to a distressed child. Amendment 3 is also straightforward; it seeks to ensure that any changes should be subject to proper parliamentary procedure.

I move amendment 2.

Gail Ross: I have a couple of questions on these amendments. I am sorry, but I was uncertain as to what amendment 2 seeks to do when I first read it; I am even more uncertain after hearing an explanation from Annie Wells about children running out into the road and the need to administer medicine. The amendment contains the phrase

"For the avoidance of doubt",

but, from all the evidence—we have said this more than once—there is no doubt that the bill provides a clarification in law.

The amendment also says that the bill should

"not unduly limit the ability of parents to carry out their responsibilities to their children."

Does that mean that parents could, if they so wished, bring forward a judicial review and argue that the bill is unlawful in some way? I need a lot more explanation of what amendment 2 is intended to do.

With regard to amendment 3, in the name of Annie Wells, it is usual for ancillary provision powers such as those in section 3(3) to be subject to the affirmative procedure when there is a power to amend primary legislation, but there is no such power here. Indeed, the powers are quite limited. I will therefore be rejecting the amendment. Although, at first glance, it seems to be quite straightforward, its intention does not apply to the bill.

Maree Todd: I am grateful for the opportunity to speak to amendments 2 and 3. The Scottish Government does not consider amendment 2 to be necessary. The powers that are contained in section 3(3) relate to making regulations on

"transitional, transitory or saving provision ... in connection with the coming into force of section 1."

So far, we have not identified any need to use those powers.

More fundamentally, the powers in section 3(3) are quite limited and technical in nature. They

relate only to the removal of the defence that is contained in section 1. In addition, they are not about substantive parental responsibilities and rights as contained in part 1 of the Children (Scotland) Act 1995. As a result, there is no doubt to be avoided here because the regulations could not make substantive provision on the rights and responsibilities of parents. Amendment 2 is therefore unnecessary and, on that basis, I urge the committee to reject it.

Amendment 3 relates to the parliamentary process that is to be followed when regulations are made under section 3(3). The regulation-making power under section 3(3) does not include the power to amend primary legislation, which is when the affirmative procedure is typically appropriate. I also note that the Delegated Powers and Law Reform Committee was content with the delegated powers provision in the bill. I therefore invite the committee to reject amendment 3.

John Finnie: My remarks contain a measure of duplication with what the minister said. The explanatory notes and the delegated powers memorandum both clarify that the regulation-making power in section 3(3) is technical and limited, and that the negative procedure is therefore considered to be the most appropriate. The Delegated Powers and Law Reform Committee considered the DPM and had no comments to make. The delegated power is limited to what is

"necessary or expedient in connection with the coming into force of section 1."

It is included in the bill to give the Scottish ministers flexibility should they identify any

"further transitional, transitory or saving provision"

that could not have been anticipated when the bill was drafted. I therefore do not consider that there is any "doubt"—as is suggested in amendment 2—that the regulation-making power could in any way

"limit the ability of parents to carry out their responsibilities to their children".

Perhaps the member could give an example when she sums up.

10:00

Furthermore, the new test that is set out is vague and subjective, particularly in relation to the inclusion of "unduly", which we covered earlier and which implies that some limitation is legitimate, not least because one primary responsibility is to protect children from assault. In her evidence, the minister told the committee that she did not think that the power would be used.

On amendment 3, and as already stated, the negative procedure is considered appropriate for such a transitional, transitory and saving provision, which is largely technical in nature and which in any case is limited to what could be considered necessary or expedient in connection with the coming into force of section 1.

I ask members to reject amendments 2 and 3 in the name of Annie Wells.

Annie Wells: I thank members for their input. The point that I was trying to make with amendment 2 is that it is not yet clear what transitional regulations could be of concern. At the moment, there is not a lot of detail on the transitional regulations. That is why I lodged that amendment.

On amendment 3, it is not that the negative procedure is always to be used; things can be done in the normal way. I lodged amendment 3 given the sensitivity of the bill, so that Parliament could scrutinise further any future transitional regulations. On that basis, I wish to 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

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 2 disagreed to.

Amendment 3 moved—[Annie Wells].

The Convener: The question is, that amendment 3 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 3 disagreed to.

Section 3 agreed to.

Section 4—Commencement

The Convener: Amendment 4, in the name of Oliver Mundell, is grouped with amendments 5 and 6.

Oliver Mundell: This is a set of simple, consensus-building amendments, which try to capture in guidance the points that came up in evidence at stage 1. It is important to capture not necessarily in the bill but in guidance some of the points that my colleague Liam Kerr raised in relation to amendment 9. It is important that we ask the Scottish Government to provide guidance and information that would be useful.

Adam Tomkins: If I were a member of the committee, I would support amendment 4. It is not merely necessary but essential to give clarity to the reasonable points of doubt that exist with regard to the bill, notwithstanding the protestations to the contrary from some quarters.

I note that proposed new section 4(1C)(b), which amendment 4 would introduce, mentions guidance having to include guidance on

"the limits of physical force".

Does the member accept that the intention of the bill is not matched by the bill as introduced, in that its clear intention, as have heard repeatedly this morning and as we heard throughout the stage 1 debate a couple of weeks ago—and as Mr Finnie makes clear in his policy memorandum—is to outlaw the "physical punishment of children"? The phrase "physical punishment" comes up over and over again, and I think that both Mr Finnie and the minister have used it repeatedly this morning. That is not what the bill does, however.

The bill goes further—potentially much further—than that, to criminalise the actions of parents, carers and guardians of children that are not physical punishment but are other actions that, under the definition in Scots law at the moment, may constitute an assault. The fatal flaw in the bill is to assume—

The Convener: Mr Tomkins, I must remind you that we are not debating the bill in its entirety just now. In your intervention, you should speak to the amendments that are before us at the moment.

Adam Tomkins: Thank you, convener; I am happy to take that advice. For clarification, I am speaking directly to the words in Mr Mundell's amendment that say that guidance must include guidance on the use of physical force. I am asking Mr Mundell to clarify what he understands by that in the context of the bill. I am speaking directly to those provisions.

The mistake is to assume that physical punishment and assault mean the same thing when they do not. For that reason, it is essential that guidance is provided in advance of the bill coming into force to clarify whether it is intended to criminalise assaults against children that do not constitute physical punishment.

Oliver Mundell: I thank Adam Tomkins for that intervention. I agree with him up to a point. I think that it would be better to make that clarification in the bill. Doing so in guidance is a second-best option.

Adam Tomkins: For the record, I sought to bring to the committee amendments that would have allowed a debate on that issue, so that those issues could have been clarified in the bill. However, those amendments were ruled inadmissible, and we heard the convener this morning explain that she was not able to give reasons as to why they were ruled inadmissible.

Oliver Mundell: I thank Adam Tomkins for that explanation.

There are other important points in the guidance. Throughout our scrutiny of the bill, we have heard from the minister, from the member in charge and, in fairness, from every member of the committee that the bill is not seeking to criminalise parents. Again, there is a duty to make clear to parents, social workers, charities, organisations that work with children and individuals who are involved in children's day-to-day lives what the alternatives are to picking up the phone and contacting the police.

I am particularly exercised about the issue that is dealt with in proposed section 4(1C)(d) and in amendment 6, which involves the legal support and advice that is available to children. The Children (Scotland) Act 1995 places a responsibility on parents to act in a legal capacity in relation to their children. Where children are subject to an offence that involves them as a victim or a witness, the parents should be able to access legal advice and support—

Alex Cole-Hamilton: I understand the point that the member is making and I have some sympathy with the interests of children who have witnessed a crime. Why did he not raise this issue in an amendment to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill?

Oliver Mundell: I have to say that that was an oversight on my part. I heard that argument earlier this week from children's charities, but I do not think that the fact that something was not done in previous legislation is a good reason for not doing it now.

What has drawn the issue to my attention at this point is that there is something different in relation

to this bill, which is the fact that removing the defence means that there is a category of behaviour that I do not think would meet the public interest test in every case. As the Crown Office itself says in its written submission, difficult questions arise in relation to an area of behaviour that involves very mild force. I think that, in those cases, it would be extra helpful to ensure that the child had access to legal advice that would enable them to understand what the likelihood of success of any action would be, and that there should be advice on what the impacts on the family would be of going through a legal process. I do not see what harm it could do.

The sort of legal advice is something that would be easily available to me, as an adult. Like most adults, I could pay to access legal advice, but children cannot always do that, and that can be particularly difficult for children who are not supported by their parents, or for the many children who have single parents. I do not see what possible harm it could do to make explicit in guidance the good advocacy services and legal support that are available, many of which we discussed when we considered the Age of Criminal Responsibility (Scotland) Bill. I struggle to see how people would disagree with that.

In amendment 5, I have tried to capture what I am looking for in the Lord Advocate's guidance. I recognise that that might be more difficult and that it creates questions.

Gail Ross: Did you consult the Lord Advocate about putting measures on his guidance in the bill? Has he given an opinion on that?

Oliver Mundell: He has not given an opinion on it and I did not seek one, because that is not my role as a parliamentarian. He operates separately from Parliament, which is the point that I was coming on to. That creates challenges as to whether it is appropriate to direct him in this way. However, I lodged amendment 5 to emphasise the point and so that we could at least have a discussion on what I feel is an important issue.

Under proposed new section 4(1E)(a), the Lord Advocate's guidance would have to cover a person's responsibility to protect the child who they are in charge of and how that interacts with the removal of the defence, particularly in cases where physical force is used in a way that is not physical punishment—it can be different from physical punishment but to outside parties it might look the same. Under proposed new section 4(1C)(b), ministers would have to publish clear guidance on the use of force in "common situations". A number of examples of that have come up, including from other countries, and we all accept that the bill is not designed to capture those things. Proposed new section 4(1E)(a) really makes the same point, but I accept that members will take individual judgments on whether it is appropriate to put that in the bill, given the commitments that we had from the Lord Advocate.

I move amendment 4.

Alex Cole-Hamilton: I will try to be brief. I will speak against all the amendments in the group, but particularly amendments 4 and 5. I strongly disagree with the premise of amendment 4, which suggests the existence of parental rights in relation to the use of physical force. In every evidence session at stage 1, we rehearsed the fact that there is no such right enshrined in international conventions or treaties.

Oliver Mundell: I accept the member's point but, in Scots law, there are clear cases of that. The member has set out some of them himself, such as picking up a child, holding back a child and pulling a child's hand away. Does the member accept that those are uses of physical force?

Alex Cole-Hamilton: I do not disagree that there is a right to restraint, but we are perhaps getting into a semantic argument that is better suited to the stage 3 debate in the chamber. To me, "physical force" suggests a punitive element, whereas "restraint" does not, and that is an important distinction. As such, amendment 4 would lend confusion to what is otherwise a clear bill.

Another aspect of amendment 4 is about children who are witnesses in criminal proceedings involving their parent or guardian. That strays beyond the scope of the bill. It would feel like an aberration if it was in the bill in isolation, with no reference to other legislation that deals specifically with that.

Oliver Mundell: The member might note that, under paragraph (1B) of amendment 4, any guidance would be only

"on the operation of this Act."

That might clarify the point.

Alex Cole-Hamilton: I am grateful for that, but I still think that that goes beyond the scope of the bill.

On amendment 5, when the Lord Advocate gave helpful oral evidence to the committee a couple of weeks ago, he could not have been clearer that he intends to produce statutory guidance. Frankly, it is extraordinary that we as parliamentarians should seek to compel the Lord Advocate towards the production of prosecutorial guidance, when it is his job to do that and he has said that he is going to do it. He knows that this is one of the most sensitive bills that the Parliament will pass in this session. As such, I would expect the production of guidance on it to be at the top of his in-tray. It is wholly unnecessary for us to start

directing his work through primary legislation. For that reason, I will not support any of the amendments in the group.

10:15

Mary Fee: I want to speak to amendment 6. On first reading, there is no reason why I would not have sympathy for it, given that it asks for support for children. I have a great deal of sympathy for the idea that support should be provided to children in instances of arrest or criminal proceedings or prosecution. I have done a considerable amount of work, with families who have been affected by imprisonment, on the impact of prosecution on a child and the long-term mental health impact that any interaction with a criminal prosecution can have on a child. I have often said in Parliament that children are the forgotten victims of crime. When an adult carer is arrested and removed from the home, the children are often forgotten.

I will explain what has pulled me back from supporting amendment 6. I have a deal of sympathy with Alex Cole-Hamilton's comments. I think that what amendment 6 proposes goes beyond the scope of the bill. Support for children should be provided regardless of whether the circumstances relate to the bill; support should be provided in relation to any situation involving prosecution. Perhaps Oliver Mundell could provide some clarification when he winds up, because I was slightly confused when he mentioned independent legal advice. What I have in mind is more along the lines of emotional support on the way through prosecution. If we limit the support that can be provided to legal advice and restrict its provision to circumstances that relate to the bill, we will miss an opportunity. The issue of support goes way beyond the scope of this bill.

Maree Todd: The Government does not support amendments 4, 5 and 6.

First, it is proposed that the Scottish ministers should provide guidance on the rights of parents to use restraint. Physical punishment is not needed to keep children from harm. The bill will not affect the ability of parents or carers to use restraint to stop a child coming to harm. Information about limits on the use of physical force could undercut the key aim of the bill, which is to remove the reasonable chastisement defence. Any such information could simply be a guide to the use of force.

I would like to respond to the exchange between Oliver Mundell and Adam Tomkins. The bill is intended to give children equal protection from assault. The law on assault is clear. At stage 1, the committee heard evidence that police officers and prosecutors apply it on a daily basis; there is no problem with the clarity of the law. The bill will increase the clarity of the law.

Adam Tomkins: At stage 1, you said:

"At the heart of the defence is the concept that it can sometimes be reasonable to strike a child."

You went on to say:

"removal of the defence reflects the growing body of international evidence that shows that physical punishment of children is harmful and ineffective."—[*Official Report*, 28 May 2019; c 14.]

That is all fine, but do you accept that the bill goes further than that and that it will criminalise not merely striking or physically punishing a child, but all assaults against children, regardless of whether they involve a physical attack? Do you accept that the law of assault is broader than that and that, therefore, the bill will, by removing the defence of reasonable chastisement, bring into the ambit of the criminal law more than simply striking or physically punishing a child?

Maree Todd: I accept that the law of assault is broader and that it includes an attack that puts the victim into a state of fear of immediate physical injury. Is Mr Tomkins suggesting that it should be permissible for a parent to do that?

Adam Tomkins: What I am saying is that the bill should reflect its policy objective. The bill's policy objective could not be clearer—it is to outlaw the physical punishment of children. Rightly or wrongly, inadvertently or deliberately, as drafted, the bill does that and then some. It does more than that. In the interests of clarity—which I think is a cardinal value in criminal law—I seek to amend the bill or to urge that the bill be amended so that it accurately reflects its stated ambition, as set out in the policy memorandum.

Maree Todd: As I have said already, the intention of the bill is to give children equal protection from assault. The law of assault is perfectly clear in Scotland; it is prosecuted day in, day out. I think that you are casting doubt where none exists.

Amendment 4 does not make clear what it means by the term "common situations". For example, some children with autism can be oversensitive to touch and they experience pain differently. Rather than what is set out in amendment 4, our plan is to raise awareness in line with the duty set out in section 2, taking account of children with special needs and other vulnerable children. That is consistent with what the committee said at stage 1.

Amendment 4 also proposes that the Government issue guidance on

"best practice on alternatives to prosecution".

This cuts across the constitutional independence of the Lord Advocate and the courts. It would not be appropriate for the Scottish Government to issue guidance that infringes on that independence. Nor would it be appropriate for the Scottish Government to issue guidance that, in establishing limits of force, restricts the courts' ability to take into account the particular facts and circumstances of each case. Universal and targeted services and voluntary organisations already offer extensive support in relation to issuing guidance for families.

I am concerned about the implications of amendment 5 for the Lord Advocate's independence. Generally speaking, it is for him to independently determine prosecution policy and any guidelines that he issues to Police Scotland. It is also generally a matter for the Lord Advocate to decide whether such guidance should be published.

I understand that, in making that decision, the Lord Advocate considers whether publication would be liable to prejudice the prevention or detection of crime. There is a clear risk that this guidance, if published, could be used as a guide to avoiding prosecution. It could also undermine the clarity that the bill seeks to provide.

Oliver Mundell: Why, then, did the Lord Advocate commit to issuing similar guidance when he appeared before the committee?

Maree Todd: I cannot speak for the Lord Advocate, but it is perfectly usual for the Lord Advocate to issue guidance. That is not an unusual thing for him to do. It does not need to go into statute on the face of a bill, though. That would be unusual. A statutory duty in those terms is simply not needed.

The committee has heard from the Lord Advocate that he intends to issue guidance and that the approach to prosecutions will be informed by the state's

"responsibility to protect children from harm and by a consideration of the best interests of the child."

The committee also heard from the Lord Advocate about the two things that a prosecutor will consider when assessing a report of an alleged crime: first, whether there is credible evidence that a crime has been committed and,

"secondly, if there is sufficient evidence, what action ... would be in the public interest ... The Scottish prosecution code sets out the factors that may, depending on the circumstances, be relevant in assessing the public interest."—[*Official Report*, *Equalities and Human Rights Committee*, 6 June 2019; c 3, 2.]

Police Scotland has confirmed its intention to issue national training on removal of the defence. Again, this clearly shows that amendment 5 is not needed.

On amendment 6, the Victims and Witnesses (Scotland) Act 2014 makes extensive provision for the rights of vulnerable witnesses, including children, and the support that they are entitled to access. Similarly, provisions within the recent Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 provide for reforms relating to special measures for vulnerable witnesses such as children in criminal cases, including the greater use of pre-recorded evidence at trial. There is therefore no need for amendment 6 and, in potentially delaying the abolition of the defence, it makes the picture for children's rights worse, not better.

Finally, these amendments state that section 1 cannot come into force until the publication duties have been complied with. Who is to say when that has happened, so that section 1 can come into force? For all those reasons, I invite the committee to reject amendments 4, 5 and 6.

John Finnie: The amendments in this group seek to make the proposed legislation's commencement conditional on the issuing of ministerial and prosecutorial guidance. The amendments are technically flawed and would not work as intended. The bill's substantive provisions would automatically come into force 12 months after royal assent, and none of the amendments as drafted would prevent that from happening.

Preconditions on commencement can be meaningfully set only if there is some flexibility about timing in the first place, most obviously by having commencement by regulations and by saying that ministers may not bring the act into force until they have done X, Y and Z. If any of the amendments were agreed to and some of the additional things that are listed had not been done by the 12-month deadline, there would be genuine uncertainty as to whether section 1 was or was not in force, which would simply cause confusion in the law, to no one's benefit. It would distract from the clarity that the bill aims to deliver.

It is not clear who the guidance that is referred to in amendment 4 is directed at, and what status it is expected to have. Is the guidance meant for parents, the police, social work services or prosecutors? The committee has been told that current guidance and/or information will be provided or updated for all those groups.

The Scottish Government provides guidance and support to parents via a number of agencies, including social work and health boards. Police and prosecutorial guidance is a matter for the police, the Lord Advocate and COPFS, and information is already publicly available in the prosecution code, including the public interest test. There has been lots of evidence to the committee on that.

Amendment 6 appears to be a stripped-down alternative to amendment 4, omitting paragraphs (1C)(a) to (c) of amendment 4. Therefore, the same questions as those that I asked about amendment 4 apply. Again, it is not clear who the guidance that is referred to is directed at and what status it is expected to have.

Amendment 5 contains an inherent contradiction between issuing guidance on policy, which must be in general terms, while at the same time ensuring that it is appropriate to the

"individual circumstances of particular cases".

The Lord Advocate told the committee clearly that guidance will be prepared and issued to the chief constable. He said:

"If the bill is passed, I intend to issue Lord Advocate's guidelines to the chief constable of Police Scotland on the investigation and reporting of allegations of assaults by parents on children."

He went on to say:

"I issue guidelines to the chief constable, and it is then his responsibility to disseminate the instructions to his officers on the ground."

The Lord Advocate also set out details of the current publicly available prosecution code, which contains comment on the public interest test and how the best interests of the child are central to decision making. He told the committee:

"Those guidelines and prosecutorial policy will support a proportionate and appropriate response to the individual circumstances of particular cases. When appropriate, that response may include the use of informal response by the police, recorded police warnings, diversion and other alternatives to prosecution. At the same time, prosecution will be enabled when that is properly justified by reference to the circumstances of the individual case. The approach will be informed by our responsibility to protect children from harm and"—

importantly—

"by a consideration of the best interests of the child."—[*Official Report*, *Equalities and Human Rights Committee*, 6 June 2019; c 3,9,3.]

Therefore, amendment 5 seems to add no value to the work that the Lord Advocate has already confirmed is under way.

I ask members to reject all the amendments in the group.

Oliver Mundell: It has been an interesting discussion. I am happy to clarify the status of and intended audience for guidance in revised amendments at stage 3 and to look at adding clarity to some of the terms used.

On the commencement issue, it was not actually a condition that I was looking for; rather, it was a matter of how to get guidance issues discussed. There was nowhere else for such provisions to fit easily into the bill and I was advised that that wording was the best way to do it. I will look at the possibility of removing the wording at a later stage.

On Mary Fee's points, as I said to Alex Cole-Hamilton, the amendments only refer to guidance

"on the operation of this Act".

Secondly, paragraph (1I) of amendment 6 says that the guidance would not be limited to

"independent legal advice and contact with a nearest relative or other trusted adult".

It is just that those are two things that I feel strongly about. Independent legal advice is important because, in these marginal or difficult cases, children should be able to understand the probability of success of court action, how they wish to interact with that and what their rights are.

10:30

The nature of a relationship between a child and their parent is special and is recognised as being legally different from other relationships in law. Given the sensitivities around charges that are likely to be made as a result of the defence being abolished, it is really important, and I am sorry that I have not pursued this in relation to other offences. It is an important point.

I accept the consensus view on amendment 5 and I will not seek to push it. However, I will press amendment 4 and seek to move amendment 6 at this stage. They could be tidied up or perhaps moved to another section of the bill at stage 3.

The Convener: The question is, that amendment 4 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 4 disagreed to.

Amendment 5 not moved.

Amendment 6 moved—[Oliver Mundell].

The Convener: The question is, that amendment 6 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 6 disagreed to.

The Convener: Amendment 7, in the name of Oliver Mundell, is in a group on its own.

Oliver Mundell: I do not intend to speak to amendment 7 for long because, judging by the previous debates, I do not imagine that it is likely to get any support. The simple intention is to ensure that bodies are properly resourced. Despite the minister's letter of 12 June, there is still some uncertainty around that point and it is important that Parliament at least gives thought to the issue. I also know that other members might take an interest in the issue at stage 3.

I move amendment 7.

Maree Todd: Amendment 7 seems to be an attempt to delay the bill. Outside the ordinary budget process, it would be unusual for the Scottish Government to provide a statement on the resources being provided to various bodies, and for the Parliament to specifically approve that.

In response to the committee's stage 1 report, the Scottish Government wrote to members of the implementation group to seek information about costs. We have provided the committee with a letter outlining the results of our discussions with the implementation group, and we will have further discussions with members of the group.

Resources required in relation to the bill would be one-off implementation costs and on-going costs. It is not clear if the resources referred to in amendment 7 are intended to cover implementation costs or running costs, or both. It is also not clear for what time period resource implications should be reported to Parliament.

The various bodies that will be affected by the bill can be expected to seek additional funding as a result. That will be considered as part of the usual Government budget procedures, including the budget bill, which Parliament scrutinises each year.

The best approach is to rely on the usual budget bill process rather than to invent a new uncertain, bespoke procedure, which, frankly, just seems to be an attempt to delay the bill.

The same concerns that I raised on amendments 4, 5 and 6 also apply to amendment 7, because of the uncertainty that it would create over how we would know whether the bill was in force. For those reasons, I invite the committee to reject amendment 7.

John Finnie: The financial resolution procedure is designed to ensure Parliament's approval of expenditure associated with a bill, should that amount be considered significant. In this case, no resolution was considered to be required. Of course, there is also the opportunity for the Parliament to scrutinise the Scottish Government's budget.

No other example comes to mind of a bill being passed by Parliament but then being unable to be brought into force until a financial statement has been published and subject to Parliament's approval. It would be interesting to know whether the member who lodged the amendment has any such examples. Does he believe that there should be a new stage 4 for all bills? Perhaps it would be just for those bills with which he does not agree.

The financial memorandum sets out the estimated costs of the bill, and the Scottish Government has commented on the work that it is undertaking to prepare for its implementation.

The committee heard from relevant agencies and the Government that the costs associated with the bill would not be prohibitive; they also said that they are difficult to estimate with any certainty at the moment.

The amendment seems to presuppose that additional resources would be required. If the ministers consult the specified people and they all say that the commencement of section 1 would not require any additional resources, ministers would publish a statement to that effect. If the Parliament then passed a resolution saying that it agreed with that view, would that count? That would appear not to meet subsection (1M) of amendment 7, as it would not be a resolution that

"the resources set out in the statement ... are sufficient",

since the statement would not "set out" any additional resources.

I hope that members followed that—it was as straightforward as the proposal itself. I apologise.

Finally, during stage 1, there seemed to be no strong view that resource funding was a major issue with the bill. Indeed, the Parliament's Finance and Constitution Committee received only one submission in response to its consultation on the financial memorandum to the bill.

I ask committee members to vote against Oliver Mundell's amendment 7.

Oliver Mundell: I am not surprised that the member in charge of the bill did not pay much attention to the minority statement in the stage 1 report, in which Annie Wells and I drew attention to our concerns about drawing existing resources away from children who most need support most, and—

John Finnie: Will the member take an intervention?

Oliver Mundell: Certainly.

John Finnie: I am grateful to you. I did not comment on that—I was commenting on the response that the Parliament's Finance and Constitution Committee received.

Oliver Mundell: With all due respect, I am not a member of that committee. I moved amendment 7 with a view to satisfying the concerns that I had in relation to stage 1. From my constituency work and my wider work in the Parliament on children and young people, I am aware of the big pressures on resources in many of the organisations that are listed. It is no secret that I do not support the general principles of the bill, because of its vagaries and the difficulties that it will pose. Given my view that the bill is unnecessary, we should be absolutely satisfied that those organisations have the resources to implement it and that it does not force them to change their practices. That is what amendment 7 is intended to do.

I press amendment 7.

The Convener: The question is, that amendment 7 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 7 disagreed to.

The Convener: Amendment 8, in the name of Annie Wells, is in a group on its own.

Annie Wells: During stage 1, we received evidence from the Crown Office and Procurator Fiscal Service that limited data were available. Amendment 8 would ensure that there would be better evidence before the bill comes into force.

It has been clear since stage 1, and as the bill has progressed, that we need more data about the number of cases in which the defence of reasonable chastisement has been considered and has been a relevant factor. We have been told that the available data are very limited. That proves my point that we need more data to understand the situation before section 1(1) comes into force and that my amendment is necessary.

I move amendment 8.

Alex Cole-Hamilton: I partly understand why Annie Wells has lodged amendment 8. However, to turn her own argument against her, data to do with the use of the legal defence of reasonable punishment are so scarce precisely because such a defence is barely ever used. That is because—this should give her confidence—the best interests principle and the public interest test are always applied effectively by the Crown Office and Procurator Fiscal Service in taking cases through the courts.

The Lord Advocate offered us comfort that, through his guidance, he will reassert that the best interests principle and the public interest test will be applied before any case is taken to court. As such, we will not see legions of parents marched through the courts as a result of the bill; it will simply lead to a cultural shift that I believe the bill's supporters around the table would like to see.

Maree Todd: Amendment 8 seems fundamentally to be an attempt to delay the bill. We have already indicated that we do not have statistics on the use of the defence in court cases. The reason is that the Government's criminal proceedings database does not hold information relating to defences that are lodged in criminal trials. Our statistics are derived from data that are held on the criminal history system—the CHS. That central hub is used for the electronic recording of information on people who are accused and/or convicted of perpetrating a criminal act. Information relating to defences that are lodged is not recorded in an electronically extractable format and is therefore not held on the CHS.

Gail Ross: Does the minister agree that, if the data are not available and are unable to be extracted, the amendment would—if it was agreed to—mean that the whole bill would be delayed forever and would never go ahead?

Maree Todd: Absolutely—amendment 8 is fundamentally an attempt to delay the bill.

People will make a plea of guilty or not guilty at the start of a criminal case. There is no plea of justifiable assault or reasonable chastisement. More generally, the amendment refers to

"data on the effect of"

the defence, and "analysis of that data." Of course, that is not just about the number of times that the defence is used in court—it is also about the negative effect of the current defence of reasonable chastisement. As the committee heard, there is a wealth of evidence—

Fulton MacGregor: The minister says that the Government does not have the stats on how often the defence is used. Would she accept that, given some of the evidence that we have heard in committee and what Alex Cole-Hamilton said earlier, it is likely that it is used very little, and that practitioners such as social workers, teachers and police officers who deal with children day in, day out rarely think about the defence when they are assessing situations?

Maree Todd: It is clear that we cannot get that data without interrogating manually all the evidence to do with those cases and prosecutions. Amendment 8 is undoubtedly an attempt to delay the bill's introduction.

I want to talk about the negative effect of the current defence of reasonable chastisement. We received, and the committee has heard, a wealth of evidence about the negative impact of physical punishment on children. There are many written reports on that—

The Convener: I am loth to cut you short, minister, but I am conscious that I asked members to focus on the amendments. We will all have an opportunity at stage 3 to make such points.

Maree Todd: I was focusing on the amendment. The amendment refers to

"data on the effect of"

the defence, and "analysis of that data." That relates to the evidence on whether the defence has a negative impact on children.

I do not think that we need any more data on the effect of the defence. As we have well established, reasonable chastisement has a negative effect. Let us remove it, and let us not delay the bill. For those reasons, I urge Annie Wells not to press amendment 8 to a vote. If it is pressed, I invite the committee to reject it.

10:45

John Finnie: The committee has already heard from COPFS and the Lord Advocate that such data are not available. Therefore, it would not seem wise to legislate to require publication of data that the relevant bodies have already confirmed are not available.

The amendment is also vague in its reference to

"cases in which that rule is considered to have been a relevant factor".

Considered by whom? What factors are relevant? Are cases to include incidents that were investigated, or only those that were prosecuted or heard in court? Over what timescales?

I will give an example. If the police did not record a smacking as a crime because the police constable who attended saw it as an exercise of reasonable chastisement, that might count as such a case, but there would not be any data on it precisely for that reason.

There is also the issue of what value data would add, if it were available in advance of section 1 coming into force. In what way would it be analysed? Surely more relevant is the number of cases of assault against children that have been brought, the nature of those cases and the outcomes. The Lord Advocate and Anne Marie Hicks, the national procurator fiscal for domestic abuse at COPFS, spoke to the committee about that. I ask committee members to vote against amendment 8 in the name of Annie Wells.

Annie Wells: I clarify that the amendment was never meant to be a delaying tactic. I thought that it was relevant, having heard the Lord Advocate himself say that there might be an increase in reporting. I thought that we should see some evidence of that. My amendment is about the practical effects on children. For that reason, I press it to a vote.

The Convener: The question is, that amendment 8 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 8 disagreed to.

Sections 4 and 5 agreed to.

The Convener: The question is, that the long title be agreed to. Are we agreed?

Members: No.

The Convener: Members should note that there will not be a division on this question, but the

dissent of Annie Wells and Oliver Mundell is noted.

Long title agreed to.

The Convener: That concludes stage 2 consideration of the bill. It will now be reprinted as amended at stage 2.

The Parliament has not yet determined when stage 3 will be held; members will be informed of that in due course, along with the deadline for lodging stage 3 amendments. In the meantime, stage 3 amendments can be lodged with the clerks in the legislation team. I thank John Finnie and the minister, Maree Todd, along with her officials, for their attendance.

The committee's next meeting will be on Thursday 27 June, when we will discuss our approach to the Female Genital Mutilation (Protection and Guidance) (Scotland) Bill.

10:48

Meeting continued in private until 11:09.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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