



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 11 February 2021**

**Session 5**



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**4<sup>th</sup> Meeting 2021, Session 5**

**CONVENER**

\*Ruth Maguire (Cunninghame South) (SNP)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Mary Fee (West Scotland) (Lab)

\*Joe FitzPatrick (Dundee City West) (SNP)

\*Alison Harris (Central Scotland) (Con)

\*Gillian Martin (Aberdeenshire East) (SNP)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

Maree Todd (Minister for Children and Young People)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Equalities and Human Rights Committee

Thursday 11 February 2021

*[The Convener opened the meeting at 09:00]*

### United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill: Stage 2

**The Convener (Ruth Maguire):** Good morning, and welcome to the fourth meeting in 2021 of the Equalities and Human Rights Committee. We have one item on today's agenda, which is stage 2 consideration of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. Joining the committee are Rachael Hamilton and the Minister for Children and Young People, Maree Todd, and her officials. You are all very welcome.

Today will work well if we take it slow and steady. When I call you to speak, please pause before speaking to allow your microphone to be switched on. Members should have a copy of the bill as introduced, the marshalled list of amendments, which sets out the amendments in the order in which they will be disposed of, and the groupings.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and to move that amendment, and to speak to all the other amendments in the group. I remind members who have not lodged amendments in the group but who wish to speak that they should request to speak by typing R in the BlueJeans chat function. Please do this once I have called the relevant group, and please speak only when I call your name. I ask anyone contributing to make sure that their contributions are relevant to the amendment or amendments being debated.

The standing orders give any Scottish minister a right to speak on any amendment. I will therefore invite the minister to contribute to the debate just before I move to the winding-up speech. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Following 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 to 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 the 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 such an amendment. If no one moves the amendment, I will immediately move to the next amendment on the marshalled list.

Only committee members are eligible to vote. When I put the question on an amendment, any committee member who disagrees should type N in the chat function. The vote will be conducted by roll call in the following order: Alex Cole-Hamilton, Mary Fee, Joe FitzPatrick, Alison Harris, Gillian Martin and Alexander Stewart, with my vote given last.

When called, each committee member should respond with either "yes", "no" or "abstain". There will be a brief pause while the clerks confirm the vote, which I will then read out. Should you consider that your vote has been incorrectly recorded, please let me know as soon as possible. I will pause to provide time for that.

In the unlikely event that time is against us this morning and we do not manage to complete our consideration of the amendments by 1.30 pm, we will continue consideration of the bill at our next meeting. If we lose connection to any member or to the minister, I will suspend the meeting until we reconnect. Depending on how long proceedings take, I might suspend for a five-minute comfort break at a suitable point.

We will now begin stage 2 proceedings.

*Section 1 agreed to.*

*Schedule agreed to.*

*Section 2 agreed to.*

#### **Section 3—Power to modify the schedule**

**The Convener:** Amendment 6, in the name of Alexander Stewart, is in a group on its own.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Good morning. The effect of amendment 6 would ensure that the Scottish ministers consult on regulations made under section 3. Consultation is an important aspect of law making; it helps to get the law right and ensures that those affected become aware of any changes in law and have their say when the law is made.

Regulations made under section 3 may be used to amend the schedule to account for

amendments to the convention and/or any optional protocol. At this time, we do not know what amendments might be made to the convention or the optional protocols. If such changes are proposed, we hope that we will get the opportunity to be involved in the actual process of amending the convention. Even if that does not happen, we should be aware of the effect of any changes and be given the opportunity to comment on them. Alterations to administrative or practical matters might need to be put in place for the changes to be fully made.

Those are just some of the reasons why consultation is necessary. The Law Society of Scotland has promoted amendment 6 on the basis that the Scottish ministers should be aware of all points of view before using such a wide-ranging power to make amendments.

I move amendment 6.

**The Minister for Children and Young People (Maree Todd):** Section 3 sets out the UNCRC requirements, which consist of text from the convention and the first two optional protocols. Section 3 also gives the Scottish ministers the power to modify the schedule in specific ways by regulation. It is important that the Scottish ministers can modify the schedule in line with any changes to the UNCRC or its optional protocols, or if an optional protocol is ratified by the United Kingdom. It might also be appropriate to modify the schedule should the powers of the Parliament change in the future to, for example, add the articles of the convention that are not currently included due to reasons of legislative competence.

It was always envisaged that there would be a high degree of scrutiny regarding the use of such a power. Consequently, the power is subject to the affirmative procedure, which requires that the Parliament must approve any such modifications to the schedule before they come into effect. I agree with Alexander Stewart that, given the power's significance and its potential impact on public authorities, ensuring a transparent and accountable approach is important. As a matter of practice, the Scottish ministers would seek views prior to the use of the power in section 3. I am therefore happy to support amendment 6 and I ask the committee to support it. It might be necessary to make some minor adjustments to the wording of the provision at stage 3 for the purposes of consistency with the rest of the bill. I am happy to work with Alexander Stewart on that.

**Alexander Stewart:** I thank the minister for her positive comments on amendment 6. I look forward to working with her if that is required as we progress.

*Amendment 6 agreed to.*

*Section 3, as amended, agreed to.*

#### **Section 4—Interpretation of the UNCRC requirements**

**The Convener:** Amendment 2, in the name of Alison Harris, is grouped with amendments 7, 51 and 8.

**Alison Harris (Central Scotland) (Con):** Amendment 2 would ensure that the courts “must” rather than “may” consider the sources of interpretation, while recognising that they are not determinative. That would strengthen the bill and ensure that Scotland kept pace with the highest standards of protection internationally. Amendment 2 also reflects the recommendation of the First Minister’s own advisory group on human rights leadership:

“There must be an obligation on courts and tribunals when interpreting the rights to have regard to international law (including UN treaties, treaty body decisions, General Comments and recommendations). It should also state that they may have regard to comparative law.”

It is widely recognised that those sources are not binding sources of law. Nevertheless, they provide invaluable and authoritative interpretive analyses of how to give substance to rights contained in the UNCRC. Strengthening the bill’s provision would not mean that the courts would have to apply those sources; rather, it would indicate the importance that should be placed on considering those sources for interpreting the UNCRC requirements.

I move amendment 2.

**Maree Todd:** Unlike when the Human Rights Act 1998 incorporated the European convention on human rights, there is no body of case law regarding the UNCRC from any international court that is equivalent to the European Court of Human Rights. It will take time for Scottish courts to develop their own case law relating to and interpreting the rights and obligations that are being incorporated by the bill.

The bill already recognises the importance of the non-binding sources of interpretation that courts may take into account when those are relevant to determining a case. Those sources include the preambles to the convention, the first optional protocol and the second optional protocol. They also include those provisions in the convention and in the first and second optional protocols that have not been incorporated by the bill because they fall outwith the powers of this Parliament.

As the Deputy First Minister made clear in his response to the committee’s stage 1 report, the Government considers that it is appropriate for the courts to retain discretion on whether any sources should be taken into account in the cases that come before them. Parties to a case will be able to plead the relevance of any source to a case and it

will then be for the courts to make a determination. On that basis, I ask the committee not to support amendment 2.

The question of whether the bill should list additional sources of interpretation was a source of significant interest and discussion at stage 1. I have listened carefully to the evidence given to the committee about which specific additional sources should be listed in the bill.

Although I agree with Mary Fee that comparative law or materials emanating from the other United Nations human rights treaties may provide useful context to judicial decision making, I believe we must strike a balance between signalling relevant sources to courts and tribunals and being overly prescriptive.

The list at section 4(2) is not intended to be exhaustive or to list every source that a court or tribunal may consider appropriate. Amendment 51 risks straying into that shopping list territory and, as drafted, would appear to have the effect of excluding general comments and concluding observations emanating from the UN Committee on the Rights of the Child. On that basis, I ask the committee not to support amendment 51.

On balance, I believe there is a compelling rationale for amending section 4 to include sources that emanate from the UN Committee on the Rights of the Child. As the Deputy First Minister said during the stage 1 debate, although the sources that emanate from that committee are not legally binding, they provide authoritative guidance on how the articles of the UNCRC should be implemented. It is important to recognise the role that the Committee on the Rights of the Child plays in supporting the effective implementation of the UNCRC across the world.

Amendment 7 will expand the list of sources that section 4(2) allows a court or tribunal to take into account. That list will now include general comments, concluding observations, views and findings under the third optional protocol and recommendations following days of general discussion.

Amendment 8 will remove section 5(4), which defines the term “the third optional protocol”. As a result of amendment 7, that term is now defined in section 4(2), meaning that section 5(4) will not be required.

As the Deputy First Minister said in his evidence to the committee, the bill seeks to promote a cultural change on children’s rights in public authorities. I consider amendments 7 and 8 to be an important element of that cultural change because they signpost for courts and public authorities the sources that are directly relevant to the implementation of the UNCRC.

I urge the committee not to support amendments 2 and 51.

**The Convener:** No other member has indicated a wish to speak, so I ask Alison Harris to wind up and to press or withdraw amendment 2.

**Alison Harris:** The necessity for amendment 2 can be demonstrated through existing case law. In recent years, courts have begun having regard to unincorporated international treaty provisions and general comments as important sources of law and of interpretation.

For example, in a case before the Supreme Court challenging the benefit cap, the court cited the UNCRC’s protection of the best interests of the child and referred to general comment 14 from the UN Committee on the Rights of the Child as providing authoritative guidance. However, that is not a routine approach for the courts. For that reason, it is appropriate for the bill to include a “must” rather than a “may” duty.

I press amendment 2.

**The Convener:** Forgive me: I did not bring in Mary Fee to speak to amendment 51. We will suspend briefly to sort that.

09:14

*Meeting suspended.*

09:16

*On resuming—*

**The Convener:** [*Inaudible.*]—Fee, who I should have called to speak to amendment 51 and the other amendments in the group.

**Mary Fee (West Scotland) (Lab):** Amendment 51 in my name seeks to strengthen the bill by including jurisprudence from the United Nations treaty bodies, which would provide greater clarity for the courts. The amendment would allow for the parameters of the UN treaty bodies—which oversee the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—to act as guidance and to help clarify the content of the UNCRC.

With that emphasis on how the UNCRC fits within the wider human rights framework, the things that the courts take into account will always need to encompass a wider human rights approach. That will lead to a bill that considers the

work of all the UN treaty bodies, thus making it a stronger bill for all children.

Amendment 51 has been supported by Together, and I urge committee members to support it.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I will speak in favour of Mary Fee's amendment 51, and I congratulate her on lodging it. It speaks to the fact that the UNCRC does not exist in a vacuum; it exists in an ecosystem of a range of human rights conventions, treaties and law. As such, if the eventual act is to be a genuinely living document and if it is to make rights real for Scotland's children, it needs to act compatibly not just with the general comments of rapporteurs and the Committee on the Rights of the Child but with the comments and observations made in respect of the other treaties, rights and conventions. I therefore support Mary Fee's proposal.

**The Convener:** Alison, I appreciate that you have already made your winding-up speech on this group, so I ask you simply to press or withdraw amendment 2.

**Alison Harris:** I am pressing the amendment.

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

**Members:** No.

**The Convener:** There will be a division.

#### For

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

#### Against

FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 2 agreed to.*

*Amendment 7 moved—[Maree Todd]—and agreed to.*

*Amendment 51 moved—[Mary Fee].*

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

**Members:** No.

**The Convener:** There will be a division.

#### For

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

#### Against

FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 51 agreed to.*

*Section 4, as amended, agreed to.*

#### Section 5—Duty to modify section 4 on ratification of the third optional protocol to the Convention

*Amendment 8 moved—[Maree Todd]—and agreed to.*

*Section 5, as amended, agreed to.*

#### Section 6—Acts of public authorities to be compatible with the UNCRC requirements

**The Convener:** Amendment 52, in the name of Mary Fee, is grouped with amendments 9, 9A and 9B.

**Mary Fee:** Amendment 52 seeks to bring greater clarity to section 6. The amendment's purpose is to ensure that the bill covers all public bodies that have duties in respect of the care of a child. Making that explicit will strengthen the bill in the interests of the children whom it seeks to protect, and widening the definition of a public authority to include such bodies will give greater protection to more children and ensure that no children are missed as a result of a loophole in legislation. The amendment will strengthen the bill and give greater protection to children and their ability to access their rights, and I ask members to support it.

Amendment 9A, in my name, seeks to strengthen amendment 9, which was lodged by the Scottish Government. The purpose of amendment 9A is to give more clarity on how

“functions of a public nature”

will meet the requirements of the UNCRC, as set out in amendment 9B. I urge the committee to support amendment 9A.

Amendment 9B, also in my name, seeks to further amend amendment 9 to ensure that there is no accountability gap. All children should have equal treatment, regardless of who is providing the service. If amendment 9B is agreed to, the bill will require that contracts that are carried out must

“fulfil the rights set out in the UNCRC requirements”.

That will provide greater accountability and ensure that private companies that are carrying out functions of a public nature are not allowed to escape the UNCRC requirements. The amendment is supported by Together—the



Scottish Alliance for Children's Rights—and the Scottish Human Rights Commission.

I urge members to support the amendments in my name in this group, which will ensure that all children are adequately protected under UNCRC requirements, regardless of whether public services are carried out by a public authority or a private company.

I move amendment 52.

**The Convener:** I call the minister to speak to amendment 9 and the other amendments in the group.

**Maree Todd:** The Scottish Government is committed to ensuring that the bill provides the highest level of protection for children's rights that is possible within the powers of the Parliament. I listened carefully to the evidence at stage 1 and I agree with the committee's recommendation that the duty in section 6 should be strengthened. It has always been the Scottish Government's intention that the bill will ensure direct accountability for children's rights in relation to all functions of a public nature.

An area that the Scottish Government looked at again relates to circumstances in which functions are being undertaken by a person pursuant to a contract or other arrangement, such as a grant, with a public authority. To put it simply, there is concern that children's rights will not be adequately protected when public authorities contract out. That has been described as a weakness of the equivalent provision under the Human Rights Act 1998; many people consider that the courts have taken too restrictive an approach in their construction of the term

"functions of a public nature".

It is not the Scottish Government's intention that a similar approach should be adopted in the bill. Amendment 9 makes absolutely clear that, to the extent that a person is undertaking a function pursuant to

"a contract or other arrangement with a public authority",

the person is caught by the duty in section 6 not to act incompatibly with the UNCRC requirements. Therefore, anyone who undertakes functions under a contract or other arrangement, such as a grant, with a public authority will be obliged to comply with the duty in section 6(1) and will be directly responsible and accountable for ensuring that their actions are not incompatible with the UNCRC requirements.

An important point is that that does not mean that the obligations of core public authorities will be extinguished. Children will still be able to bring claims against core public authorities; they will

also be able to enforce their rights directly against providers that undertake public functions.

Although this is ultimately a matter for the courts to decide as the jurisprudence develops, examples of functions that we anticipate will be caught by amendment 9 include publicly funded early learning and childcare and publicly funded provision at independent and grant-aided schools.

I welcome the opportunity that Mary Fee's amendments give me to further explain the Scottish Government's ambition. The definition of a public authority under section 6(3) is intentionally wide. It is modelled on the approach in the Human Rights Act 1998 and will apply to every public authority and function of a public nature, to the maximum extent that is permitted by the powers of this Parliament. Ensuring that public authorities that provide care for children are required to comply with requirements in relation to children's rights is already achieved by the existing definition of "public authority". Amendment 52 would risk introducing uncertainty in relation to functions that are not about the care of children, which could have the consequence of narrowing the public authorities to which the compatibility duty in section 6 would apply. I do not think that that is the intention behind amendment 52.

My understanding of amendments 9A and 9B is that they seek to apply the compatibility duty to certain functions that would otherwise be considered to be private in nature. It is the case in Scotland, as in many other countries, that provision of services to children and young people can be undertaken by public authorities and by the private sector. It is the intention of the Scottish Government that children's rights should be fully respected, protected and fulfilled in Scotland, and it is my view that section 6, as amended by amendment 9, will deliver on that.

The obligations under the UNCRC, as with other international obligations, rest on the state. It is through public authorities and public functions that actions of the state are undertaken, which is why it is appropriate to place obligations directly on public authorities requiring compliance with human rights, in this case children's rights under the UNCRC. That does not mean, however, that business and the private and third sectors do not have an important role to play in the fulfilment of children's rights in practice. Nor does it mean that there is no responsibility on the part of the private sector to ensure that rights are respected and protected.

09:30

Children's rights can be, and are, protected in a number of different ways, for example through the criminal law, child protection legislation and

equalities legislation and under the regulations that might apply in different sectors. In line with the UN's "Guiding Principles on Business and Human Rights", the Scottish Government will continue to work with those in the private sector to ensure that children's rights are fully respected, protected and fulfilled. If there are gaps in policy and regulation that require to be filled to ensure that children's rights under the UNCRC are protected, the Scottish ministers may be subject to challenge in the courts. Where the courts deem that further action to protect children's rights is necessary, it will be incumbent on the Scottish Government to take appropriate action.

I understand that the policy intention behind amendments 9A and 9B is to expand the definition of public functions even further so that the requirement to comply with children's rights would fall on parts of the private sector directly where the core purpose of a body is the provision of services that fulfil children's rights under the UNCRC. However, I do not believe that that would be the effect of amendment 9B. Amendment 9B would add to what amendment 9 says and would, in my view, narrow its effect so that only contracts or arrangements that related to the types of services mentioned in amendment 9B would be captured. It is my intention that amendment 9 should have wide application and that any provider undertaking functions with public funds as a consequence of contracts and other arrangements should be required to comply with children's rights. I am concerned that amendment 9B would put that at risk.

There are important questions that the committee has not considered in relation to any proposed extension of the compatibility duty to what would otherwise be wholly private functions. That would be a significant expansion of the bill's scope and one on which, through the Scottish Government's consultation and the committee's stage 1 evidence, private bodies have not been invited directly to share their views. I am also cautious about taking an approach that would seek to frame the realisation of children's rights as the responsibility of only certain services. Children's rights must be protected, respected and fulfilled in all areas of children's lives, and I believe that the bill already delivers on the Scottish Government's intent on that in Scotland.

My view is that amendments 9A and 9B should be rejected for the reasons that I have set out. However, it is, of course, my intention that the bill should put in place the strongest framework possible for the realisation of children's rights. I am aware that stakeholders such as Together and the Scottish Human Rights Commission are supportive of the Scottish Government giving these issues further consideration, which I am happy to continue to do. I have asked my officials

to continue to engage with those stakeholders and others on those questions.

As I have said, I believe that the bill will put in place a strong framework that will ensure the realisation of children's rights in practice in all circumstances and that amendment 9 will strengthen that framework. Where additional measures might be required to ensure that children's rights are protected, the bill will ensure that ministers will be required to take action or potentially face challenge through the courts if they do not.

It is my view that amendments 9A and 9B should be rejected at this stage. As I outlined, I will continue to engage with relevant stakeholders and members, should they wish it, on the questions that this further debate has raised.

**Alex Cole-Hamilton:** I will speak in favour of Mary Fee's basket of amendments, which I think are an improvement on the Government's efforts for section 6 and an elegant solution to the challenge that has been given to us by stakeholders in the sector about the limitations of the bill as drafted. We have to recognise that the public purse is spent beyond public authorities and providers that deliver public services. A huge range of private sector companies and charities that the bill should also cover perform functions in the name of the state with public funding.

I disagree with the minister's assessment of the shortcomings—as she sees them—of the amendments, because the amendments have been universally endorsed by the sector, not least by the Children and Young People's Commissioner Scotland. For that reason, I am happy to support Mary Fee's amendments.

**Mary Fee:** I welcome the supportive comments from Alex Cole-Hamilton. I also note the minister's comments. However, my amendments reflect the views and concerns of stakeholders that we heard throughout our evidence sessions, and I believe that the amendments are an important addition to the bill that will give it considerable strength. That being the case, I press amendment 52.

**The Convener:** The question is, that amendment 52 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
 Fee, Mary (West Scotland) (Lab)  
 Harris, Alison (Central Scotland) (Con)  
 Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

FitzPatrick, Joe (Dundee City West) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 52 agreed to.*

*Amendment 9 moved—[Maree Todd].*

*Amendment 9A moved—[Mary Fee].*

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 9A agreed to.*

*Amendment 9B moved—[Mary Fee].*

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 9B agreed to.*

*Amendment 9, as amended, agreed to.*

*Section 6, as amended, agreed to.*

**After section 6**

**The Convener:** Amendment 53, in the name of Mary Fee, is in a group on its own.

**Mary Fee:** Amendment 53 is based on a number of discussions that I have had with a variety of organisations, including Together and Families Outside. I lodged it as a probing amendment, and I am keen to work with the Government, ahead of stage 3, to produce guidance in order to ensure that all public

authorities can collaborate within the same set of guidelines. Giving the Scottish ministers the power to issue guidance to public authorities would enable them to be provided with the tools that they will need to meet UNCRC requirements, and the public authorities would be obligated to follow those.

There is concern among organisations such as Together, Families Outside and the Scottish Human Rights Commission that an absence of set guidance could lead to the UNCRC's not being incorporated by all public authorities. Showing support for amendment 53 would lead to greater clarity for public authorities and would make the bill stronger through its ensuring greater accountability for public authorities, thus making children's rights more accessible.

I move amendment 53.

**Maree Todd:** I welcome amendment 53, and I am supportive of the principle of providing clarity about the guidance and other materials that are to be provided by the Scottish Government in support of implementation. My officials are already engaged with a range of public authorities and stakeholders on materials that will be required to support public authorities to realise children's rights in practice. As is explained in the policy memorandum, it has always been the intention that a range of guidance and materials will be developed in partnership to support the effective implementation of children's rights.

I am, however, concerned that amendment 53 as drafted would introduce uncertainty about the responsibilities of public authorities. The requirement under section 6 not to act incompatibly with the UNCRC requirements is clear. Each public authority will require to consider what steps it needs to take in order to fulfil that duty. The final arbiter in any case will, of course, be the courts.

Although it is intended that a range of guidance and other support will be provided to public authorities, that cannot replace the responsibility that will rest on all public authorities to ensure that they comply with children's rights. Guidance is not a substitute for considering the rights of children in all circumstances or for public authorities being proactive in their consideration of what that means for the delivery of services to children and young people. Therefore, I do not consider that it is appropriate or necessary to require that public authorities should have regard to guidance that is issued by ministers.

Nevertheless, I am supportive of making it clear in the bill that guidance and other supportive materials can be provided by the Scottish Government, in partnership with public authorities and others, in support of the implementation of the

bill. Therefore, I urge Mary Fee not to press amendment 53, in order to allow me to explore a suitable alternative to bring before the Parliament at stage 3.

**The Convener:** Thank you, minister. I invite Mary Fee to wind up and to press or withdraw amendment 53.

09:45

**Mary Fee:** I welcome the minister's comments, and I am encouraged by the work that is being done by the Government to ensure that, when the bill is enacted, there will be adequate guidance and instruction. Given those comments, I am happy to work with the Government ahead of stage 3 to ensure that there will be guidance that can be followed by everyone. I will not press amendment 53.

*Amendment 53, by agreement, withdrawn.*

### **Section 7—Proceedings for unlawful acts**

**The Convener:** Amendment 10, in the name of Alexander Stewart, is grouped with amendments 11 to 15 and 18.

**Alexander Stewart:** Amendment 10 would provide that the Scottish ministers must make regulations under section 7(5) if they consider such regulations to be necessary. Section 7(5) provides that the Scottish ministers may do so

"if they consider it necessary to ensure that a particular tribunal can provide an appropriate remedy".

If the Scottish ministers consider it necessary for regulations to be laid in Parliament, the matter should not be one of ministerial discretion. The regulations' necessity implies that it should be mandatory for ministers to make those regulations, and the amendment seeks to clarify section 7 accordingly.

Amendment 11 would require the Scottish ministers to consult on the regulations before laying them under section 7(5). As I mentioned on a similar point regarding section 3, consultation is an important aspect of law making. It is essential in consideration of amendments that might add to the relief or remedies that a tribunal can grant or the grounds for such remedies or orders that a tribunal could specify or make. Amendment 11 would ensure that the Scottish ministers gather a full range of views before making regulations under section 7.

Amendment 12 would delete subsection (9) to pave the way for amendment 13. In their evidence to the Equalities and Human Rights Committee, the Law Society of Scotland and the Faculty of Advocates highlighted practical issues around the operation of section 7, particularly with regard to subsection (9), which provides for the disregard of

any time period before a person reaches the age of 18 in the calculation of time limits within which an action may be brought under that section. At the extreme, that could involve litigation almost two decades later, when the issue in question might no longer be relevant. Early action allows for effective remedy in individual cases and for children more generally. Section 7(10) specifies the power for a court or tribunal to disapply the one-year time period when it is equitable to do so. That case-by-case approach is preferable to a situation in which the time before a person reached the age of 18 could be disregarded for the purposes of bringing action. If agreed to, amendment 12 would require further amendment to section 7(10).

Amendment 13 would provide that, when considering under subsection (1) whether it is equitable to allow the person to bring the action, the court or tribunal must take account of any delay in the person becoming aware of the act and the person's age at the date of the act. Amendment 13 is consequential on amendment 12, which, as I have said, deletes section 7(9). It allows for factors such as delay in becoming aware of a breach of the convention and the age of the person at the date to be taken into account when the court is considering whether to allow the action.

Amendment 14 would amend section 8 and ensure that any relief or remedy granted by the court or tribunal must be effective as well as appropriate. Effectiveness of the remedy to be granted by the court is a key component in ensuring that the statute is working for the benefit of children in Scotland. Article 13 of the European convention on human rights provides the right to an effective remedy.

However, article 13 is excluded from the terms of schedule 1 to the Human Rights Act 1998, an omission that many commentators have criticised. It is important to ensure that the remedies granted under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill will be effective. Indeed, emphasising the requirement for relief or remedy to be effective could militate against purely academic points being raised. I agree with the view that was expressed by the Law Society of Scotland and in the Equalities and Human Rights Committee's stage 1 report, that section 8 should be amended in that way.

Amendment 15 seeks to add to section 8 a requirement of courts and tribunals to give a child who might be affected an opportunity to express a view and have

"regard to such views as the child may express".

The Equalities and Human Rights Committee asked the Scottish Government to amend the bill to require courts and tribunals to ask for the child's view on what would be considered an effective remedy in those cases.

Like the committee, I am aware of precedent in other legislation, such as section 11 of the Children (Scotland) Act 1995, as amended by the Children (Scotland) Act 2020, when it comes into force.

I believe that requiring courts and tribunals to ask for children's views in considering what would be effective remedies in their cases is important in that context, because a child might want something more than damages. The amendment ensures that the court or tribunal must take into account the child's view of what would be considered an "effective" remedy.

It is in keeping with current child law in Scotland and provisions in the convention that the views of the child should be taken into account when a court or tribunal is considering whether to make an order concerning the child, and amendment 15 would achieve that objective.

I move amendment 10.

**Maree Todd:** Section 7 makes provision for proceedings in relation to acts of public authorities that are incompatible with the UNCRC requirements. Section 7(5) provides a power for the Scottish ministers to add to the remedies or relief of a particular tribunal if they think it necessary to do so, to ensure that the tribunal can provide an appropriate remedy. Ministers can also use that power to add to the grounds on which the tribunal may grant a remedy or the orders that a tribunal may make.

The power is intended to ensure that the Scottish ministers can make provision for additional remedies quickly and without having to resort to primary legislation when, in a particular circumstance, it has been identified that the powers of a tribunal are not sufficient to provide a remedy for a breach of children's rights.

I welcome amendment 10 and I am supportive of it in principle. Of course, the section 7(5) power is subject to parliamentary scrutiny through the affirmative procedure, and any draft regulations that are laid before the Parliament could be rejected by the Parliament. To reflect the fact that the making of regulations under section 7(5) cannot be guaranteed by the Scottish ministers, I offer to work with Alexander Stewart to lodge an amendment at stage 3 that would adjust that provision, so that the duty on ministers would instead be to lay draft regulations before the Parliament in the circumstances that are set out in section 7(5).

I also welcome amendment 11, which reflects the Government's commitment to open and transparent decision making. It might be necessary to make minor adjustments to the wording of the provision at stage 3 for the purpose of consistency with the rest of the bill, but I am happy to work with Alexander Stewart on that.

I ask the committee to support amendments 10 and 11.

I firmly oppose amendments 12 and 13, which would, if agreed to, significantly reduce the protection that the bill provides for children's rights. If Mr Stewart is a champion of children's rights, he will not move those amendments.

It is widely recognised that children and young people face additional barriers in realising their rights and in seeking access to justice. By nature of their age and vulnerability, it is likely to be more difficult for children and young people to have the understanding, capacity and means to raise legal proceedings. That is particularly true of children with additional support needs and those who experience violence, abuse and trauma.

The provision in relation to time limits that section 7(9) puts in place will ensure that violations of children's rights cannot be dismissed simply because of the passage of time. The additional hurdles that amendments 12 and 13 would put in place are not, in my view, appropriate. No child should be required to prove to a court that, by virtue of being a child, they face additional barriers to raising legal proceedings to enforce their rights. The Deputy First Minister has spoken of the culture change that is required among public authorities if we are to realise our ambition that children's rights are fully protected, respected and fulfilled, and the provision in section 7 on time limits is part of that culture change.

Children and young people spend significant parts of their lives under the care of, and in receipt of, services from public authorities, so public authorities must be ready to listen and learn from the children and young people whom they serve. That includes recognising the significant power imbalance that exists between children and public authorities and ensuring that children are fully supported to realise their rights throughout their childhood.

Section 7 will not prevent claims from being raised quickly when it is possible and in the interests of children and young people for that to happen. However, it will ensure that children and young people are given every opportunity to hold public authorities to account, and that should be supported by all members who support children's rights.

I support amendment 14, which would ensure that there is transparency in the courts'

consideration of effective remedies. I support the policy intention behind amendment 15. However, the Scottish Government has lodged amendment 18, which is intended to achieve the same result but is clearer. Both amendments seek to ensure that, when a court is considering the effectiveness of remedies, it has the child's views, in line with article 12 of the UNCRC.

In my view, amendment 18 is stronger than amendment 15. It will ensure not only that children are afforded the "opportunity to express" their views but that they should be able to do so in the manner that they prefer or that is suitable for them. It also makes it clear, in line with article 12, that a child should

"be presumed to be capable of forming a view."

**The Convener:** No other member has indicated that they wish to speak, so I ask Alexander Stewart to wind up and say whether he wishes to press or withdraw amendment 10.

**Alexander Stewart:** I am encouraged by the minister's comments with reference to section 8, and I look forward to working with her on some of the amendments as we progress with the bill. I am happy to press amendment 10.

*Amendment 10 agreed to.*

*Amendment 11 moved—[Alexander Stewart]—and agreed to.*

*Amendment 12 moved—[Alexander Stewart].*

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 12 disagreed to.*

*Amendment 13 moved—[Alexander Stewart].*

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 13 disagreed to.*

*Section 7, as amended, agreed to.*

### Section 8—Judicial remedies

*Amendment 14 moved—[Alexander Stewart]—and agreed to.*

*Amendment 15 not moved.*

10:00

**The Convener:** Amendment 16, in the name of the cabinet secretary, is grouped with amendments 17, 19, 27, 28, 39, 40, 42 and 43.

**Maree Todd:** We recognise the additional barriers that children and young people face and the need to ensure that justice is accessible to them. As such, the bill provides the Children and Young People's Commissioner Scotland with the power to bring proceedings in the public interest and to intervene in proceedings in which a person claims that a public authority has acted, or proposes to act, in a way that is incompatible with the UNCRC requirements. It also requires the courts to notify the children's commissioner when a court is considering making

"a strike down declarator or incompatibility declarator"

in relation to legislation, or when a compatibility question arises in any proceedings before a court or tribunal.

We have noted the written evidence of the Scottish Human Rights Commission, in which it seeks similar powers to those of the children's commissioner to raise or intervene in proceedings. I consider that to be in line with our maximalist approach to incorporation.

Amendment 19 will modify the Scottish Commission for Human Rights Act 2006 to disapply the existing prohibition on assisting in claims or legal proceedings, but only in relation to proceedings under the bill. The approach will bring the SHRC into the bill's framework in the same way as the children's commissioner, providing parity of esteem.

Amendments 39, 40, 42 and 43 will mean that the bill makes the same provision in relation to the SHRC as it does for the children's commissioner

and will further support children and young people to fully realise their rights and access justice.

Amendments 16 and 17 will amend section 8(5) so that no award of damages is to be made to the SHRC.

Amendments 27 and 28 will require the Scottish ministers to consult the SHRC when publishing or amending the children's rights scheme and when publishing a report under section 13.

The amendments will strengthen the SHRC's existing functions by providing the power to raise litigation in the public interest and by placing requirements on courts to notify the SHRC of certain proceedings. That will enable the SHRC to bring cases to court without the need for individual children and young people or their families to take on the full responsibility and strain of bringing challenging cases to court on their own. The amendments will also enable the SHRC to intervene in certain proceedings, where it is appropriate for it to do so.

Our approach recognises the SHRC's status as one of Scotland's national human rights institutions and is in line with the intention to support children and young people to assert and defend their rights and the rights of others.

I move amendment 16.

*Amendment 16 agreed to.*

*Amendment 17 moved—[Maree Todd]—and agreed to.*

*Section 8, as amended, agreed to.*

#### **After section 8**

*Amendment 18 moved—[Maree Todd]—and agreed to.*

*Sections 9 and 10 agreed to.*

#### **After section 10**

*Amendment 19 moved—[Maree Todd]—and agreed to.*

### **Section 11—Children's Rights Scheme**

**The Convener:** Amendment 20, in the name of the cabinet secretary, is grouped with amendments 21, 22, 54 to 56, 23 to 26, 57, 58 and 61.

**Maree Todd:** As the Deputy First Minister set out during the stage 1 debate, the Scottish Government is happy for the scheme to require ministers to include and report on the topics that are listed in section 11(3). On that basis, I urge the committee to support Alexander Stewart's amendment 22, which would make the list of matters that are listed in section 11(3) mandatory

parts of the scheme. Had the member not lodged such an amendment, I would have done so.

As the Deputy First Minister also set out during the stage 1 debate, the Government intends to strengthen the scheme by requiring it to include arrangements to promote a child-friendly complaints mechanism and to ensure effective access to justice for children and young people.

The list at section 11(3) is not intended to set out every action that ministers will take in fulfilment of the compatibility duty in section 6; instead, it is intended to highlight key strategic priorities that should always be included. The scheme will be consulted on and revised annually, so there will be an annual opportunity for more granular priorities, which are likely to change over time, to be recognised.

Ensuring that children and young people can realise their rights and access justice is vital not only to the success of the bill but to driving the desired culture change in Scotland. Amendment 24 will require ministers to set out in the scheme arrangements to ensure effective access to justice for children. That will include matters such as legal aid but, importantly, it is wider than that. There is already a requirement in section 11(3)(a) for ministers to set out arrangements that will ensure that children can participate in decisions that affect them. When children require access to independent advocacy to participate fully in decision making, that is the type of measure that can be reported on under that requirement. I consider that the provision in section 11(3)(a) is broader, so that other matters relevant to children's participation are prioritised. For those reasons, I urge members to support amendment 24 and I ask Mary Fee not to move amendments 54 and 55.

We know that the provision of accessible complaints mechanisms is an important part of realising children's rights in practice. For many children and young people, complaints mechanisms are likely to be the route by which children's rights issues can be aired without recourse to the courts or tribunals system. In recognition of that, I believe that it is important that the action that the Scottish ministers take to promote accessible complaints mechanisms should form part of the children's rights scheme. Amendment 23 will ensure that that is included in the requirements for the scheme.

Through the scheme, the Government intends to build in greater accountability and transparency in relation to the proactive realisation of children's rights. To support that aim, amendment 25 will require ministers to address arrangements for the publication of child rights and wellbeing impact assessments—CRWIAs—in the scheme so that

they can be consulted on and reviewed on an annual basis.

I have listened carefully to the evidence given to the committee on suggested additional requirements for inclusion in the scheme, including a specific provision about protected characteristics and children who are in situations of vulnerability. Although I am of the view that ministers will already be required, as a consequence of the compatibility duty in section 6, to demonstrate how they ensure the rights of all children and young people without discrimination, I have listened carefully to the views of those who represent the views of children, who are often the least heard. They have emphasised that specific requirements to ensure that separate rights and needs are systematically prioritised matter to them.

I therefore welcome amendments 56 and 57, and I am supportive of them in principle. I understand the importance that those amendments have to Together and other stakeholders who represent, in particular, children with disabilities and care-experienced children and young people. I also recognise the importance of ensuring that children with protected characteristics and in situations of vulnerability should be specifically recognised within the scheme.

I have asked my officials to give the drafting of those two amendments careful consideration and to work in partnership with Mary Fee and members of Together to ensure that they achieve their intended purpose. It is possible that I will seek to introduce adjustments at stage 3 to ensure that the provisions work as well as they can.

I do not consider that amendment 61 is necessary, because it duplicates the definition provided by amendment 57, and I urge Mary Fee not to move it.

I have given careful consideration to the necessity of amendment 58. Section 13 requires the Scottish ministers to review and report on the scheme. Therefore, I do not think that it is strictly necessary to repeat in section 13 the matters that must be included in the scheme and that are set out in section 11. The other matters to be included in the scheme are not repeated in section 13. I believe that, if amendment 56 is supported, the policy intention that I understand Mary Fee is seeking to deliver through amendment 58—that is, that those matters will be included in the scheme and will become part of the annual review and the reporting cycle for the scheme—will be delivered. I therefore suggest that amendment 58 is not necessary.

My intention is that the scheme will function as a transparent mechanism for how children's rights are embedded by the Scottish ministers in practice

and that it will provide a model that public bodies can follow.

The UNCRC is, of course, not the ceiling of our ambitions. It is my intention that, through the scheme, ministers should set out arrangements for how they progressively realise the rights of children and young people, in line with international obligations. Amendment 21 builds on the current requirements of the Children and Young People (Scotland) Act 2014 and builds proactive consideration of what steps ministers can take to give better and further effect to the rights of children into the scheme requirements. In that way, we will ensure that the Scottish ministers continue to fulfil their role as leaders in children's rights by seeking to progressively realise those rights.

I do not consider that amendment 26 is necessary. It is intended that the first children's rights scheme will be in place on commencement of the eventual act.

I encourage members to support amendments 21 to 25 and 56 and 57.

I hope that Alexander Stewart accepts that his amendment 26 is not now needed and that he will not move it. Should he do so, I hope that members will recognise our intent to make the scheme ahead of commencement, and that they will vote against that amendment. Likewise, I hope that Mary Fee recognises that the acceptance of amendment 57 makes amendment 58 obsolete, and that she will not move amendment 58. The same applies to amendment 61. While it would be the Government's preference for amendment 58 not to be agreed to, should members be minded to support it, I am sure that we will be able to accommodate it—although we would give that further consideration ahead of stage 3.

I also hope that Mary Fee will not move amendments 54 and 55, on the basis that the intent behind both of them is covered—that of amendment 54 by the existing provision in section 11 and that of amendment 55 by the Government's amendment 24. Should amendments 54 and 55 be moved, I would encourage members not to support them.

I move amendment 20.

10:15

**Alexander Stewart:** Amendment 22 seeks to amend section 11(3) to ensure that the children's rights scheme requires to include certain obligations on the Scottish ministers regarding the rights of children. Section 11 requires the Scottish ministers to make a children's rights scheme

“setting out the arrangements ... to ensure that they comply with the duty under section 6(1).”



Section 11(3) provides that

“The Scheme may ... include arrangements for the Scottish Ministers to”,

for example,

“ensure that children are able to participate in making decisions that affect them,”

and

“raise awareness of and promote the rights of children”.

The Equalities and Human Rights Committee noted that many responses to the call for views and oral evidence suggested that the language in section 11 needs to be strengthened. I acknowledge the Government’s response to the committee accepting that the wording in section 11(3) will be changed from “may” to “must”. I and the Law Society of Scotland agree with that proposal and amendment 22 would achieve that objective.

Amendment 26 ensures that there is a time limit on the publication of the first report on the first children’s rights scheme. In the view of the Law Society of Scotland, it is important for the children’s rights scheme to be in force quickly and for there to be adequate parliamentary scrutiny of its operation. Under section 11(4) the first scheme must specify the date on which the first report is to be published. I note the minister’s comment on that and am happy to incorporate that as we move forward.

**Mary Fee:** I listened carefully to the minister’s comments and, in the light of them, I will not move my amendments 54, 55, 58 and 61. However, I will speak to the amendments because I wish to speak to the intention behind them.

Amendment 54 sought to strengthen the bill by ensuring that the children’s rights scheme gave greater control to children by giving them

“access to independent advocacy services”.

That would mean that children would always have access to impartial information to help them when they were making decisions that affected them, which would add an extra level of protection for children.

Amendment 55 sought to ensure that children would have access to legal aid as part of the children’s rights scheme. That would have strengthened the bill, as it would have allowed children to use their rights, regardless of their financial circumstances. That would help to make the bill inclusive of all children in Scotland.

Amendment 56 would ensure that all children had their rights respected, protected and fulfilled. Children who have one or more protected characteristics or who are in a situation of vulnerability might be less likely to have their rights

respected, protected and fulfilled, due to discrimination. Putting that amendment in the bill would ensure that those children’s rights are respected as part of the scheme, give greater protection and make the bill stronger for vulnerable children.

Amendment 57 would give greater clarity to the bill by defining what is meant by protected characteristics. Using the characteristics listed in section 149(7) of the Equality Act 2010 means that there would be little room for interpretation. That would be an important change, because it is crucial that all children feel properly supported. Using an established list from the 2010 act would give reassurance that no characteristics could be ignored and that the understanding of the incorporation of the UNCRC is rooted in established equalities legislation. The bill must guarantee that all children in Scotland are adequately protected.

Amendment 58 would strengthen the bill by ensuring that the Scottish ministers must include in their reports a summary of actions that they have taken to ensure

“that children who have one or more protected characteristics or are in a situation of vulnerability have their rights respected, protected and fulfilled”.

That would mean that greater accountability for children’s rights would be required from Scottish ministers, thus making the bill stronger for the children whom it seeks to protect.

Amendment 61 seeks to provide greater clarity to the bill. It follows amendment 57 in my name by ensuring that any mention of protected characteristics throughout the bill would be defined by the Equality Act 2010. Along with amendment 57, it would provide in the bill a cohesive understanding of the definition of protected characteristics, leaving no room for interpretation.

**The Convener:** As no other members have indicated that they wish to speak, I ask the minister to wind up.

**Maree Todd:** The children’s rights scheme is an important part of the framework that the bill puts in place. It will ensure that there is regular consideration and scrutiny of the steps that ministers must take to ensure that children’s rights are proactively and progressively realised in practice. As I said, there is a balance to be struck between including the appropriate level of specificity in the bill and the need to ensure that the bill puts in place a framework that can endure into the future and is responsive to the priorities of the day.

I am grateful for the spirit that colleagues on the committee have expressed. I am keen to work further with you before stage 3 to ensure that section 11 delivers on our ambition.

*Amendment 20 agreed to.*

*Amendment 21 moved—[Maree Todd]—and agreed to.*

*Amendment 22 moved—[Alexander Stewart]—and agreed to.*

*Amendments 54 and 55 not moved.*

*Amendment 56 moved—[Mary Fee]—and agreed to.*

*Amendments 23 to 25 moved—[Maree Todd]—and agreed to.*

*Amendment 26 not moved.*

*Amendment 57 moved—[Mary Fee]—and agreed to.*

*Section 11, as amended, agreed to.*

**The Convener:** That seems like a good place to stop for a quick comfort break. I suspend the meeting for about five minutes.

10:24

*Meeting suspended.*

10:30

*On resuming—*

### **Section 12—Procedure for making, amending and remaking the Scheme**

*Amendment 27 moved—[Maree Todd]—and agreed to.*

*Section 12, as amended, agreed to.*

### **Section 13—Reviewing and reporting on the Scheme**

*Amendment 58 not moved.*

*Amendment 28 moved—[Maree Todd]—and agreed to.*

**The Convener:** Amendment 47, in the name of Gillian Martin, is grouped with amendments 49, 5 and 50.

**Gillian Martin:** Throughout the committee's many outreach sessions, I was struck by how many young people said that their rights had not been properly communicated to them at crucial points in their lives. In particular, the care-experienced young people to whom we spoke were firm in their calls for all policies and decisions relating to children to be available in child-friendly language. Therefore, throughout our formal evidence sessions, I pursued that line of inquiry, and I was convinced of the need for all reports relating to children and young people to be made available to them in a language that they could understand.

In response to questions from me in his evidence to the Equalities and Human Rights Committee at stage 1, the Deputy First Minister agreed on the importance of ensuring that the requirements in the bill would

“be translated into a meaningful message to children and young people”—[*Official Report, Equalities and Human Rights Committee*, 3 December 2020; c 17.]

that could be easily understood. They need to know what their rights are and how to pursue them. They will have a better chance in that regard if the communications on those rights are appropriate for their age.

The achievement of that ambition is fundamental to ensuring that children and young people are empowered to understand their rights. Confirming and enabling that understanding should be central to how public authorities build a rights-respecting culture that centres on the rights of the child.

As introduced, section 13 provides that ministers must review and report on the operation of the children's rights scheme annually; it also requires that ministers must prepare and publish a version of the report that they

“consider will be understood by children”.

Amendment 47 will strengthen that provision to require that ministers produce a version that “children can understand”, which is a much stronger requirement. Amendment 49 will require that a report published under section 15 by listed public authorities of the actions that they have taken

“for the purpose of ensuring compliance with the duty under section 6(1)”

is

“accompanied by a version of the report that children can understand”.

Amendment 50 will place the same requirement on reports published by the Scottish ministers under section 23, following

“a strike down or an incompatibility declarator”.

I know that Alison Harris also wishes the bill to be strengthened in that area. However, I consider that my amendment 50 is stronger, as it says that reports must be produced in a version “that children can understand”, and the phrasing is more consistent with my amendments 47 and 49. Alison Harris's amendment 5 has a similar objective, but it uses the phrasing “that ... Ministers consider”, which I do not believe is as definitive or robust.

I therefore ask the committee not to support amendment 5. I hope that Alison Harris and the rest of my colleagues understand why my amendment is stronger and more in keeping with

our shared objective of communicating appropriately with children on their rights. I ask the committee to support amendments 47, 49 and 50 in my name.

I move amendment 47.

**Alison Harris:** Although I listened to what Gillian Martin said, I feel that my amendment 5 is the most child-friendly focused option, because it would require the Scottish ministers to publish a report that children could understand. It is only right that such a report, given that it will be about the steps that are being taken to address a breach of children's rights, is primarily one that children can and do understand. My amendment would ensure that only one report was prepared, whereas my understanding is that Gillian Martin's amendment would require two reports: an adult report and a child-friendly report. I believe, therefore, that my amendment is more appropriate.

**Maree Todd:** I welcome and support amendments 47 and 49 in the name of Gillian Martin, which would ensure that reports on the children's rights scheme under section 13 and reports under section 15 on action that is taken by public authorities

"for the purpose of ensuring compliance with the duty under section 6(1)"

will require to be communicated in a way "that children can understand."

I also welcome and support amendment 50, which will ensure that reports that are published by the Scottish ministers under section 23 following

"a strike down ... or an incompatibility declarator"

are also communicated in a way "that children can understand."

Although I support the intention behind amendment 5, I consider that amendment 50, lodged by Gillian Martin, is clearer and more consistent with the phrasing of amendments 47 and 49. I therefore ask the committee to support amendments 47, 49 and 50.

**The Convener:** I ask Gillian Martin to wind up and to press or withdraw amendment 47.

**Gillian Martin:** I note that children of a range of ages might want to access reports, and, although child-friendly language is appropriate for young children, it is important that the report is also available in a language that older children and young people can understand. My main reasoning is that Alison Harris's amendment 5 uses the phrase "that ... Ministers consider". The approach in my amendment 50 is much stronger, as it compels ministers to ensure "that children can understand" the report, which is more objective and much stronger. I press amendment 47.

*Amendment 47 agreed to.*

*Section 13, as amended, agreed to.*

#### **Section 14—Child rights and wellbeing impact assessments**

**The Convener:** Amendment 29, in the name of the cabinet secretary, is grouped with amendments 30 to 33, 48 and 34. Members should note that amendment 32 pre-empts amendment 33; so, if amendment 32 is agreed to, I cannot call amendment 33.

**Maree Todd:** I am aware that concerns were raised with the committee regarding section 14(3) and the level of discretion that it affords to ministers in relation to decisions of a strategic nature for which a child rights and wellbeing impact assessment must be undertaken. Undertaking rigorous impact assessments at all levels of government and public administration will be an important part of how public authorities demonstrate their compliance with the compatibility duty in section 6 and how they respect, protect and fulfil children's rights in practice.

The bill as introduced places a requirement on ministers to undertake a CRWIA in relation to such decisions of a strategic nature as they consider appropriate. Amendment 33 will strengthen that provision by removing the references to ministerial discretion and requiring ministers to set out the detail on the strategic decisions for which they will prepare and publish a CRWIA on the children's rights scheme. That was always the policy intention.

As members will be aware, Alexander Stewart's amendment 22, which I support, will adjust section 11(3) to make the list of matters to be included in the scheme mandatory. When combined with our amendments 29, 30 and 33, and with Mr Stewart's amendment 31, which I also support, that will place a duty on ministers to publish the CRWIA prepared in relation to legislative provision or decisions of a strategic nature in accordance with the requirements and arrangements that are set out in the children's rights scheme. The effect of those amendments will be to ensure on-going transparency and accountability in relation to how the Scottish ministers consider and make provision for children's rights in their strategic decision making in practice.

Mr Stewart's amendment 32 appears to have a similar aim to my amendment 33, but it does not make it as clear that when and how CRWIAs must be prepared and published must be in accordance with the arrangements in the scheme. I therefore ask him not to move that amendment and instead to support the Government's amendment 33.

I assure the committee that the Government will continue to work with public authorities to encourage best practice in ensuring that their CRWIA processes are accessible, involve consultation with children and young people and are published in child-friendly formats, where appropriate.

As the Deputy First Minister said in his appearance before the committee, the impact of the Covid-19 pandemic has been felt acutely by children and young people, and it has disrupted their lives in previously unimaginable ways. This Government has ensured that children's rights are at the heart of our Covid response. Throughout the pandemic, decisions have often needed to be taken at pace. However, we have sought to strike the important balance between the health and wellbeing of school and wider communities and the clear benefits that education and attending school bring. A suite of impact assessments, including a CRWIA, on school closures and their reopening in August have been published and are currently being updated to take into account variances with the current situation.

Members of the Covid-19 education recovery group, which includes a member of the Scottish Youth Parliament, have provided insight for that work. It has also been supported by discussions with the children's commissioner, meetings between the Deputy First Minister and groups of learners in June, October and December 2020, and input from multiple stakeholders. That was further strengthened in November 2020 with the creation of the education recovery youth panel, which is comprised of 25 children and young people aged from nine to 18. The Deputy First Minister met the panel on 4 February 2021. It will continue to engage with ministers and the Covid-19 education recovery group throughout spring and summer 2021, helping to influence and shape our approach to education recovery.

By establishing a framework for children's rights in Scotland, the bill is essential to our recovery and to the fairer, more equal society that the Government wants for Scotland beyond our Covid recovery.

Although I do not consider that amendment 48 is necessary, I am content for provision to be made in the bill that would require ministers to prepare child rights and wellbeing impact assessments in relation to decisions about schools closures in the context of the Covid pandemic. I have asked my officials to give the drafting of the amendment careful consideration. I consider that adjustment will be required at stage 3. However, I am supportive of it being accepted today.

I urge members to support my other amendments in this group, along with amendment 31 in Alexander Stewart's name and amendment

48 in Rachael Hamilton's name. I ask members not to support amendment 32, because I believe that Government amendment 33 offers a better solution.

I move amendment 29.

**Alexander Stewart:** I will speak to amendments 31 and 32, which would ensure that the Scottish ministers were under a direct obligation to prepare a child rights and wellbeing impact assessment in relation to all strategic decisions relating to the rights and wellbeing of children.

Section 14(3) obliges the Scottish ministers to

“prepare a child rights and wellbeing impact assessment in relation to such decisions of a strategic nature relating to the rights and wellbeing of children as they consider appropriate.”

In its stage 1 report, the Equalities and Human Rights Committee asked the Scottish Government to remove ministerial discretion at section 14(3) of the bill. If that was not removed, the committee wanted the Scottish Government to provide clear information about what decisions of a strategic nature would and would not be considered appropriate for a CRWIA to be carried out.

I agree with the committee and the Law Society of Scotland, which take the view that section 14(3) affords the Scottish ministers significant discretion regarding what is considered “appropriate” and therefore about which impact assessments to prepare.

I read the Government's response to the stage 1 report, and I welcome the minister's comments this morning about amendment 32. I will not move that amendment. However, I intend to move amendment 31.

10:45

**The Convener:** I call Rachael Hamilton to speak to amendment 48 and other amendments in the group.

**Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con):** I thank the committee for giving me this opportunity to speak to my amendment.

Over the past year, due to Covid-19, children's rights to education have been compromised by the closure of schools. To save lives and protect the national health service, the immediate closure of schools was unavoidable. However, the on-going pandemic and those actions have had a substantial impact on children's rights, with learning interrupted. I believe that the impact was not properly assessed.

Parents, teachers and pupils across Scotland have patchy access to digital and physical resources, for example, and many struggle to

access broadband. Furthermore, in worst-case scenarios, some children have found themselves in a vulnerable position by being at home all day instead of at school, where mental and physical wellbeing can be assessed.

Although the Government published a child rights and wellbeing impact assessment on some of the pandemic-related legislation that has been passed, it is important that assessments are done comprehensively and cover all law and policy that affects children.

It was highlighted in the committee's 2018 report "Getting Rights Right: Human Rights and the Scottish Parliament" that the Government should amend its practice for all its bills. The report says:

"The Scottish Government, should, in conjunction with the Parliament, the Scottish Human Rights Commission, the Equalities and Human Rights Commission and the Children and Young People's Commissioner Scotland, agree a template for an 'impact and opportunity assessment'."

That recommendation was made years ago. An impact assessment was carried out for the schools opening last August, but no assessment was done prior to that. I thank the children's commissioner, Bruce Adamson, and the observatory of children's human rights Scotland for their independent assessment, which highlights those issues.

It has become clear, through evidence that has been given to the committee that, as we incorporate the UNCRC into Scots law, we must seek to strengthen the duty on the Government to properly assess any decision making on school closures or disruption of education as a result of Covid. Where access to education is to be restricted, it should be the case that ministers must prepare a child rights and wellbeing impact assessment, to ensure that we do not see a rerun of last year's issues or create the same exam result issues for next year's cohort. Dr Tracy Kirk made that point.

Some children have been let down badly under the current circumstances. Amendment 48 seeks to address that. In short, it would underpin what is in place by placing a duty on ministers to properly prepare impact assessments in the context of UNCRC, thereby avoiding a situation arising in which the closure of schools compromised a child's access to education, as outlined in article 28.

**The Convener:** As no other member has indicated that they wish to speak, I invite the minister to wind up.

**Maree Todd:** I will simply say that it is essential that child rights and wellbeing impact assessments are undertaken meaningfully and that they inform decision making across the public sector. The bill strikes the right balance by ensuring that there is

direct accountability on ministers in relation to legislation and strategic decisions and by ensuring that the Government can continue to work with public authorities, so that best practice in relation to impact assessments is followed without reducing the assessments to a tick-box process.

I believe that the Government's amendments, and the other amendments that I am supporting in this group, will strengthen the bill in the interests of children and young people. I am grateful to committee members for their support.

*Amendment 29 agreed to.*

*Amendment 30 moved—[Maree Todd]—and agreed to.*

*Amendment 31 moved—[Alexander Stewart]—and agreed to.*

*Amendment 32 not moved.*

*Amendment 33 moved—[Maree Todd]—and agreed to.*

*Amendment 48 moved—[Rachael Hamilton]—and agreed to.*

*Amendment 34 moved—[Maree Todd]—and agreed to.*

*Section 14, as amended, agreed to.*

### **Section 15—Reporting duty of listed authorities**

**The Convener:** Amendment 35, in the name of the minister, is grouped with amendments 36, 37, 59 and 60.

**Maree Todd:** Section 15 places a requirement on listed authorities to prepare and publish reports on what they have done to comply with the duty in section 6(1) on a three-yearly basis. The purpose of that duty is to ensure that there is transparency and accountability for the actions and plans of those authorities whose services most directly affect children and young people.

In their evidence to this committee, some rights stakeholders called for the approach in the bill to be strengthened by requiring the section 15 duty on listed authorities to be not only retrospective in effect but proactive, requiring them to report on their planning for the next reporting period as well as what they had done in the previous period. As was set out in our response to the stage 1 report, the Scottish Government agreed with the committee's recommendation and pledged to lodge an amendment to achieve that effect.

I consider that requiring listed authorities to set out and report on their plans for the next three-year period will help to promote a culture of everyday accountability for children's rights. That is how public authorities would work in any case. As you will be aware, section 2 of the Children and

Young People (Scotland) Act 2014 currently contains a duty on certain public authorities to report on steps taken to

“secure better or further effect within its areas of responsibility of the UNCRC requirements.”

The bill will repeal section 2 of the 2014 act in its entirety—along with the rest of part 1 and schedule 1—and replace it with what is in section 15. Amendments 35 to 37 will amend section 15 to provide that, as well as reporting on what actions they have taken to comply with the duty in section 6(1), listed authorities will be required to report on what actions they have taken to secure better or further effect of the rights of children. The intention is that section 15 should also reflect the wider duty and intention underpinning the duties in section 2 of the 2014 act and ensure that consideration of the progressive realisation of children’s rights is at the heart of listed authorities’ actions and planning considerations.

Therefore, not only do Government amendments 35 to 37 fulfil the recommendation of this committee, but they go further and require listed authorities to set out and report on their actions to give better and further effect to the rights of children.

As the Government has done for the existing reporting duty under section 2 of the 2014 act, we will work in partnership with a range of public authorities in relation to the guidance that will be required to support them to fully realise children’s rights in practice.

I have sympathy with the intention behind amendments 59 and 60. However, in placing additional requirements on public authorities, we are mindful of the need to achieve the right balance and to avoid placing undue administrative burdens on public authorities. I consider that the intended effect of those amendments would be better achieved by effective guidance and partnership working between Government, relevant stakeholders and public authorities, and with children and young people. That is the way to ensure that the reports contain the right information, which is tailored to the circumstances of the authority in question. Where appropriate, that approach can deal with the matters about which the member is concerned.

I know that members want to do more in the bill to recognise and provide for the needs of children in what is reported, and I share that aspiration. For those reports to be meaningful, they must address a range of issues relating to children. However, Mary Fee’s amendments would prescribe in primary legislation some matters and not others, which would not necessarily serve the best interests of children.

I am keen to explore and consider those matters further, ahead of stage 3. I therefore ask Mary Fee not to move amendments 59 and 60, on the basis that I will consider ahead of stage 3 what might be possible in that space. If the amendments are moved, I encourage members not to support them, on the basis that I have outlined. I am not convinced that the suggested approach is helpful or workable, but I will work with what the committee decides.

I ask members to support amendments 35 to 37, and I ask Mary Fee not to move amendments 59 and 60.

I move amendment 35.

**Mary Fee:** Amendment 59 would strengthen the quality of the content of the bill by ensuring that listed authorities met the requirements regarding children who have one or more protected characteristics or who are in a situation of vulnerability, which would ensure that their rights were respected, protected and fulfilled. By making that a requirement for listed authorities, the bill would provide more protection for children in those groups and strengthen the obligation on the listed authorities to do all that they can to ensure that the rights of all children are respected, protected and fulfilled.

Amendment 60 would provide greater clarity to listed authorities when they used the bill. It would ensure that listed authorities actively work to meet the requirements that are set out in the amendment. Children will be better protected when listed authorities proactively promote complaints handling procedures and ensure that children have access to independent advocacy and legal aid. The amendment would make the bill stronger, as it would set out a more transparent approach to reporting.

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

**Maree Todd:** The Scottish Government amendments in the group will ensure that there is an effective reporting cycle that provides transparency for children and young people about the steps that listed public authorities plan to take to realise children’s rights and the effectiveness of such steps that have been taken in previous years. Public authorities are subject to many reporting obligations, and it is incumbent on all of us to ensure that they can deliver what we ask them to report, and that we do not place overly prescriptive requirements on them, which can lead to tick-box exercises.

I think that the bill as strengthened by the Scottish Government amendments will strike the correct balance but, as I said, I am happy to work with the committee’s decision. As we have done with the Children and Young People (Scotland)

Act 2014, the legislation will be supported by guidance for public authorities.

*Amendment 35 agreed to.*

*Amendments 36 and 37 moved—[Maree Todd]—and agreed to.*

11:00

**The Convener:** Amendment 59, in the name of Mary Fee, has already been debated with amendment 35.

**Mary Fee:** Given the supportive comments that the minister made on my amendments, I am happy to work with her ahead of stage 3, and I will not move amendment 59.

*Amendment 59 not moved.*

*Amendment 60 not moved.*

*Amendment 49 moved—[Gillian Martin]—and agreed to.*

*Section 15, as amended, agreed to.*

#### **Section 16—Listed authorities**

**The Convener:** Amendment 3, in the name of Alison Harris, is grouped with amendment 4.

**Alison Harris:** Regular reporting and public scrutiny play an essential role in embedding children's rights in decision making. Accordingly, the duty on listed authorities to report every three years on the steps that they have taken to ensure compliance with UNCRC requirements has been widely welcomed. That builds upon and adds value to the existing reporting obligations on public authorities that are listed in the Children and Young People (Scotland) Act 2014.

Amendments 3 and 4 would bring the Scottish Prison Service and the Scottish Courts and Tribunals Service within the scope of the duty, given the impact that those agencies have on children's experiences of their rights. The agencies have a leading role in implementing the UNCRC requirements, particularly in relation to the best interests of the child, under article 3, children's relationships with their parents, under article 12, supporting children who are unable to live with their parents, under article 20, and youth justice, under article 40.

The SCTS will need to undertake a number of steps to ensure that its existing processes align with UNCRC requirements and progressively realise the rights of children, such as supporting children to engage with the courts, ensuring that solicitors and advocates receive adequate training, ensuring that all court and judiciary staff act compatibly with UNCRC, and supporting children to have their views taken into account in the adult criminal court when a parent or carer is being

sentenced. Including the SCTS in the reporting duty will help to ensure scrutiny of that work, and ensure that children and young people are involved and that their views are taken into account.

Similarly, the SPS will need to undertake a number of steps to ensure that its existing processes are aligned with UNCRC requirements and progressively realise the rights of children and their families. Children and families who have a family member in prison experience stigma, keep the issue hidden, and often do not seek support, even when it is available. Evidence shows that the children of prisoners are three times more likely to suffer from mental health problems than their peers, that they experience the separation as a bereavement, and that families often suffer financially as well as emotionally when a parental figure is removed from the home. Those difficulties are exacerbated by the economic circumstances that many families experience before and after the prison sentence. Children are often not given information about parents being released from prison, and that can be traumatising and disempowering.

Including the SPS within the scope of the public body reporting duty will help to ensure that the best interests of children and families who are affected by parental imprisonment are at the heart of all planning and policy making—[*Inaudible.*] It will encourage a proactive approach to involving children and their families in discussions, and ensuring that families that are affected by imprisonment are not forgotten.

I move amendment 3.

**Mary Fee:** I support Alison Harris's amendments in this group, which are significant and important. Since I came into Parliament I have campaigned for the rights of children of offenders to be protected, and I know only too well that the children of offenders are often among the most marginalised and vulnerable groups in our society. It is really important that we do all that we can to support and respect their rights. I am delighted that Alison lodged her amendments, and I am happy to support them.

**Maree Todd:** I am supportive of amendment 4, but I am of the view that amendment 3 is unnecessary. The bill puts in place significant requirements for the Scottish ministers to publish a children's rights scheme and to review the scheme and its operation every year. As part of the review process, ministers will be required to publish a report on an annual basis.

Through those mechanisms, the Scottish Government will set out the steps that it is taking or its plans to comply with the duty in section 6 and, if amendment 21 is agreed to, to give better

and further effect to the rights of children. That requirement and the requirement to report annually will relate to all the Scottish ministers' functions, including those in relation to the Scottish Prison Service.

Alongside ministers' requirements to report on the children's rights scheme, sections 15 and 16 place reporting requirements on the public authorities listed in section 16, which have a significant role in the lives of children and young people.

The steps taken by the Scottish Prison Service to fulfil children's rights will be set out in the children's rights scheme, because the SPS is an executive agency of the Scottish Government and will be covered in reports on the children's rights scheme under the requirement in section 13. Amendment 3 is therefore not necessary and I ask Alison Harris not to press it.

As I said, I am supportive of amendment 4, which will add the Scottish Courts and Tribunals Service to the list of public authorities that will be required to report every three years under section 15. The Scottish Courts and Tribunals Service is a key partner in ensuring the delivery of our ambition for a justice system that has children's rights at its heart. I welcome the steps that the SCTS is already taking in support of children's rights and its commitment to working with the Scottish Government on the implementation of the bill.

**The Convener:** I call Alison Harris to wind up and to press or withdraw amendment 3.

**Alison Harris:** I press amendment 3.

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

**Members:** No.

**The Convener:** There will be a division.

#### For

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
 Fee, Mary (West Scotland) (Lab)  
 Harris, Alison (Central Scotland) (Con)  
 Stewart, Alexander (Mid Scotland and Fife) (Con)

#### Against

FitzPatrick, Joe (Dundee City West) (SNP)  
 Maguire, Ruth (Cunninghame South) (SNP)  
 Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 3 agreed to.*

*Amendment 4 moved—[Alison Harris]—and agreed to.*

*Section 16, as amended, agreed to.*

*Sections 17 to 20 agreed to.*

### Section 21—Incompatibility declarators

**The Convener:** Amendment 38, in the name of the cabinet secretary, is grouped with amendments 41, 44 and 45.

**Maree Todd:** Amendment 38 is about the meaning of subordinate legislation in section 21(3). The amendment adjusts the definition so that it links more precisely to the description of primary legislation that is used in subparagraphs (i) and (ii) of section 21(5)(b).

Amendment 41 will make it clearer that ministers have discretion as to the manner in which reports under section 23 are to be published, not whether those reports should be published at all.

Amendments 44 and 45 are technical amendments that are intended to improve and clarify the effect of section 32(1)(a) and (b). They will bring into line the description of the legislation that might give rise to the need to make "remedial regulations" under section 32 with that used in section 19.

I move amendment 38.

*Amendment 38 agreed to.*

*Section 21, as amended, agreed to.*

### Section 22—Power to intervene in proceedings where strike down declarator or incompatibility declarator is being considered

*Amendments 39 and 40 moved—[Maree Todd]—and agreed to.*

*Section 22, as amended, agreed to.*

### Section 23—Ministerial action following strike down declarator or incompatibility declarator

*Amendment 41 moved—[Maree Todd]—and agreed to.*

*Amendment 5 not moved.*

*Amendment 50 moved—[Gillian Martin]—and agreed to.*

*Section 23, as amended, agreed to.*

*Sections 24 to 26 agreed to.*

### Section 27—Power to intervene in proceedings where compatibility question arises

*Amendments 42 and 43 moved—[Maree Todd]—and agreed to.*

*Section 27, as amended, agreed to.*

*Sections 28 to 31 agreed to.*



11:15

### Section 32—Remedial regulations

*Amendments 44 and 45 moved—[Maree Todd]—and agreed to.*

*Section 32, as amended, agreed to.*

*Sections 33 and 34 agreed to.*

### Section 35—Interpretation

*Amendment 61 not moved.*

*Section 35 agreed to.*

*Sections 36 to 39 agreed to.*

### Section 40—Commencement

**The Convener:** Amendment 46, in the name of Maree Todd, is grouped with amendment 1. Amendment 46 pre-empts amendment 1, so if amendment 46 is agreed to, I cannot call amendment 1.

**Maree Todd:** As we reach the conclusion of the stage 2 process, it is important that we all pause and reflect on what the legislation does. Scotland is now more than halfway through passing world-leading, groundbreaking legislation to incorporate the United Nations Convention on the Rights of the Child into domestic law. We should not lose sight of the scale of that achievement.

Similarly, we should not lose sight of the fact that the real work starts when the bill is passed, to ensure that we efficiently and effectively commence its measures. There is no point in passing legislation if we do not get its implementation right, which is what will make the biggest difference for children and young people. I see the provisions in part 3 of the bill as critical in that regard. Sections 11 and 12 require the Scottish ministers to make a children's rights scheme by publishing a draft scheme and consulting children and others. We will then be expected to make any changes before laying the scheme proposal before Parliament for a period of at least 28 days.

We have already rejected Alexander Stewart's amendment to provide for a period of two years to produce the first children's rights scheme, on the basis that the Government intends to do so before the act commences. Therefore, it is challenging to see how we might achieve that in the six-month period before commencement that Alex Cole-Hamilton's amendment calls for, and enable the newly elected Parliament to play its rightful role in scrutinising our proposals and allow it to influence the design of the scheme.

As the Deputy First Minister said in his evidence to the committee, when a bill of this significance is taken forward, a balance is to be struck between

recognising the priority of an early commencement and allowing the time that is needed for public authorities to prepare. The legal ramifications of the bill are of the highest order. Public authorities and all those that undertake functions of a public nature, including those that undertake functions pursuant to contracts and other arrangements, will be directly accountable though the courts for their actions. When the Parliament makes new law, it is important that fair notice is given to those whom it affects.

It is extremely positive that public authorities, from justice partners to local authorities and health boards, are supportive of such a progressive step in the realisation of children's rights in Scotland. Those public authorities and others are already working to ensure that children's rights are prioritised and that the necessary preparations for incorporation are undertaken.

It is important to allow all public authorities and those undertaking functions of a public nature adequate time to undertake vital steps such as reviewing policy and practice and ensuring that guidance can be developed and deployed and that staff delivering services can receive training. As members will be aware, the Convention of Scottish Local Authorities has written to every member of Parliament highlighting its support for a 12-month implementation period to allow Scotland's public bodies to develop the processes and resources to support effective implementation.

The bill will apply not only to children's services but to all public functions that engage children's rights. Crucially, adequate time is needed to ensure that the procedures and court rules that are required to support claims under the bill are in place on commencement. As I said in relation to amendment 4, the Scottish Courts and Tribunals Service is a key partner in ensuring that our ambition for a justice system that has children's rights at its heart is delivered. In our engagement with it, it has told us that a six-month implementation period would create significant operational difficulties for it. One example of a proposal that would create those difficulties is amendment 18, which requires the court or tribunal to give the child an opportunity to give their views on the effectiveness of the relief, remedy or order that the court is considering. There will need to be consideration of the methods and support that will be available to the child to enable them to provide their views, and amendments to the court rules will be required. Therefore, the Scottish Courts and Tribunals Service supports amendment 46, which will put in place a 12-month commencement date to ensure that the relevant changes can be considered and implemented appropriately.

We could apply a six-month commencement period to the bill, but directing how the legislation moves forward into practice from the centre does not sit comfortably with me. That is not how I would choose to do that—not when we need all relevant authorities to help us to deliver the fundamental cultural shift that we want this legislation to deliver for Scotland's children and young people.

That said, there is more that we can do to show that we not only acknowledge the concerns about a long lead-in time for commencement of the bill and its measures but understand completely the impact that the pandemic has had on many children and young people. As the Deputy First Minister made clear to the committee at stage 1, we are keen to avoid an extended pre-commencement period. I think that our amendment 46 achieves that and will ensure that momentum is maintained by committing us all to working to commence the legislation one year from royal assent.

I move amendment 46.

**Alex Cole-Hamilton:** I will take great pride in moving amendment 1. As the Children and Young People's Commissioner stated in the last line of his briefing to us, a year is a long time to wait. Actually, the children of Scotland have been waiting far longer than that. Indeed, the United Kingdom first ratified the convention in 1991. I was 14 then—a child myself—and I am now 43, and the convention is still not threaded through the laws of the land in the way it should be. We are not world leading in what we are doing. Many countries have gone before us and have outstripped us in many other areas of children's rights.

The minister states that we need to give public authorities and local authorities time to get their systems in place and understand what the changes mean for them. However, they have had that time, and then some. Since 2011, public authorities have seen the direction of travel on children's rights, and will have understood that they would be required to act compatibly with the convention. I remind the committee of the majority Scottish National Party Government's manifesto commitment in 2011 to introduce a bill on the rights of children and young people. It did that, and then withdrew it and conflated it into the much broader Children and Young People (Scotland) Act 2014, which places duties on public authorities to have regard to and raise awareness of the United Nations Convention on the Rights of the Child.

We are not teaching people new tricks with this bill; we are talking about things that they have successfully baked into their systems. We should be proud of the work of things such as our rights-

respecting schools, which recognise the rights that are afforded to our nation's children under the articles of the convention and educate pupils about them. Therefore, ministers, councils and public bodies have been working with the convention on a day-to-day basis for the past seven years.

This Government has a poor record of slow walking children's rights legislation—let us not split hairs about that. This is the committee that stewarded the Age of Criminal Responsibility (Scotland) Bill through the Parliament two years ago and, regardless of the fact that you would not ever see an eight-year-old prosecuted, that is still our age of criminal responsibility, and it is one of the lowest in the world. We cannot lead the world on children's rights from the back of the pack.

I am not sure that the Government would have produced a commencement date if I had not lodged amendment 1, and I think that a year gives the situation far too long to slide when children's rights are being violated every day and they need an opportunity to find redress and advocacy, and they need public authorities to build in processes to ensure that that does not happen any more. That should not be an afterthought; it should be baked into the strategy and the development of all policies and procedures, and baked into new institutions that are created.

Amendment 1 is supported unanimously right across the children's sector. We need to listen to those people. I understand that some of what needs to be done might be difficult, but I think that, on children's rights, we need to throw our cap over the metaphorical wall. The children's commissioner thought that we could implement the proposals from the date of royal assent, although I accept that there might be some logistical challenges in doing that.

I have done extensive work on this. From speaking to stakeholders—those who have to deliver the proposals and those who have been calling for the changes for generations—I believe that amendment 1 strikes the right balance.

**Gillian Martin:** Too often, decisions affecting children are made without working with and engaging with children. I have to say that everyone on the committee wants the UNCRC to be incorporated as soon as possible, but we also want that incorporation to be effective.

The minister's points about the fact that, if there were immediate implementation of the proposals, there would not be enough time to engage with children and children's rights organisations on how the children's rights theme should look and work have changed my mind on the issue. Further, we voted today to have a child-friendly complaints system. There needs to be time for engaging with

children on that and for Parliament to scrutinise the proposals in that regard, so that we can get that right.

Alex Cole-Hamilton says that rights should be baked in already, but there might be public institutions where those rights are not baked in already, and those institutions need time in which to debate those issues and ensure that children are given the rights that we all want them to have.

All of that can happen only through working together with children, and I am concerned that the commencement date that Alex Cole-Hamilton proposes would not allow time for that to happen in the places where there are gaps. Our scrutiny of what is going on is important, and engagement with children across all public authorities is vital. I note that other countries that incorporated the convention did not immediately commence the legislation but, instead, allowed time for that vital work to be done. That is what I want to see happen in Scotland.

**Joe FitzPatrick (Dundee City West) (SNP):** I appreciate that I am coming to the bill process later than colleagues, and it is appropriate to put on the record the fact that, looking at what has gone on from the outside, I have been impressed with the level of engagement that the committee has managed to have with children and young people, in spite of all the challenges. That relates to my difficulty with the six-month proposal in amendment 1, as I would like to know how we can ensure, within that timescale, that the processes that the Parliament and the other organisations need to take forward are informed by consultation with children and young people, particularly given that we are still in the middle of a pandemic. I am keen for the measures to be enacted as quickly as possible, but that needs to be done with children, not to children. Others might want to respond to that.

Until we have answered those questions, amendment 46 is appropriate, but I am still keen to come back at stage 3 and look at how we answer those questions so that children and young people are absolutely central to the implementation of the legislation when the bill becomes an act.

11:30

**Mary Fee:** I would like to speak in support of amendment 1. I fully support the amendment and all Alex Cole-Hamilton's comments about commencement.

The specific point about the commencement of the Age of Criminal Responsibility (Scotland) Act 2019 was well made. It should shame us all that we have passed legislation without a commencement date, so that it has still not been enacted. I do not want to see that happen to the

bill. All stakeholders and stakeholder organisations are prepared for this legislation. They have been preparing for it for a long time.

I agree that the bill is ambitious, so let us be ambitious with commencement and have it six months from the date of royal assent.

**Alex Cole-Hamilton:** I find the remarks that have been made by some members about not doing this to children but doing it with them patronising. They negate all the work that has been done by children and young people for years in trying to embed rights-respecting processes and a children's rights-based framework into many of the strands of public life in this country. I direct members to the letter from the Scottish Youth Parliament, which is almost excoriating in the pressure that it puts on the committee for early commencement. Children are aware of the bill. They are watching intently. They understand what will be required of them and their input into the processes that it will be built around. However, to say that we can take this decision against their wishes completely undermines the work that has been done on this by children and young people. Their voices have been heard at every stage and they have shown a passion to see the bill commenced now or as soon as possible after royal assent and not slow walked, as this Government is wont to do with all aspects of children's rights.

**Alexander Stewart:** I will support amendment 1 in the name of Alex Cole-Hamilton. We have already heard from Alex and other members about the support that the amendment has across the sector, including among stakeholder organisations and institutions that want to see the legislation enacted. I am therefore disappointed that the minister has indicated that more time will be required because, as we have already heard, organisations already know about the process and have been gearing up to ensure that they are ready. When we have such a huge groundswell of opinion from the sector and from individuals and organisations that represent and support children, I firmly believe that the bill needs to be actioned sooner rather than later.

**Maree Todd:** The Scottish Government remains committed to ensuring that momentum continues and that the bill is commenced as soon as possible. It is in no one's interests, particularly not those of children and young people, for us to get this wrong. As we are a responsible Government, it is incumbent on me, as the minister, to listen to those public authorities that are saying that they require time to get this right.

Commencing a bill such as this within one year of royal assent would be one of the fastest approaches to commencement and implementation of legislation of such legal and

constitutional significance. Amendment 46 strikes an appropriate balance between ensuring that momentum is not lost and giving public authorities time to prepare for their duties.

I just do not believe that it is credible to say that the Government is dragging its heels. The Age of Criminal Responsibility (Scotland) Act 2019 is an exceptionally complicated piece of legislation. The changes that had the most material positive effects for children and young people have been prioritised since royal assent. Since March last year, the response to Covid-19 has impacted the availability of key colleagues across the public sector and the capacity to make progress on the legislative programme both at Westminster and in the Scottish Parliament. We still expect that legislation to be fully commenced this year.

Nor are we dragging our heels on this legislation. We are delivering it during this session of Parliament, as promised. At a time when much of our legislative programme has had to be dropped, this bill has been prioritised and a commencement date is made clear in the bill. To commence within one year is hugely ambitious for this sort of legislation. It took two years for the Human Rights Act 1998 to commence.

We must not forget that we are pioneers. Scotland is the first country in the UK to incorporate the UNCRC into law and the first devolved legislature in the world to directly incorporate it. We have a duty to get that right.

I am pleased to have the commitment of our public authorities, which support the progression and realisation of children's rights across all public services that the incorporation of the UNCRC will achieve. They are not dragging their heels either. COSLA recognises the need for a change in systems and practices, including training and development, and audit, the update of policies and the development of child-friendly guidance and of frameworks, materials and complaints processes. All of that requires meaningful engagement with children and young people as well as with other stakeholders.

All of that comes at a time when local authorities are carrying the heavy burden of dealing with the global pandemic. That has improved engagement for some. Children in my constituency in the rural Highlands may well find it easier to attend engagement that is held virtually rather than in person. However, for some children and young people, engagement is harder. Some of the children and young people who need the legislation most will be excluded from the work that is required to implement it within a six-month timetable. At the moment, due to the public health restrictions, a six-month commencement period would make it almost impossible to reach out to

the digitally excluded children who most need the legislation.

I would not choose to direct such a culture change from the centre; I would prefer to engage and to work collaboratively, which inevitably takes time. As Gillian Martin pointed out, Parliament will not be sitting for a large part of the six-month period following royal assent. That will further truncate the opportunity for scrutiny of the scheme or of the complaints procedure. Engagement activities for children and young people would have to take place during the summer if there were a six-month commencement period. We all know that that is not an ideal time to engage with young people.

I therefore consider that committing to a one-year commencement period would be the responsible course of action. We have flexibility built in that would allow us to commence sooner on some or all of the bill if that proves possible. We are, however, ready and willing to work with the timetable that the Parliament decrees.

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

**Members:** No.

**The Convener:** There will be a division.

**For**

FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

**Against**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

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

*Amendment 46 disagreed to.*

*Amendment 1 moved—[Alex Cole-Hamilton].*

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

**Members:** No.

**The Convener:** There will be a division.

**For**

Cole-Hamilton, Alex (Edinburgh Western) (LD)  
Fee, Mary (West Scotland) (Lab)  
Harris, Alison (Central Scotland) (Con)  
Stewart, Alexander (Mid Scotland and Fife) (Con)

**Against**

FitzPatrick, Joe (Dundee City West) (SNP)  
Maguire, Ruth (Cunninghame South) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

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

*Amendment 1 agreed to.*

*Section 40, as amended, agreed to.*

*Section 41 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill.

The bill will now be reprinted as amended at stage 2 and will be published on the website tomorrow morning. 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 the minister and her officials for attending the meeting. Our next meeting will be on Thursday 18 February.

*Meeting closed at 11:42.*



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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