OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 7 November 2023

Session 6

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CONTENTS

Col.
DECISION ON TAKING BUSINESS IN PRIVATE 1
SUBORDINATE LEGISLATION........ 2
Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Amendment Regulations 2023 (SSI 2023/266) 2
REGULATION OF LEGAL SERVICES (SCOTLAND) BILL: STAGE 1........ 3
UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (INCORPORATION) (SCOTLAND) BILL: RECONSIDERATION STAGE........ 26

EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

22nd Meeting 2023, Session 6

CONVENER

*Kaukab Stewart (Glasgow Kelvin) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)
*Meghan Gallacher (Central Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Paul O'Kane (West Scotland) (Lab)
*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Brian Inkster (Inksters Solicitors)
Chris Kenny (Medical and Dental Defence Union of Scotland)
Professor Stephen Mayson (University College London)
Rachel Nicholson (Scottish Government)
Naeema Yaqoob Sajid (Diversity+)
Shirley-Anne Somerville (Cabinet Secretary for Social Justice)
Martin Whitfield (South Scotland) (Lab)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 7 November 2023

[The Convener opened the meeting at 09:50]

Decision on Taking Business in Private

The Convener (Kaukab Stewart): Good morning, and welcome to the 22nd meeting in 2023 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies for this morning's meeting.

Under agenda item 1, do we agree to take item 5, which is consideration of today's evidence, in private?

Members *indicated agreement.*

Subordinate Legislation

Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Amendment Regulations 2023 (SSI 2023/266)

09:51

The Convener: Agenda item 2 is consideration of a negative Scottish statutory instrument. I refer members to paper 1. Do members have any comments on the regulations?

As no member has indicated that they have any comments, is the committee content not to make any formal comments to the Parliament on the regulations?

Members *indicated agreement.*

The Convener: Thank you. That concludes consideration of the regulations.

Regulation of Legal Services (Scotland) Bill: Stage 1

09:52

The Convener: Agenda item 3 is our second evidence session on the Regulation of Legal Services (Scotland) Bill. I welcome to the meeting Brian Inkster, chief executive officer of Inksters Solicitors; Chris Kenny, former chief executive of the Legal Services Board of England and Wales and currently CEO of the Medical and Dental Defence Union of Scotland; Professor Stephen Mayson from University College London; and Naeema Yaqoob Sajid, solicitor and director of Diversity+. Welcome to you all.

I refer members to papers 2 and 3. I note that the Delegated Powers and Law Reform Committee is taking evidence on the bill this morning from the Minister for Victims and Community Safety.

I invite each of the witnesses to make some brief opening remarks should they wish to do so, starting with Brian Inkster.

Brian Inkster (Inksters Solicitors): Thank you for inviting me to give evidence today. As you said, I am the chief executive officer of Inksters Solicitors, which is a law firm that I formed in 1999. We operate what I call a plug and play law model, whereby we have consultant solicitors who are self-employed and who work under our umbrella, with us providing them with back-office support and services. We have offices in 13 locations around Scotland from the Highlands and Islands to the central belt.

I have followed the regulatory reform very closely over the years, especially since the Roberton review was published, and I have written quite extensively about it on my blog, which is called "The Time Blawg". I very much support the principal recommendation of Esther Roberton's review. There is a great need for one regulator that is independent of the member bodies. There is a clear conflict of interest in a regulatory body also representing its members, and that conflict should be removed. However, the bill does not seek to do that in any way.

I trust that, in due course, the committee will call Esther Roberton to give evidence. It will be important for the committee to hear what she has to say on the matter, given the passage of years and the fact that we now have a bill that does not follow her recommendations.

I am also a strong advocate of alternative business structures. It is disgraceful that it has taken 13 years to implement the Legal Services (Scotland) Act 2010 in so far as ABSs are concerned. The act has still not been fully implemented, and as yet we do not have the first ABS in Scotland. The committee should inquire as to why that has taken so long to happen, and why there has been a delay on the part of the Law Society of Scotland and the Scottish Government in implementing that legislation over a period of 13 years.

I do not believe that there is any reason to have a solicitor percentage ownership in ABSs. According to the current position, whenever we might have the first ABS, it will be 51 per cent. The bill suggests 10 per cent but, as far as I can see, there is simply no good argument for having any percentage there. At the committee's previous evidence session on the bill, Sharon Horwitz gave very good reasons for ABSs being allowed to exist with no percentage restriction.

Chris Kenny (Medical and Dental Defence Union of Scotland): I thank the committee for its invitation.

Let me first associate myself with everything that Brian Inkster has said, with which I wholeheartedly agree. I want to share experience from England and Wales, where the model offers strong learnings that are both positive and negative. On the positive side are the benefits that alternative business structures can bring as regards consumer service and innovation. I absolutely share the frustration of Scottish users of legal services that they have been denied those for a considerable period.

There is still a restriction at the heart of the bill, which is not only nonsensical in policy terms but, dare I say it, rather offensive to the 99.5 per cent of the population who are not lawyers. There is a flaw there on the achieving of benefits. Those have been achieved south of the border, but they have been far fewer than they might have been because of a failure to deal with the complications of the regulatory architecture. Continuing to have representative bodies as the ultimate regulator—even if there are Chinese walls or intervention powers for the Government or for a regulator—means that far too much energy is given to arguments that appeal to regulatory anoraks such as the people on this side of the table but do little or nothing for the public interest.

The Roberton report set out a really compelling vision for getting beyond that and creating a lean regulator that would be able to consider legal services in their entirety, with no temptation for regulatory capture or conflict of interest. The bill recognises those dangers but, by setting out a raft of intervention powers for the Government, produces a cure that is worse than the disease that it attempts to resolve. The cleaner, more visionary approach that Roberton advocated would give a real opportunity for a step change in

the Scottish legal industry. I hope that the Parliament will attempt to get back to those first principles rather than live with the really quite odd and clumsy compromise that the bill currently represents.

Professor Stephen Mayson (University College London): I thank committee members for inviting me to be with you this morning.

For those who do not know my background, I am a member of the English bar by training and I am a professor of law at UCL. Between 2018 and 2020, I carried out an independent review of legal services regulation in England and Wales, with a follow-up report on consumer harm last year. In carrying out that work, I talked to Esther Roberton as part of my review and I took her views into account as I considered what might be a better resolution for the future for England and Wales.

I will make a few opening comments. I support some things in the bill, such as the extension of the commission's powers to unregulated providers and entity regulation. There are some things not in the bill that I would support, such as a single independent regulator. That is the conclusion that I came to, that Esther Roberton came to, that the Competition and Markets Authority came to and that New Zealand has come to. The conflict that Brian Inkster referred to between regulatory and representative interests is, in my view, simply untenable in the 21st century.

10:00

I am very uncomfortable with some things in the bill, at least in its original form, such as the powers given to Scottish ministers. I see those as entirely consequential on the decision not to have a single independent regulator. One flows from the other and both, in my view, are unfortunate. I see no merit in reducing the 51 per cent threshold for ABSs to 10 per cent. It should be removed entirely. I do not support the proposition to regulate the title "lawyer". I am sure that we can come back to all those things later in the evidence session.

Finally, the bill misses some opportunities to learn from what we have done or not done in England and Wales, particularly in relation to the incomplete separation of regulation and representation. There are difficulties with the regulatory objectives that are carried over and still exist in the draft, and there are problems of undue complexity and prescription in the legislation that inhibit flexibility in a fast-moving sector in this century.

Naeema Yaqoob Sajid (Diversity+): Good morning everybody. Thank you, convener, for the introduction and for the invitation to appear at today's committee meeting. I am a solicitor with more than 20 years' experience in the Scottish legal sector, in the private and public sectors.

I had an unconventional route into the law. I left school with unsatisfactory results—which is probably a kind way of putting it—at the age of 17, to be married. I studied a Scottish national certificate in business studies at college, and later a higher national diploma in legal studies, before resitting my highers to enable me to gain entry to university to study law. Therefore, if I get quite passionate about the legal sector, it is probably because I had a difficult time getting into it.

I completed my law degree while I had two young children and escaped academia for a short period to build up much-needed experience. I worked as a parliamentary researcher in 1999 when the Scottish Parliament was reconvened. I commenced my legal career as a procurator fiscal depute and later moved into the private sector, where I specialised in child and family law. I became a partner in a middle-sized legal firm and then in a larger national law firm.

As you can tell, my career in the legal sector has been quite varied. I am now an avid campaigner for change and, in particular, I am passionate about making improvements in the legal industry, ensuring that it is fit to face future challenges. My specialism lies in diversity, equity and inclusion and the additional barriers that intersectionality can create. I use my lived experience, my interpersonal skills and business insights to navigate positive change to workplace cultures and structures.

With that in mind, I created Diversity+ in 2021, which is a bespoke consultancy firm designed to assist organisations in the legal sector to make improvements. I am also a co-founder of the Scottish Ethnic Minorities Lawyers Association and a member of the University of Edinburgh's law advancement board.

I share the view of fellow speakers and witnesses about needing an independent regulator and about the model for the ABS going forward. Having researched further since providing my written response, I remain firmly of the view that an independent regulator is the best model for our growing and increasingly diverse profession and the public that it seeks to serve.

My starting point is that the legal profession, including solicitors and advocates, should not be self-regulated. The bodies that represent them should not be the ones that investigate and discipline them. In my view, that is what we need to ensure independence, in theory and in practice. I would advocate for separation of powers. The case for that has never been stronger than it is now. I can explain my reasons for that later, given the opportunity. Although I appreciate that, in its

present form, the bill does not allow for that, I hope that today we can persuade you all to reconsider.

The Convener: Thanks very much to all of you.

We have a range of questions from members. I will just advise our witnesses that, although you might well be tempted to stray into other areas, I must ask you to focus on the essence of the question that has been put. It would be helpful if you did that, as other members will come in on other areas.

To start us off, I call Meghan Gallacher.

Meghan Gallacher (Central Scotland) (Con): Good morning, panel. Thank you very much for joining us today.

My questions relate to the separation of powers and the respective roles of the executive and the judiciary. What are the panel's views on the Law Society's arguments that independent regulation could lead to increased costs and threaten the independence of the legal profession? Do you believe that the regulatory committee is a sufficient guarantee of independence? Perhaps I can start with Brian Inkster.

Brian Inkster: There is a lot more worry being expressed about this question of independence than actually exists. Indeed, it is a bit ironic for the Law Society to talk about wanting to be both the regulatory body and the membership body, given that there is no independence in that respect or separation of the two things. Nevertheless, it still claims that there will be issues and problems with its own independence under the current proposals.

Clearly there has been a lot of controversy over the question of powers that the Scottish Government and ministers might have; however, although there might be certain concerns in that respect, I think that they might have been overplayed. That said, I believe that recent correspondence from the minister has suggested that the Government will be looking at making changes to the bill to overcome the issues that the Law Society is seeing with regard to the question of independence between the regulator and the Government. On the whole, though, this is probably a lot of fuss over very little. As it stands, the bill contains a lot of checks and balances covering the question of independence and setting out the need for intervention only in fairly serious circumstances.

I do not think that any regulator should not be subject to some form of oversight. It should be independent, but what if that regulator is going off the rails and doing something completely nonsensical? Should there not be some form of oversight in such circumstances? Whatever form that oversight might take, it could still be independent from Government and in the hands of the judiciary or whatever. It is clearly an issue that the Government is looking at quite closely at the moment, given the representations that have been made by the Law Society, the Faculty of Advocates and the judiciary, and I am sure that it will be resolved.

Meghan Gallacher: Thank you. Perhaps I can throw the same question out to our other witnesses.

Chris Kenny: I saw no evidence at all that having the Legal Services Board as an oversight regulator in any way minimised the profession's independence. The debates that we had with the board were quite often full and frank—according to the normal meaning of those terms—and I would think far less of lawyers as a group if I believed that they were going to be overruled by the existence of a new statutory body.

That said, I think that the perception of independence is as important as the reality. As we have all said, I do not believe the model of representation and regulation that has been put together achieves that, nor do I believe that the level of intervention powers proposed by the Government in the current version of the bill remotely helps the cause of independence. I would suggest that the Roberton model, with the judiciary as the ultimate guarantor of the lawfulness of the regulator's decisions and oversight, by this committee or another organisation within the Parliament, would give that sort of guarantee.

You also mentioned costs. There is no reason why a new body that is picking up the functions of a number of different bodies should not benefit from some savings in back-office costs. Dare I say it, but I think that that would make it easier for members of representative bodies to put pressure on those bodies to operate as effectively as they could in cost terms. I therefore expect any new settlement to be cost neutral, if not rather cheaper.

By definition, it follows that I do not believe that the regulatory committee is sufficient. The very fact that—as I understand it—the regulatory committee has not submitted evidence in its own right may say something about the extent to which it perceives itself as separate from the Law Society.

Professor Mayson: By way of preliminary comment, I always find it interesting, in these conversations, that people are invited to justify independent regulation. Nobody ever seems to be called on to justify non-independent regulation; it is just assumed that, because it exists, it must be all right.

On the point about independence, I echo Brian Inkster's comments. In my view, that aspect can be overplayed. The interests of justice do not,

arguably, require an independent legal profession—they require independent legal representation by individuals who are appropriately qualified. What is important is the independence of the individual, which is as much about a state of mind or about conduct as it is about a regulatory structure. I get the impression that that is often just something that can be seized on by a professional or regulatory body in order to resist further change.

Again, I echo what Chris Kenny said on the independence of the Law Society of Scotland's regulatory committee. I thought that it was very interesting that that committee's response to this committee did not identify in which of its two capacities it was responding. Indeed, it said at one point that there was "a coincidence of interest" between the two capacities, which—to be frank—I find astonishing. As an external observer, or as a consumer who had a problem with a member of the profession, I would probably find that position quite disturbing.

On cost, the evidence that we have is slightly different. We do not have a single regulator, but an overarching regulator, and we have a multiplicity of bodies. However, there are instances of alternative regulation that appear to be cheaper than the current model.

Finally, there is a cost that has not been factored in, which is that the current model is expensive and excludes people from legal representation. The cost of unmet need to society and to the public purse is probably a lot greater than even some marginal increase in cost in regulating the sector.

Naeema Yaqoob Sajid: I support what my fellow witnesses have said. To avoid duplication, I simply add that it is unfortunate that so many of the good changes that would have come about through the Roberton review, if the recommendations had been taken on, have been clouded by the whole argument about oversight by the legislator. That seems unfortunate, because so much more ought to have been discussed, and that has been missed because so much power and energy has been put into the oversight aspect.

I stand by my view that the only form of proper independence for the profession is to have an independent regulator. If there is any doubt about what we have just now, in particular with regard to the Law Society's regulatory committee and the question of how independent it is, I would simply ask that the members of this committee read the information on the role, remit and duties of the regulatory committee, which the Law Society provides on its website, to see exactly how much, in reality, that committee is at arm's length from the Law Society itself and its committee structure. I would argue that it is not at arm's length, and for that reason, I would commend that information to this committee, so that members can have a look for themselves.

We are looking to make wholesale changes, and now is the opportunity to do that. The previous changes were made more than 40 years ago. If we miss this opportunity to get it right, another five generations of solicitors entering the profession could be living with the changes that we now decide to make. It takes seven years for someone to become a solicitor using the conventional route, so in 40 years, we could be looking at another five generations.

I suggest that we take a pause and think about what sort of legal profession we want in the future, which can best serve not only the profession itself but the people whom we look to serve. It is important to do that, and independence should be at the core of that thinking.

I share the views of other speakers on costing. I am not sure that a proper cost analysis has been done. We have been very quick to criticise what was done in the Roberton review. However, we have really not looked at the cost savings that will be made should the current model be dismantled and restructured according to what we would want to have in an independent regulator. I am not an accountant or an auditor. There are many learned, knowledgeable and experienced people who can do that cost analysis for you. A better, more informative cost analysis should be done to calculate the savings that will be made when we dismantle the current structure.

10:15

Meghan Gallacher: Thank you, convener.

The Convener: I will just come in on the back of that. Professor Mayson, you have views on the experience of independent regulation in England and Wales, so I am just going to take a bit of time to give you an opportunity to go into that a wee bit further. How have the issues of cost of a new regulator and independence of the legal profession been dealt with in England and Wales?

Professor Mayson: I am not sure that they have been dealt with fully. We have a model of supposed independence in that the professional bodies that are named in the Legal Services Act 2007 as the approved regulators are required to establish their own independent regulator. However, for the most part, they are still attached to the professional body from which they originated. There have been problems over the years with both the Solicitors Regulation Authority and the Bar Standards Board not being able to demonstrate that their regulatory bodies are fully independent, even though they are supposedly established as such.

You might be aware that the Chartered Institute of Legal Executives is looking at its regulatory delegation. At the moment, it has its own dedicated regulator, but it is part of the group that is looking at moving its regulatory functions to the Solicitors Regulation Authority. The authority would be, for the chartered institute, a completely independent regulator, which is one of the reasons that it wants to do it—the chartered institute is finding it difficult to guarantee the independent regulation that it feels its members need and deserve.

Part of the logic for the move is based on cost. It has looked at the relative costs of regulating within its own body and regulation through the Solicitors Regulation Authority, and the early analysis shows that moving to the bigger body would be cheaper, because there are economies of scale, and as Chris Kenny said, it would not incur some of the basic establishment costs that any regulator would need. I think that the costs fall disproportionately on smaller regulators, and, of course, that charge is passed on to consumers.

Chris Kenny: For the record, I should just declare that I did a little bit of work for the Chartered Institute of Legal Executives in relation to the position that Stephen Mayson has just described.

The Convener: Thank you for that.

Maggie Chapman (North East Scotland) (Green): Good morning, panel. Thank you for joining us, and thank you for the written submissions that you provided.

I am interested in exploring the detail of regulation and that kind of thing a little bit more. Professor Mayson, if I can come to you first, you said in your written contribution that the difference in the treatment of the Law Society of Scotland and the Faculty of Advocates in the proposed new framework, as category 1 and category 2 regulators, is not justified. Can you say a little bit more about that?

Professor Mayson: Yes. That is fundamentally based on a concern about regulation by profession—which is what we have, and what is proposed in the bill—as opposed to regulation by activity. The consumer or buyer's point of view is that they want a particular service. They may choose to have that service from an advocate or from an appropriately qualified solicitor. Under the bill—and indeed now—the regulatory consequences that would flow from that decision are different, depending which choice they make. There are different regulators, with different rules, different registers and probably different costs.

My point is that the underlying risks to the consumer, which is what regulation should ultimately be protecting, are identical, but the regulatory solutions that are being offered, currently and under the bill, are not. I can see no public-legitimacy or consumer-protection argument that justifies that split.

Maggie Chapman: It was really helpful for you to set things out like that, so thank you.

Naeema, you mentioned that it was a necessary complexity to have the two-category regulator system. Is the thinking there along the same lines, or is there something else that we should be trying to get at?

Naeema Yaqoob Sajid: As a solicitor, I find it difficult to navigate through the complaints procedure with two separate categories, so imagine what it will be like for service users.

The Scottish Parliament information centre briefing accompanying the bill contains, in effect, three annexes: one setting out the current regulatory landscape, one showing what the situation would be under the Roberton proposals, and one with the proposals as they are. Just looking at those frameworks for illustration purposes shows us the complexities. I shudder to think how a layperson would navigate through those complexities to understand whether they are getting transparency and really fully understanding the complaints procedure. The bill purports to simplify the procedure, but that is not what it is doing by adding a further layer and a further category.

Maggie Chapman: That is clear. On the overarching regulatory objectives that we might choose to bring into place through this proposed legislation, what do you see as the best way of updating the regulatory objectives and the professional principles for legal service providers? Do you see enough of that in the bill, or does the bill just add complexity such that we are not really sticking to the principles of independence, clarity and simplicity for either consumers or practitioners?

Naeema Yaqoob Sajid: It is a good thing to add the principles and the objectives into the bill, but I do not agree with the terms of the mechanisms through which they will be regulated and investigated, because that is highly complicated. Introducing the principles into the bill will be a good thing for consumers and service users, because the principles will be clearly set out in legislation. The difficulty comes from how the principles are applied in practice, and from whether we are adding further complications through the scheme that we are looking to introduce. That would be my concern, because I do not think that the system has been simplified.

Chris Kenny: It is a very good thing to have the regulatory objectives and the principles in the bill, but the fact that they are there makes the case for

having a far cleaner, simpler regulatory structure. It is only by looking across the entire profession and industry—I use both those words deliberately—that we can deal with cross-cutting issues such as the level of diversity in the profession, the structure of the market, whether consumers are getting the best deals and whether the right incentives are in place for ensuring transparency and other things.

Just to echo what was said earlier, the very fact of the complexity undermines public confidence. If people feel that they cannot understand or navigate the system, it will look like jobs for the boys, even if all the protections in the bill work to the best degree. The perception of a lack of independence is almost as harmful as the reality of it.

Maggie Chapman: You used the two words “profession” and “industry”. Can you say a little bit more about how you, as a practitioner, understand the system? Should consumers be worried at all, or should they just be able to rely on the simple, straightforward, clean system that you have been talking about?

Chris Kenny: There are two levels. Consumers will generally interact with an individual practitioner—perhaps with his or her firm, but more likely with an individual. They will want reassurance that there is a way to resolve the remedial issue, if that individual turns out to be a rogue, and, if further investigation reveals a pattern, reassurance that there is a way to protect both the public and the profession by removing him or her.

However, I think that regulation is more important than that, when it comes to what my former opposite number in New South Wales, Steve Mark, used to call the “ethical infrastructure” of the profession. There will be issues that are not about whether solicitor X has behaved well or badly but about the way that the market operates, the way that incentives operate and how far access to justice is or is not being achieved. Those issues are not really addressable at the level of specified rules of conduct for the individual; they rely much more on systemic strategic interventions, and those are hard to do. From my former position as an oversight regulator, I would submit that they are almost impossible to do for a representative body, some of whose preconceptions may need to be challenged to achieve the good social outcomes that you are looking for.

Maggie Chapman: Thanks—that is helpful.

Brian, I ask you the same questions, around the complexity of the regulatory system and the point of putting the principles in the bill.

Brian Inkster: I do not think that I can usefully add much to what my fellow witnesses have said. In my written submission, I made it clear that I think that the two tiers just add unnecessary complexity to the whole thing and that following the principal recommendation of the Roberton review would simplify things. Why are we complicating things when we could be making them more simple?

Maggie Chapman: For my final question, I go back to Stephen Mayson. It is around transparency—I suppose that it is about transparency not only for consumers and individuals but for society more generally. Are the proposals that are aimed at increasing transparency and reporting and that kind of thing enough? Does the bill get the balance right on those issues or are there things that we should be thinking about but are not?

Professor Mayson: One conclusion that I came to when I did the second part of my review on consumer harm was that I remained almost completely unconvinced that disclosure and transparency give much benefit to consumers. They do in the abstract—it is a great principle. Indeed, for those who look, having the ability to do that through a register or other forms of comparison is clearly valuable. However, for the vast majority of individuals who use legal services—often, it is in times of distress or vulnerability—those things do not actually touch where they need to. Therefore, it is difficult. I could never say, “Don’t do it,” but I would probably question whether the value of doing it is as great as its proponents often suppose.

Maggie Chapman: It is almost as though it is at the wrong end of the process.

Professor Mayson: Yes.

Maggie Chapman: We need to look upstream and make sure that we do not get to the point where people need to ask such questions. Given what you have already said, are there ways of putting in enough upstream stuff around scrutiny and regulation to ensure that nobody needs to worry about transparency, because we have sorted it?

Professor Mayson: I am almost inclined to think that support is not a regulatory issue; it is something that a client or consumer needs help with on their route to legal advice and representation. It may well be that we could train practitioners better to help and support consumers in making the choice and, having made the choice, in how they can relate better to their legal adviser. However, as I said, I remain unconvinced about the systemic solutions that are offered.

Maggie Chapman: That is helpful. We have heard about that need for training or just for better

awareness and societal education and literacy about what is available and what is not. I will leave it there—thank you.

Professor Mayson: Could I just make an observation on the regulatory objectives?

Maggie Chapman: Yes, of course.

Professor Mayson: There are a couple of things in bringing—

The Convener: Speak through the chair, please. Sorry—I am bringing order to this. I will allow you to continue, professor.

Professor Mayson: I am sorry.

There are a couple of elements of the bill that I welcome and that are not in the English equivalent. One is the reference to "the interests of justice" as well as to "access to justice", which I take to mean improving the administration of justice. Surprisingly, we do not have that—I think that it is part of the public interest, but we do not have it. The other is the duty on regulators to work towards consumers being

"treated fairly at all times".

We do not have that, either, and that is important.

On the totality of the objectives, though, I still have a difficulty. They are all there, but there is no hierarchy of objectives and no overriding objective. What I have found down south is that, if a regulator or professional body wants to argue for something, it can pick one of the regulatory objectives and justify its proposal. That makes it very difficult for a regulator to make a decision that it can then justify more objectively by reference to the different regulatory objectives to which it might attach priority. Complexity adds cost and friction.

10:30

Maggie Chapman: Can I ask one more follow-up question about that?

The Convener: If it is a very small question with a very brief answer.

Maggie Chapman: If you were to determine a hierarchy or an overriding objective, how exactly would you do that?

Professor Mayson: That is very simple for me. In its policy memorandum, the Government referred to the public interest and, pleasingly, adopted my definition of what public interest means. So, clearly, I am going to say that that should be the overriding objective.

Maggie Chapman: Thank you.

Paul O'Kane (West Scotland) (Lab): Following on from that discussion, I have questions about Government input and ministerial oversight. I would like to hear our witnesses' general views on the fact that the bill would give the Government powers to review regulators' performance.

Chris Kenny: I probably have the T-shirt and the experience. If the Government could regulate, it would, without feeling the need for independent regulators to exist. Are independent regulators perfect? Absolutely not. Do they need a degree of oversight? Yes, they do. However, is that oversight best achieved by micromanagement, target setting and a raft of detailed intervention powers? I do not think so.

The powers in the bill are, to some extent, modelled on those that the Legal Services Board has in relation to individual regulators. In practice, those powers are rarely used because it is fiendishly difficult to find proportional ways of doing so. The challenges are specified in such detail that the board might well want to intervene in a couple of areas while not tackling the main question, which might be about the governance and culture of an organisation.

That is why I say, with the greatest respect to civil servants—I was one for many years—that they should really keep out of it. They should be involved in taking a policy view on how the framework operates as a whole and every decade or two—or even every four decades, as Naeema Yaqoob Sajid said—they might propose fundamental policy reform. However, oversight ought to come from parliamentarians, rather than from the legislature and the executive and it should ultimately come from the judiciary. The great danger with the bill at the moment is that it gives false comfort that nothing will ever go wrong if we can intervene on all those things, but the likelihood is that the one thing that will go wrong is the one thing that you have not been able to specify in advance.

The Convener: Do you have a supplementary question, Mr O'Kane?

Paul O'Kane: The Government has written to the committee to say that it is considering amending the bill in order to reduce the influence of ministers. I know that the legal profession and the bodies to which we have made reference today are concerned about that ministerial oversight. In the light of what you have just said, is there adequate scope to amend the bill to reduce ministerial oversight?

Chris Kenny: That will be quite difficult, because of the way that the intervention powers are specified. Those powers do not seem easily to lend themselves to being transferred to the judiciary, and I am not sure that they lend themselves to being easily specified for a parliamentary committee. You would need something rather clearer.

My worry is that we are in a cleft stick, because to withdraw all the powers makes the lack of independence within the overall framework much more stark, so that the cure is almost as bad as the disease, if not worse. I do not think that there is a fine-tuning answer: you probably need more fundamental adjustments to the architecture of the bill.

Paul O'Kane: I will explore that to clarify the point. Are you saying that the bill needs fundamental reform rather than just amendment? Does the Government need to reconsider the approach?

Chris Kenny: I will defer to the expertise of parliamentary draftspeople to work out how fundamentally it is possible to amend the bill. However, I do not think that it will be a matter of tweaking who does what. To delete "Scottish ministers" and insert "judiciary" would not be sufficient to deal with the fundamental tensions in the architecture.

Paul O'Kane: Do any other witnesses want to comment on the issue more broadly?

Professor Mayson: I am slightly concerned that if, to adopt Chris Kenny's terminology, you delete "ministers" and insert, for instance, "the Lord President", you turn the judiciary into a direct regulator because of the nature of the powers. Over the short to medium term, that would place the judiciary in a rather invidious position.

The Government has boxed itself into a corner. It has said that we cannot have independent regulation and can no longer sustain self-regulation. We have to fudge something in whatever the mix is and I am afraid that the fudge will not work.

Meghan Gallacher: I have a question about the concerns that you just raised, Professor Mayson, in relation to the role that the Lord President of the Court of Session would have with the Government if the bill was enacted as it stands. My concern from my first reading of the bill was that it could draw the two of them into a sort of collaborative administration. What would the impact of that be?

In section 20, the phrase,

"Measures open to the Scottish Ministers",

concerns me, because of the performance targets that could be set and the potential for penalties to be imposed. Is that your understanding? What would the implications be?

Professor Mayson: The bill could lead to perceived collaboration or, indeed, outright conflict between the Government and the Lord President, neither of which I would regard as desirable and which would be deeply uncomfortable for the Lord President. If you take the public interest as a guiding light, I cannot see any way in which those situations are in the public interest. Either one could undermine the position of the Lord President and of the judiciary more generally and lead to perceived interference by the judiciary in the regulation of lawyers.

Chris Kenny: For the committee's information, the situation in England and Wales is that the powers in place for the role analogous to that of the Lord President are very constrained. The Lord Chief Justice works with the Lord Chancellor on the appointment or appointments to the overarching regulator. That is important in managing creative tension between the two. Like Stephen Mayson, I feel uneasy about a great degree of policy and managerial interventions being given to the judiciary that, at worst, could put the judiciary in a difficult position should somebody want to challenge the operation of the framework in practice, or challenge a particular element of it on, for example, grounds of disproportionality.

Meghan Gallacher: Thank you very much.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panel. I have a general question on which I am happy to take the panellists' views one at a time. The convener will be glad to hear me say that the witnesses can give me as short or as long an answer as they feel necessary. I have heard what the witnesses have said, including their opening statements, at which point I was attending remotely, so I think that I know where each of them might go with my question, but I will give them a chance to put it on the record.

Will the proposals in the bill make it easier for people to find a lawyer who can advise them and help them to enforce their rights?

Naeema Yaqoob Sajid: The short answer is no. I do not see anything in the bill that will do that, because, if anything, it adds complications to a system that we are all trying to make simpler and easier for service users. What is really needed is the proper resourcing of services and, in particular—this will not come as a surprise to any of you—of legal aid and the like. If that is the objective of the bill as it stands, I do not think that that objective is met.

Professor Mayson: I agree, largely. It looks as though we will end up with four different registers. Consumers will need to work out which type of person they approach for legal advice and representation before they can go and search the right register, or, taking pot luck, they will look at a register and then find a practitioner. It just seems rather illogical to me, and I do not see how that makes it easier.

Chris Kenny: The changes in alternative business structures, although far smaller than they

need to be, might be somewhat helpful at the margin in creating greater competition and diversity. However, the benefits—if any—will be marginal.

Brian Inkster: I agree. The bill does not really set out to address that issue in any shape, form or fashion. It is more about the regulation, and I do not think that there is anything in it that would answer your question in the affirmative.

Fulton MacGregor: To avoid the risk of stepping on any colleagues' toes in terms of where they go with questioning, I will leave it there, but I might come in again towards the end of the meeting if that is alright.

The Convener: Please indicate if you wish to do so.

I will continue on the theme of whether the bill is achieving its objectives. I am interested in the complaints system. There are huge issues with the current system, and I want to know whether the bill addresses those. From the point of view of the average person on the street, the system is quite impenetrable already. I have heard from many people who have made representations about their complaints that not only is the system difficult to navigate but getting satisfaction from it is extremely difficult at the moment. Will the bill seek to address that? I am particularly interested in underrepresented and marginalised groups—people who are the poorest in society or who are from ethnic minorities, for instance. I direct the questions to Naeema Yaqoob Sajid and Brian Inkster.

Naeema Yaqoob Sajid: That probably requires a little bit of analysis and thought. As a brief answer, I would say no. I am sorry, convener, but you will have to repeat the very beginning of your question.

The Convener: No problem. The main thrust of it is whether, through the bill, a citizen will be able to make a complaint in the least traumatising way possible. Will they manage to navigate the system, and what is the likelihood of their getting a clear outcome?

Naeema Yaqoob Sajid: As the bill stands, my answer is no, because, apart from anything else, it adds a further category into the existing system. With the bill, we are just tinkering. We are not saying that the structure is wrong and that we need to scrap it, restart and rebuild; instead, we are tinkering at the edges to improve a system that is far from perfect.

If anything, neither the service users nor the professionals like the system as it is. However, instead of saying to ourselves, "Let's look at this deeply and in more detail, decide that the structures are wrong and rebuild with our marginalised communities at the heart of it"—you asked specifically about marginalised communities—we will not have a complete and future-proofed system going forward. We are only tinkering at the edges. That is a personal view.

We have to think about where the profession is now. It has never been more diverse. Forty years ago, the profession was mainly male, but now there is a female majority—it is 57 per cent women and, of the people who are coming into the profession, two thirds are women. The profession and the industry itself is becoming ever more diverse, so are the current structures designed for the diversity that we now have in the profession and for the services that we are looking to provide? Just tinkering and improving on what we already have will not be enough for that purpose.

The only way that we are going to get more clarity, and the only way that service users are going to be able to have a much more simplified procedure, is by having an independent regulator and a more streamlined approach. We are trying to improve the processes that we already have because we feel that they cause delay and confusion, which is correct: everybody is saying that. However, only tinkering with the processes is not enough.

10:45

Brian Inkster: The bill does not appear to deal in any real way with the detail of how complaints would be handled. Indeed, it leaves that in the hands of the new Scottish legal services commission—which is, in effect, a renaming of the Scottish Legal Complaints Commission. That renaming is quite confusing to the general public, because suddenly the word "complaints" has vanished.

The Convener: It is not just a rebranding, is it? The bill has in it a proposal to extend the powers of the SLCC.

Brian Inkster: It has a proposal to extend its powers, but it does not really deal with the fundamental question of how it will deal with complaints or how that process might be improved.

The Roberton review made it clear that there was criticism of how the complaints process was dealt with, from all angles, and that improvements are needed, but the bill does not in any way seek to address how the complaints process might be improved for the benefit of the consumer and solicitors.

In my submission, I made a few comments about issues that I think need to be addressed. Whether or not they ultimately will be would be in the hands of the new commission rather than in

the hands of Parliament or the Government in so far as the bill is concerned, because that detail is not gone into in any way.

Whether or not that detail should appear in a bill is another question. However, if we see a need to sort out a problem—which the Roberton review said existed—which is that the complaints process is not fit for purpose, we really should look at tackling what the issues are that make it not fit for purpose and what we need to do to make it better. That is not really being addressed by the bill.

In my submission, I suggested a few things that need to be addressed, such as the fact that a complaint needs to have a definite prescriptive point and could not be made after a certain point. At the moment, the Scottish Legal Complaints Commission is given a lot of leeway to allow complaints that are many years old, whereas the Scottish Legal Complaints Commission gives solicitors a very short time in which to respond to what can be very complex and detailed issues that involve a solicitor having to go through their files, extract information and compile it. They might be given only a week or two to respond, yet the Scottish Legal Complaints Commission can take months to reply. There is unfairness and imbalance there.

Often, full disclosure is not made to both parties about the documents that the Scottish Legal Complaints Commission has before it. It also gets involved in what I would class as professional negligence matters, whereby an administrator within the Scottish Legal Complaints Commission makes decisions on points of law and on what would be classed as a professional negligence matter. That should really be dealt with through the courts and through proper evidence, proper legal arguments and proper legal knowledge of the situation.

Often, the powers that the complaints people within the Scottish Legal Complaints Commission have are just too overarching and too great for what they should be doing. There needs to be some balance. Although mediation is offered to both parties, if one party does not accept mediation, it does not happen. If mediation was made compulsory for complaints, we would see a lot of complaints being settled earlier without too much problem and without the expense that the Scottish Legal Complaints Commission currently costs.

The Convener: Thank you for that. I want to ask another small question, though I am mindful of the time and the fact that there are still two colleagues I need to bring in.

In your written evidence, Naeema, you say with regard to the Law Society's dual role:

> "there is a risk of conflict and bias, as a result of the real possibility of injustices being done, both for the professional and the public."

Can you give an example of what that risk would look like?

Naeema Yaqoob Sajid: Oh, gosh! Chris Kenny put it very well when he said that the perception is as important as the reality. I therefore do not think that going into examples will really help the committee.

This is very much about one organisation wearing two hats, which, to me, is a direct conflict of interests. It does not matter what words we use or how we try to change where the balance is struck; the reality is that, if one organisation wears both a representative hat and a regulator hat, that is a direct conflict. That is my starting position. If our profession is built on the principles of the rule of law, fairness, justice and equality, how does all of that fit with one organisation wearing both hats?

The Law Society carries out its role as a representative of the profession very well. Indeed, I have many colleagues and friends in the Law Society and I work with it on a number of initiatives. However, if it sets the standards, is representative of the profession and then also adjudicates on people who have been seen to fall short of the standards, that seems to be a direct conflict—I cannot put it in any simpler terms.

The Convener: No—that was very helpful.

Naeema Yaqoob Sajid: We could compare it with other professions and say that they self-regulate, but we have to see each profession in isolation and in the light of the role that it plays. The legal profession has principles to which we must adhere and that are different to those of other professions.

The Convener: Thank you for that. I call Annie Wells.

Annie Wells (Glasgow) (Con): Good morning, panel. I have a couple of small questions that I hope will generate some conversation.

First, what are your views on the need for entity regulation as proposed in the bill? Chris, do you have any thoughts on that?

Chris Kenny: This is one of the stronger parts of the bill, and it is one of the areas where the introduction of alternative business structures has led to benefits for the entire sector.

The legislation on alternative business structures in England is far too complex. The provisions in the bill are possibly too complex, too, but they are, I think, better. The English legislation specified the need for a senior professional post and a senior finance and administration post within an ABS, so that people could be assured that it

was a robust and well-managed organisation that was not going to disappear into bankruptcy overnight and that proper professional standards were being adhered to. Very wisely, the Solicitors Regulation Authority effectively translated those posts into controls at the level of the individual firm.

To me, that seems quite important, because, although something might have gone wrong for an individual—and although it might be possible to put it right quickly—the cause might not have been rampant lack of professionalism by the individual lawyer. It might have been something to do with, say, lousy administrative systems in a firm or something harder to grasp around culture. Finding a way for regulators to get a grip on those kinds of issues when they emerge via casework, as well as providing the right incentives for firms as good businesses to concentrate on both areas, will be really important.

Annie Wells: Thank you.

The Convener: If someone has anything to add, that is grand. If not, I suggest that, in the interests of time, we move on.

Annie Wells: I have one further question, which I will put to Professor Mayson to begin with. In your opening remarks, you talked about making it an offence to use the title of "lawyer" with intent to deceive the public in connection with providing legal services for fee, gain or reward. Do you want to expand on your earlier comments?

Professor Mayson: Not greatly, but I would say that, for my money, the expression "lawyer" is, in ordinary parlance, too often used with some modifying adjective. People will talk about, for example, "retired" lawyers, "non-practising" lawyers, "trainee" lawyers, "academic" lawyers and so on. All those people are, to some extent, legally qualified, and to be able to label oneself as a lawyer in those circumstances seems to me to be quite reasonable. Actually, if you look at the bill's proposals on allowing the unregulated to come within some form of regulation by the commission, many of those people might legitimately call themselves—and be called—lawyers. To make it an offence would seem to me to cut across the very good policy objective of regulating the currently unregulated, so I am not in favour of that.

I think that, for the consumer, the issues are whether someone is competent, which depends not on their title but on what they are authorised or accredited to do and whether they are regulated, which can be picked up from a register. Again, that does not have to be connected to a profession and, in the future, it will be unregulated as well. I think that the real consumer issues are already caught by the bill in the two offences in sections 83 and 84—job done.

Annie Wells: That answered my question perfectly. Thank you, Professor Mayson.

The Convener: Karen Adam is next.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning. In the interests of time, convener, I am happy to open my question up to whoever has a burning desire to answer it. What are your views on the proposals that would allow regulators to disapply rules with the aim of allowing new services and legal technologies to be trialled? Would they lead to more innovation? Who would like to comment on that? I have put you on the spot.

The Convener: Naeema, do you want to comment?

Naeema Yaqoob Sajid: No. I would put Brian Inkster on the spot on that. [*Laughter*.] I think that he is probably the best person to lead on it, and others may follow.

The Convener: That is excellent. You have pushed your colleague forward. Brian, will you have a crack at answering Karen Adam's question?

Brian Inkster: I am not sure whether I am the best person to lead on that question, but I will have a crack at answering it. I think that it is about a relaxing of regulation to allow things such as new technology to come into play. Is that right?

Karen Adam: Yes.

Brian Inkster: I think that the idea that that is necessary has maybe been overstated. To what extent do we need to relax regulation in order to see whether new technology is going to work for the public? This is maybe pie in the sky stuff rather than actual, necessary, needful stuff. There has been talk about sandboxes where people can play with technology safely and know that the regulation will not apply while they are doing that. I think that it is fair enough to have those provisions in the bill, but I do not know that there is a desperate need for them or how much they will be used. There is no harm in having them in the bill, but I would have thought that the need for them is very limited.

Chris Kenny: I wonder whether, in practice, much will turn on the mindset of innovators and whether they are prepared to be open with regulators in the early days and ask whether things will cause any problems. It is also about regulators being open to innovation and encouraging the measured taking of risks. The extent to which the provisions will lead to the disapplication of any rules, rather than just a degree of transparency at a level of detail that might not otherwise exist, perhaps remains to be seen.

Like Brian Inkster, I do not believe that there is any harm in having the provisions just in case there is a great discovery in silicon valley tomorrow that can transform legal services in Paisley next week.

Karen Adam: Thank you.

Professor Mayson: May I add something?

The Convener: Yes. Can you do it in 30 seconds?

Professor Mayson: It seems to me that innovators and entrepreneurs who are not lawyers and for whom regulation is currently a barrier are more likely to go into the unreserved territory. That is why the proposed powers for the commission to regulate the unregulated are so welcome and so necessary, because that is where a lot of consumer harm could be done by innovation and entrepreneurialism that is not controlled.

The Convener: Thank you. Naeema, would you like to comment in 30 seconds as well?

Naeema Yaqoob Sajid: I very much share the thoughts that my fellow panellists have expressed. My only additional comment is that we have to be as inclusive as possible, and I hope that the provisions will add to that as opposed to taking away from it.

The Convener: That concludes our questions. I thank all our panellists. It has been a very interesting and enlightening session. I will suspend the meeting briefly to allow a changeover of witnesses.

10:59

Meeting suspended.

11:03

On resuming—

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

The Convener: We now move to our fourth agenda item, which is our final evidence session on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill at reconsideration stage. I welcome to the meeting Shirley-Anne Somerville, who is the Cabinet Secretary for Social Justice, and her officials. Liz Levy is unit head of children's rights and the bill lead, Shona Spence is from the bill team and Rachel Nicholson—who is joining us remotely online, and has just popped up in front of me—is a lawyer in the Scottish Government's legal directorate. Welcome, and thanks to you all.

I also welcome Martin Whitfield, who has joined us for this evidence session. I will, depending on the time, allow Martin to ask questions.

I refer members to papers 4 and 5, and I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): Thank you and good morning, convener.

I am grateful for the committee's careful consideration of this important bill. As the committee is well aware, the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was passed unanimously by the Scottish Parliament in 2021, but could not receive royal assent due to its referral to the Supreme Court by the United Kingdom law officers. The Supreme Court judgment has significantly impacted on our ability to legislate for human rights in Scotland, although I stress that we very much respect the Supreme Court's judgment.

In amending the bill to address the judgment, I tried to balance three considerations: protecting children's rights to the maximum extent possible; minimising the risk of another Supreme Court referral; and making the law as accessible as possible for users. I reached the conclusion that the maximum effective coverage for children's rights in the present devolved context is for the compatibility duty to apply only when a public authority is delivering devolved functions that are conferred under acts of the Scottish Parliament or common-law powers, which means that it will not apply when powers are delivered under acts of the

United Kingdom Parliament, even in devolved areas.

The duty to read and give effect to legislation in a way that is compatible with the UNCRC requirements, and the power to strike down incompatible legislation or to issue an incompatibility declarator, will apply only in relation to legislation originating from the Scottish Parliament. The Supreme Court judgment means that this Parliament's power to give the courts remedial powers is limited by the mere fact that existing statutory provision happens to be in an act of the Westminster Parliament, even when such powers concern matters on which the Scottish Parliament could—and frequently does—legislate.

That has resulted in a disappointing loss of coverage for children's rights compared with what we had originally hoped to achieve. Although we have tried to minimise complexity in the approach that we have taken, the Supreme Court judgment means that the duties will not be straightforward to understand, as we had hoped them to be.

However, the bill will still provide legal protection for children's rights that is not currently available in Scotland or, indeed, in any other part of the UK. We should also remember that, although the sections of the bill that are impacted by the Supreme Court judgment are powerful provisions, other important provisions in the bill will mean that children's rights are respected in the first place and will help to ensure that our statute book is fully compliant with the UNCRC requirements.

The bill requires Scottish ministers to set out and report on how they are giving further and better effect to children's rights regardless of whether the compatibility duty applies, and for listed authorities to prepare and publish similar reports.

The bill also requires the Scottish Government to carry out a child rights and wellbeing impact assessment for decisions "of a strategic nature" and, when it introduces any new Scottish legislation, to make a statement about its compatibility with UNCRC requirements.

The more limited scope of the compatibility duty means that it is even more important to create a lasting cultural change about children's rights. I am confident that we can deliver that as a result of the more widely spread support that we are putting in place. That includes a model child-friendly complaints process that can be used regardless of whether the compatibility duty applies, and a wide range of support, training and guidance for public authorities on taking a children's rights approach.

In the context of the current devolution settlement, the most straightforward way to give children and young people the human rights protection that they deserve is for the UK Government to incorporate the UNCRC into UK law. We have an important opportunity to lead by example, by passing the bill.

The Convener: Thank you very much, cabinet secretary, for that detailed and informative opening statement.

The cabinet secretary will be aware of how keen I am to engage with young people and to represent their voices as often as I can. My first question is not my own. It is from Arden, a member of the Children's Parliament, who says:

> "I would love to ask how the Bill will change things for children and if children are going to help implement the Bill and be consulted on."

Shirley-Anne Somerville: Thank you, convener, and I thank Arden for the question.

Now that we have gone through the bill process, and as we look forward to what will come next, after it is passed—as, I hope, it will be—it is important to ensure that children and young people remain very much at the heart of everything that we do. It is also important that we remain focused on the dialogue that we are already having with children and young people, and that we keep it going. For example, one of my most recent meetings on the subject was with two members of the Scottish Youth Parliament—not the Children's Parliament, where Arden is—to talk about the issues that are in the bill and, importantly, about the steps that will happen next.

We need to ensure that we give children and young people much greater awareness of their rights, and we currently have a number of funding streams to ensure that that is happening. As I said in my opening remarks, that will, we hope, help Arden and others to look not just at where we have had to change the legislation at the reconsideration stage regarding the compatibility duty but, more widely, at their rights and how to ensure that those rights are being respected and observed.

A great deal of work has gone on and will continue. I and other cabinet secretaries and ministers meet Children's Parliament and Scottish Youth Parliament representatives, and we have the Cabinet takeover as well. For a number of years, the UNCRC has been one of the issues that they have spoken about. It is for them to decide on the topics that they address, but I would be surprised if that discussion does not continue.

The Convener: We move to questions from my colleague Meghan Gallacher.

Meghan Gallacher: Good morning, cabinet secretary and others on the panel.

Last week, the committee heard from witnesses that they felt some frustration about the fact that it

has taken more than two years for the amendments to come back to Parliament and for discussions on the UNCRC to restart. Why did it take that length of time to bring the bill back for reconsideration? What processes took place during that time, before the amendments were lodged?

Shirley-Anne Somerville: Looking into the matter has been a complex process. One of the reasons for that—as I also said in my opening remarks—was very much our wish and desire to ensure that we still had the maximum coverage possible.

That is why we looked at a number of avenues to see the different ways in which the bill could be amended. Those provided, for example, further coverage, but increased the level of complexity in the bill, which—as the committee heard—was a concern. We tried very much to hold to the intentions of the original bill that was passed in order to seek as much coverage as possible.

During the intervening period, there has been careful line-by-line scrutiny in the Scottish Government of the Supreme Court judgment. There has been a great deal of engagement with the UK Government, which initially included engagement with the Secretary of State for Scotland, to see whether there was any willingness to do this in another way—for example, to change the devolution settlement to allow the bill to remain as it was originally passed—but the Secretary of State was not willing to consider that.

We have had a number of periods of stakeholder engagement in which we went through the options that we could provide. The drafting element then came in. There has been very close working about the specifics at lawyer-to-lawyer level, with the Office of the Advocate General, because we were keen to get as much assurance as possible that what we were doing would provide the maximum coverage but would not carry the risk of another Supreme Court referral.

Once I had taken a policy decision on where we wanted to go with the different options that were available, those were tested with stakeholders, and the detailed amendments were shared with the Office of the Advocate General. The two Governments were doing that important work at lawyer-to-lawyer level, because I wanted the bill to have the maximum impact while also reducing the risk of another Supreme Court referral.

I hope that I have talked the committee through the process, but I am happy to go into further detail on any of the steps, if the committee would find that useful.

The Convener: Cabinet secretary, would you like to bring in Rachel Nicholson at this point? She has indicated that she might wish to speak, but it is up to you.

Shirley-Anne Somerville: Certainly—yes.

Rachel Nicholson (Scottish Government): I want to come in on the first question, to point out that there are a number of provisions in the bill that will allow for children to be consulted on a statutory basis, when the bill is passed. Those provisions are in relation to the children's rights scheme, to guidance and to reporting. I add that to answer the first question about how children will be involved in development of the bill and the provisions when they come into law.

11:15

The cabinet secretary has covered the question about what was happening during the two years following the judgment. Ultimately, we had to look at the finding of the Supreme Court judgment that focused on section 28(7) of the Scotland Act 1998, which states:

"This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland."

We had to look at that not only in the sense that it is an affirmation of the doctrine of the sovereignty of the UK Parliament, but in the sense that it seems to impose a limit on devolved competence. It was very important to work out the exact detail and implications of that so that we could try to retain as much coverage as possible. As the cabinet secretary has touched on, the further we try to go in terms of coverage, the more complexity becomes layered into the different drafting iterations that we develop.

The Convener: Thank you, Rachel. I move straight to Fulton MacGregor.

Fulton MacGregor: Good morning, cabinet secretary and officials.

Cabinet secretary, the committee has already heard, in written evidence and in the oral evidence taken last week, a lot of support for the approach that you have taken, as it aims to minimise the risk of referral to the Supreme Court, as you have said. However, in your letter, you indicated that there was the potential to have gone further. Can you elaborate on that and on why, in the end, you chose to keep the approach that has been outlined?

Shirley-Anne Somerville: We explored what could be done to achieve more coverage for UK acts in devolved areas within the compatibility duty. One example of how we sought to do that was by looking at an approach that would have differentiated between existing and future acts in devolved areas, so that, for example, the compatibility duty would have applied to existing, but not future, legislation.

We also tried to identify ways in which future acts in devolved areas could be included by adding in a regulation-making power under which Scottish ministers could, with the approval of Parliament, extend the compatibility duty to devolved functions that are created under UK acts in the future, even if that were to be done on a case-by-case basis. The reason why we chose not to do that goes back to the complexity that the bill would then have had. It is already a complex piece of legislation, but it will be more complex if those amendments are passed and the bill becomes an act.

When we looked at the complexity issue alongside our assessment of the risk of another referral to the Supreme Court, we, as a Government, came to the view that greater coverage would, in effect, make the provisions too complex for users. We did some testing within the Scottish Government and realised that we were in danger of producing legislation that would be too complex to use, whether by children and young people, their representatives or the public bodies.

We also considered that compatibility could have applied when public authorities are delivering their duties under powers that are conferred by amendments to UK acts that are made by acts of the Scottish Parliament. We do not feel that there is a legislative competence barrier to doing that but, again, the provisions that would come from that would be extremely complex. That balance of the risk of complexity in coverage, and the risk of a Supreme Court referral led me to take the decision that I have taken.

Fulton MacGregor: Thank you for that very full answer. Building on that, as I said earlier, the approach that you have taken seems to have widespread support in the sector, particularly from children’s organisations, many of which we heard from last week. That support is based, I think, on a real feeling in the sector that there is no alternative way to achieve incorporation at this point, given the Supreme Court’s decision. Do you agree with that? Were there any realistic alternatives?

Shirley-Anne Somerville: When the Supreme Court judgment came through, the Scottish Government asked the Secretary of State for Scotland to look into whether the current devolution set-up could be changed to allow the bill to proceed, as the Parliament had voted for. That would have been an alternative, but the Secretary of State for Scotland was not willing to consider it. On that basis, we needed to adapt the bill. That was clearly disappointing, but that was the state of play, so we are where we are.

The other obvious way to achieve greater UNCRC incorporation is, of course, for the UK Government to do what we are doing within our limited powers, and put the UNCRC on the UK statute book.

Those are two alternatives, but they were not open to the Scottish Government; they needed the UK Government to take action.

Paul O’Kane: Good morning. I am keen to understand some of the issues around the complexities and concerns that have been raised with us by the Convention of Scottish Local Authorities, Social Work Scotland and others. Social Work Scotland described the amendments as “potentially impossible” to navigate in this landscape. There have been calls from front-line workers, who will have to interpret and work through the legislation, for sector-specific guidance. First, what work is being done on guidance in general, as outlined in the bill? Secondly, is the cabinet secretary open to the development of sector-specific guidance for practitioners?

Shirley-Anne Somerville: I very much recognise the points made in evidence that was given last week. My officials and I have been having the same types of discussions with public bodies. As I have said previously, I recognise that the bill is a complex piece of proposed legislation, and it will become more complex if the amendments are passed. Regarding the evidence that was given last week, I assume that the request for detailed sector-specific guidance is a request for us to set out how policy and practice in a particular area need to change to become UNCRC compliant. The evidence from Andrew Tickell was very pertinent in that regard. He described how the UNCRC did not lend itself to a list of rules; it is more a list of principles that need to be interpreted, and that makes sector-specific guidance difficult. It is for the Scottish courts to decide, when cases are brought to them, what constitutes a breach in the context in which services are being delivered.

However, I recognise that we need to support public authorities, and there are a number of ways in which that will be done. There will be non-statutory guidance on taking a children’s human rights approach, which will be available by the end of the year for those involved in public service delivery in Scotland. We are updating external child rights and wellbeing impact assessment templates and the external guidance, and the UNCRC innovation fund is available. By summer 2024 we will have a national child rights, skills and knowledge framework in place, which will provide a single point through which to access new and existing training resources on children’s rights for a wide range of sectors.

There is also the statutory guidance that is contained in the bill. The bill requires Scottish ministers to issue guidance to support public

authorities to comply with the compatibility duty and to promote children's rights and respect in practice. A group has been convened to consider the development of that statutory guidance, and that will include a framework for reviewing compatibility. We cannot consult on that draft guidance until the bill is finalised, but we are keen to move on that at speed afterwards. So, we have some non-statutory guidance, the statutory guidance and some of the work that we are funding—for example, in the Improvement Service—to assist local authorities.

I very much recognise the concern about the complexity as it stands. We are keen to work with COSLA, SWS and others to see what more can be done in that area. It may not be sector-specific guidance, as they talked about, but we recognise the concern and are keen to work with everybody to deal with that.

Paul O'Kane: I welcome the cabinet secretary's undertaking to do that further work.

Does she also recognise the concerns that have been raised around general resourcing challenges and how the work will involve a demand on capacity and resources that are already stretched, particularly coming back to the point about front-line practitioners? What discussions is she having with ministerial colleagues around future budget planning and the need for increased capacity?

Shirley-Anne Somerville: We have recognised that putting the bill into practice once it becomes an act is important. A piece of legislation is just that: it is a piece of legislation. How we support children and young people and public bodies so that it becomes genuinely meaningful is the important part.

In my previous answer, I talked through some of the funding work that is already in place to support that. Obviously, work on implementation will need to continue once the bill becomes an act, if Parliament sees fit to pass the amendments. We are very clear that that work will have to continue.

Budget discussions will take place as part of the normal discussions that we do in relation to the budget, but we are keen to work with local authorities and other public bodies to ensure that we get the maximum effect out of the bill and that it is genuinely meaningful once it becomes an act. I recognise that that work does not stop if and when the bill is passed.

Maggie Chapman: Good morning; thank you for being here. I have a few questions on a couple of different areas, but I also want to give voice to one of the young people who has been involved in discussions around the bill. This question comes from Ellie, who is a member of the Scottish Youth Parliament:

"If the Scottish Government are going to be working out what laws are and aren't within scope of the bill, then thinking about, over time, bringing some laws into scope, how will they be involving children and young people from the very beginning in ensuring they prioritise the most important laws?"

Shirley-Anne Somerville: I think that that question may be from one of the members of the Scottish Youth Parliament that I met last week. Forgive me if it was not but, if there are not two Ellies involved, I think that it was. We talked about that issue last week, which is a really important aspect of the process. We recognise that some acts are in scope and that some are not. At that time, we talked about looking at what is most important for children and young people, and I was keen to pick up on their suggested ways forward. Myriad acts will be outwith scope and we have to think about how we best take the work forward and what the priorities for children and young people are. If we are looking at moving acts into Scottish parliamentary debate and therefore within scope, that will not in any way involve a short time period.

As I said last week, we will continue with our suggestion that we work together to look at where, for example, there is a potential for greater inequalities to arise if we have some acts that are outwith scope, and at where the priorities are for children and young people. We are keen to start the work in that area. I am sure that we might get on to further questions about audits and so on in due course, but, as part of that work, we need to involve children and young people right from the start and find out what their priorities are, because that will take some time—and much longer still after that to then implement. I am keen to work on their priorities and to put them at the front and centre of what we are doing.

11:30

Maggie Chapman: I hear—and welcome—your clear intention to continue to keep young people involved in the process.

Linked to that is an issue with the three-year implementation programme, which has been talked about and on which some work has already started. Last week, we heard clearly from Together (Scottish Alliance for Children's Rights) and others that the implementation programme should continue to help with the development of resources for children, their families and others to help them understand their rights and grow their understanding and literacy in this area. There is also the important issue of funding and capacity building to increase the number of specialist children's lawyers. Is that something that you are considering? Can you, at this stage, commit to supporting the continuation of the implementation programme?

Shirley-Anne Somerville: As I mentioned to Mr O'Kane, decisions on future funding will be a matter for the budget process as we go forward, and I look forward to the committee and, indeed, all political parties coming forward with suggestions—preferably costed—to see whether we can move on this area as well as on others.

However, the question, again, highlights a very important point. I will not repeat myself, convener, as I think that I touched on some of this in my answers to Mr O'Kane, but it points to recognition of the fact that, just because the act has been passed, that does not mean that this is all over. When I met the members of the Scottish Youth Parliament last week, it was explained to me that this is, in many ways, only the beginning—although it might not feel like that to some of us who have been around this process for some time. We are keen to look at the range of support that is in place to ensure that it is working effectively, and we are also keen to work with children, young people and public bodies to ensure that we are looking at what more needs to be done.

I have already mentioned the UNCRC implementation programme. Clearly it will need to continue as the provisions in the bill are commenced—I hope, next year—and we will continue to work with public bodies, children, young people and their representatives to build on the comprehensive support that has already been provided, for example, through the rights-respecting schools awards, the funding for Clan Childlaw and the funding for the Improvement Service.

Maggie Chapman: I heard your earlier responses to Paul O'Kane. However, this is about not just funding but using the funding that has already been or will be allocated in the most effective ways and ensuring that young people's voices are part of the discussions around that. I have had reassurance from you in that respect.

My third question is on reporting periods. Section 15 sets out the reporting duties of listed authorities and the timings of reporting cycles. The first period indicated in the bill ended on 31 March 2023, which has obviously been and gone. I note that none of the amendments that you have submitted deals with that issue. Would you be supportive of a mechanism to fix things in later stages, and do you intend to lodge an amendment to that end?

Shirley-Anne Somerville: The issue is a consequence of the bill's referral to the Supreme Court. For clarification, I should say to the committee that I intend to lodge an amendment to change the reporting dates so that listed authorities have clarity on the timing of their duties. It is, of course, for the Presiding Officer to determine whether such an amendment is admissible under standing orders for a reconsideration stage, which is not something that the Parliament has gone through before. It is certainly my intention to lodge that amendment, though, and it will then be for the Presiding Officer to take a view on it.

Maggie Chapman: Thank you. I will leave it there for now, convener.

The Convener: I might pick up on the consequences of the referral and things that have had to be missed as a result, but I have another question to ask. It has been suggested that duty bearers should act compatibly with the UNCRC requirements, regardless of the bill. However, some have highlighted a risk in, say, local authorities complying only with the areas that are open to litigation. How are you going to address those concerns?

Shirley-Anne Somerville: I would be very concerned if public authorities stopped taking a children's rights approach when delivering their duties just because they are not in scope of the compatibility duty. As I said in my opening remarks, a real desire has been expressed by the Parliament and, more importantly, by children and young people for that approach to be taken regardless of whether the legal compatibility duty comes into effect.

Regardless of the scope of the legal duties in the bill, UNCRC is already at the heart of getting it right for every child, as the convener will be well aware, and it is important that we consider that in its entirety. We are keen to work with local authorities to take a children's human rights approach in the delivery of their services, regardless of the source of their powers. I know that children and young people want us to do that as legislators, and it is important that our services are delivered in that way. We were speaking earlier about the funding that is in place, and we should not differentiate here: it should not be a matter of just taking that approach when the legal compatibility duty arises while somehow leaving aside the rights of children and young people, as if they are lesser rights, when they are impacted by a UK act, for example.

We are keen to work with public bodies to ensure that we are still considering that approach in the round, regardless of the legal compatibility duty, because it is the right thing to do. As I stressed in my opening remarks, although we are disappointed about the changes that we have had to make, there is still a lot in the bill that requires that wider look to be taken, rather than just considering whether something will end up in court.

The Convener: In an earlier answer you referred to the consequences of the referral of the

bill to the Supreme Court. Apologies for taking you back a little bit, but I wanted to ensure that you had every opportunity to put any other consequences on the record.

We have talked about coverage and the delay, but we also heard last week from young people who understand somewhat the delay in getting it right. They have waited this long, so they are generally supportive. Are there frustrations that you would like to share with us just now? How have those frustrations been mitigated with regard to the amendments?

Shirley-Anne Somerville: I absolutely appreciate that children and young people in particular want us to just get on with it, as we were told at the Cabinet takeover, and I have kept that in my head as we have been considering the situation, trying to ensure the maximum coverage in such a way that the bill is a piece of living and breathing legislation that will make a difference to children and young people. There has been frustration within Government that we have not been able to move faster, and I know that that is very much felt by children and young people and their representatives, too. I still think that it was important to take the time to consider those matters, and the work between the Governments at lawyer-to-lawyer level took time, but I certainly felt that it was important to get the maximum coverage possible.

There has been frustration. To mitigate some of that, we have tried to ensure that we are involving children and young people, their representatives and others as we have looked at the options that have come through. Clearly, we cannot go into the legal advice that we receive within the Scottish Government or the lawyer-to-lawyer discussions that have happened between the two Governments, but we take the conclusions of those and we have been trying to discuss them with stakeholders as the situation has progressed, to keep them up to speed.

We have also continued to work on the implementation, because not everything had to wait for the bill to be passed for us to consider what more we could do in the education field to ensure that children have a much greater understanding of their rights.

I do not know whether members have had the opportunity, either as constituency members or with the committee, to visit their local schools and talk to children and young people about their understanding of their rights and how they can take that forward. Certainly, one of the most inspirational parts of my time as Cabinet Secretary for Education and Skills and in my current post has been listening to children and young people express with passion—as well as a wee bit of frustration—what the bill can and should mean for them. I thank all children and young people for their patience as we have gone through the process, but also for their work in, I hope, our getting the bill as right as it can be under the settlement that we have.

The Convener: Thank you. I will move on to Karen Adam.

Karen Adam: Good morning, cabinet secretary and officials. On that point, on Friday, I had 19 primary school children in my constituency office, and it was inspiring. We should listen more to the clarity of children's words.

Some witnesses have suggested that, over time, more legislation could be brought within the scope of the UNCRC legislation. They have suggested ways to achieve that, such as applying UNCRC requirements to future bills, such as the Promise bill, and committing to minimising future Scottish Parliament amendments to United Kingdom acts. What is the Scottish Government's long-term plan on UNCRC incorporation, given the narrower scope that it now has?

Shirley-Anne Somerville: I will first deal with the example of the Government avoiding making amendments to UK acts. Clearly, there will be an impact on what the Government thinks about as it plans legislation in the future. When we are deciding whether a change of law should be expressed as a freestanding provision or as an amendment, we look at parliamentary resource implications and accessibility to law. In the future, the Government will consider the implications of such decisions on UNCRC scope—that will be built into how we look at things.

Of course, bills will go through Parliament that measures could be attached to. Ministers are open to doing that, but we need to be careful, so I will not give an overall commitment to that, because it is important that we look at issues on a case-by-case basis. For example, we need to consider what provisions would benefit from being in an act of the Scottish Parliament, what would happen to the scope and timetable for a bill if it was already progressing and what level of consultation would have to be undertaken if we were to put something into a bill as it goes through. Would that delay a bill? Would members feel that it was a reasonable way forward if the measure was not in the bill at stage 1 and evidence had not been taken on it, for example? People might have concerns if we do not consult properly.

We need to look at issues on a case-by-case basis. It is an interesting proposal, but we will need to consider the issues each time that we look at such provisions. My encouragement to stakeholders and others is that, if they feel that there is an opportunity, they should absolutely reach out to officials and the ministers responsible

for those bills to see what can be done and to have that conversation. Clearly, it is not as simple as lifting something from a UK act and putting it somewhere else, because Government and Opposition members may want to change, update and modernise the law.

We therefore need to be mindful of that. We are certainly not closing down the idea, but we will need to look at the issues on a case-by-case basis.

Karen Adam: Staying on the theme of incorporation, I am sure that you are aware that the Scottish Government plans to introduce a human rights bill incorporating four international human rights treaties into Scots law. One witness, Dr Tickell, said that the difficulties facing the UNCRC bill apply "just as powerfully" to further incorporation. What is the Scottish Government doing to prepare for that? Is it considering what would be in scope and what the impact would be on the ability to ensure that that bill includes provision for enforcement?

11:45

Shirley-Anne Somerville: Dr Tickell raised a very important point. The human rights bill, which has been consulted on, is already some of the most complex legislation that the Parliament will have had to consider since being reconvened. Therefore, we absolutely have to learn lessons from the UNCRC bill about its scope and how we deal with it. We also have to learn lessons about the difficulty that comes with such complexity.

Stakeholders will wish to have many things in the human rights bill, and my ask all along, as we have gone through the consultation for the bill, has been that if stakeholders do not think that we have gone about things in the right way, they should be encouraged to come forward with alternative proposals. They should not just say that they would like something to be in the bill or that they would like something to be done differently; we genuinely want to know how we can work together within the devolved settlement.

The UNCRC bill has been an example of the limitations of the devolved settlement and of the willingness of the UK Government to seek Supreme Court judgments, et cetera. We need to be very cautious about that, because I do not want to get into the same position with the human rights bill, which I think is even more complex legislation than the UNCRC bill.

To say that the human rights bill is complicated is an understatement, and the conversations that we are having in relation to the UNCRC bill throw into sharp focus some of the discussions that we will inevitably come back to as part of the human rights bill—particularly when stakeholders ask us to go further when the Government or others might have concerns about scope and legislative competence.

The Convener: I am going to ask a question about having an audit or review, which I think loosely fits in here. We have heard calls from witnesses for a legislative audit or review. What can you tell the committee about your response to those calls? Are you considering a review of what legislation is incompatible? Have you committed to undertaking that work? What would it involve and could it have unintended consequences? I know that COSLA has made a suggestion and that Together has offered a model.

Shirley-Anne Somerville: The question has been an interesting part of the discussions that we have had with stakeholders as we have prepared for the reconsideration stage. It is not only about the amendments but about how we deal with the implications of the bill as it stands.

The UNCRC strategic implementation board was informed at its last meeting that I have asked officials to commission a review of UK acts in devolved areas. I make it clear that that review is not to identify whole UK acts that would be worth converting into Scottish Parliament acts but to identify provisions in UK acts that could be converted.

As the committee is well aware from its own discussions on legislation, an entire UK act could have hundreds of provisions in it. The Scottish Government might wish to amend such legislation, as might the Scottish Parliament—I am sure that members might wish to make amendments. That will take time to go through the parliamentary process. As I mentioned in my answer to Maggie Chapman, we are also keen to look at the priorities of children and young people as we consider the audit.

I have already made a commitment to such work. At this point, I cannot give a timescale for it, because we need to scope out exactly what it will entail, but I am keen to get it initiated as soon as is practically possible. As I said, it is very important to involve children, young people and others who are impacted in how we can generate findings in a phased way and how we can take them forward.

We are keen to see what the Government can do to respond to requests in relation to an audit and to see how we can work together with stakeholders on how we do that, which is also important.

The Convener: We would welcome being kept informed about that. When you are in a position to issue timescales, please write to the committee and let us know.

Annie Wells: Good morning, cabinet secretary and officials. The committee has heard repeated calls to get the messaging right on the bill and to ensure that it is fully explained to not only rights holders but duty bearers. What plans does the Scottish Government have in place to do that?

Shirley-Anne Somerville: On 18 October, I wrote an open letter to children and young people to provide an update on the bill, which explained why we are seeking to amend it and how it will apply to them. We are also keen to continue our work on communicating directly with children and young people and, obviously, with stakeholders. We have touched on communicating and working with stakeholders in previous responses but, if Ms Wells would like further information on that, my officials and I can go into it in further detail.

There is a real need for us to work with children and young people and ensure that any communication is child friendly—that is very important. That is one reason why we have the rights-respecting schools award, which is available to all state schools in Scotland. We also have a communications group that is helping us to develop our approach. We have, for example, Young Scot working on a social media campaign for young people, and we are grant funding the Children's Parliament to help raise awareness of children's rights among children and young people. We also have a guide for parents, carers and family members that will be updated when, with the will of Parliament, the bill is passed and, as I mentioned, there is the Clan Childlaw funding. The Children and Young People's Commissioner Scotland will play a central role, too, but it will be very much up to the commissioner to decide how to take that forward.

Annie Wells: Thank you. In response to Mr O'Kane, the cabinet secretary has already answered some of the questions that I was going to ask, so I will leave it there.

The Convener: Mr Whitfield, I see you and I am ahead of you. I give you the opportunity to come in.

Martin Whitfield (South Scotland) (Lab): I am grateful for the invitation to this meeting, convener.

It is still morning, cabinet secretary, so I wish you a good morning. I will pick up a couple of small points for clarification. You talked about the UNCRC as one of the issues to be considered with regard to ensuring the compliance of legislation going forward, but you could not give the same reassurance with regard to legislation that is going through at the moment. In some cases, you have already reached out to third parties for discussions; I am thinking of, for example, the Promise bill. Are you envisaging a specific date after which all legislation will have to undergo UNCRC consideration, or do you expect to have an individual discussion on every piece of legislation that is introduced?

Shirley-Anne Somerville: Once the bill becomes an act, the process will become more legalised. Even without the bill being passed, we are taking it into consideration in legislation that we are working through at this stage, to ensure that things are UNCRC compliant. Other members might wish to amend bills in various ways—that is not an issue for the Government—but this is certainly something that the Government is already looking at. The bill brings it into legal focus.

Martin Whitfield: I am grateful for that response.

The Convener: We are coming to the end of the session, but I have a final question that relates to evidence that we took last week from the police. You just talked about the bill moving to being an act; I think that there is a period of six months for its enactment, but the police expressed concern about the practical implications and, in particular, whether there was going to be a cliff edge or some longer phasing in of the provisions. They gave the example of custody suites for children and said that a complete reconfiguration of their custody facilities will be required to keep children separate from adults. That will take a bit of time, and I suppose that the police are looking for reassurance that, after the six-month period, on day 1 of the legislation coming into force, they will not be in breach straight away. What support and guidance will be available in that respect?

Shirley-Anne Somerville: The timetable for the bill is up to the Parliament but, if it is passed by the end of the year, it will commence by mid-2024. By then, public authorities will have had an extra two and a half years to get ready for the compatibility duty, during which time they will have had access to a growing range of national training and support.

I hope that the six-month commencement date is not unreasonable, but it is important that we continue to work with public bodies to ensure that we support them in the process and that we look carefully at their concerns and any implications that there might be.

When the bill was introduced, it did not have a commencement date but, if my memory serves me correctly, I think that it was included at stage 2. It is unlikely that we will be able to amend the commencement date at reconsideration stage, as it is not something directly to do with the Supreme Court judgment, which is what the amendments are all about.

Again, it is up to the Presiding Officer to decide the issue. However, the date is already in the bill,

and the parts of the legislation that we are not seeking to amend as a result of the Supreme Court judgment will stand.

The Convener: That was helpful. The bill has been around for a long time and, as far as young people are concerned, I think that the good-will winds are, in a sense, behind it. Obviously, though, the committee has a duty to look underneath and work together on the detail.

On that note, I thank the cabinet secretary for her extensive contributions and her officials for appearing before the committee. That concludes this morning's formal business, and I thank everyone again.

11:57

Meeting continued in private until 12:12.

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