



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 10 December 2024

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
28th Meeting 2024, Session 6

CONVENER

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

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O’Kane (West Scotland) (Lab)

*Evelyn Tweed (Stirling) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeff Gibbons (Scottish Government)

Jamie Hepburn (Minister for Parliamentary Business)

Simon Stockwell (Scottish Government)

Nel Whiting (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 10 December 2024

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning and welcome to the 28th meeting of 2024, in session 6, of the Equalities, Human Rights and Civil Justice Committee. There are no apologies.

Our first agenda item is a decision on whether to take item 3, which is consideration of today's evidence, in private. Are we agreed?

Members *indicated agreement.*

Post-legislative Scrutiny

10:00

The Convener: Our second agenda item is to take evidence on the delay in implementation of all or some of the provisions of the following three acts: the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020; the Children (Scotland) Act 2020; and the Domestic Abuse (Protection) (Scotland) Act 2021. I welcome to the meeting Jamie Hepburn, Minister for Parliamentary Business, who is accompanied by Jeff Gibbons from the criminal justice division, Simon Stockwell from the family law unit, and Nel Whiting from the violence against women and girls unit. Good morning and thank you for joining us.

I refer members to papers 1 and 2, and I invite the minister to make a brief opening statement before we move to questions.

The Minister for Parliamentary Business (Jamie Hepburn): I am grateful for the opportunity to be with you this morning.

The Scottish Government takes seriously the implementation of legislation that is passed by this Parliament. The work that is involved in implementation varies enormously and can be particularly complex. Some provisions have little or no cost, whereas others give rise to significant costs. In addition, the implementation of legislation can rely on other organisations and agencies that we need to work with. The three acts that we are discussing today involve some significant operational issues for a number of agencies—in particular, justice agencies. In addition, in some areas, rules of court may be needed.

Many of the substantive provisions of the Children (Scotland) Act 2020 are already in force. Work is on-going on the regulation of child contact centres. We aim to lay Scottish statutory instruments next year to put the Care Inspectorate in place as the regulator. We also plan to lay commencement regulations for further provisions of the act next year, and have reconvened a working group on child welfare reporters.

We also remain committed to implementing the Domestic Abuse (Protection) (Scotland) Act 2021. Part 1, when implemented, will provide the police and the courts with new civil powers to issue domestic abuse protection notices and domestic abuse protection orders. The scheme of protection notices and orders is intended to protect people from the abusive behaviour of their partner or ex-partner. We continue to engage with justice partners and other stakeholders, including Scottish Women's Aid, which officials met recently, to talk through the operational challenges that have emerged as a consequence of the legislation's

provisions for the protection orders scheme. Some of the challenges that have been identified include clarity on the estimated number of cases and, in turn, the costs of implementing the scheme and the short timescales required to process and implement a DAPN and a DAPO, which have been identified by justice partners as extremely challenging.

There are also wider challenges as to how the views of children will be gathered. That area has been discussed with justice partners and outlined in discussions with Scottish Women's Aid. We are endeavouring to find a workable and sustainable way forward. At this stage, it is not possible to provide an informed estimate of when that will be completed, although, of course, it remains a priority for us.

Colleagues in the United Kingdom Government and other devolved Administrations, whom officials meet regularly, have faced similar concerns. The UK Government has just launched a pilot, having chosen not to resolve some of the issues that we are wrestling with—for example, how best and how quickly to take the evidence of a child.

We aim to bring into force next year part 2 of the act along with sections 2 and 3 of part 1, to provide additional protection to those who are at risk of domestic abuse. Part 2 will help to protect victims by giving social landlords the ability to apply to the court for an order that, if granted, will have the effect of allowing the landlord to transfer a tenancy to a victim survivor. However, court rules will need to be updated, which might affect the timetable. We are taking forward the wide range of tasks that are necessary to commencing the social housing tenancy provisions in part 2 of the act, including secondary legislation, changes to court procedures and work with stakeholders to develop statutory guidance. The process has taken longer than we anticipated, which is why there has been a delay in implementation. We also need to ensure that the provisions operate as intended.

We have committed to implementing the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 within the equally safe delivery plan. Once implemented, the protection orders will provide a fast and responsive mechanism to reduce the risk to potential victims of female genital mutilation, and the creation of statutory guidance will help to address knowledge gaps and offer clarity and certainty for practitioners and organisations working with victims of female genital mutilation.

To ensure the effective implementation of the act, we are working closely with external stakeholders including local authorities, Police Scotland, the Scottish Courts and Tribunals

Service and our addressing violence against minority ethnic women and girls network.

In conclusion, we are committed to commencing legislation passed by the Parliament. Those are complex pieces of legislation to implement but work is on-going.

I am happy to answer questions from the committee. Given that the acts all relate to quite specific areas of policy, I will also seek to bring in Jeff Gibbons, Simon Stockwell and Nel Whiting as appropriate.

The Convener: Thank you, minister. That was really helpful.

We move to questions from committee members, and I will ask the first question. What caused the initial delay in implementing the female genital mutilation act? At first, we heard that the delay was caused by the pandemic and that it was possibly due to the level of resources within the Scottish Government.

Jamie Hepburn: That remains the case. Covid-19 has had a substantial impact on the progression of a range of governmental activity, because people were required, as I think everyone would understand, to divert their attention to the immediate response to the pandemic. In that regard, there is a degree to which the Government has to play catch-up. There are capacity issues within the team delivering the implementation of the act. Nonetheless, work continues in that regard.

Clearly, we want to avoid any delay. The task at hand is to ensure that we take forward the provisions of the act. Resources have been mapped out for the implementation of the act and we hope to be able to fully implement it by spring 2026, but that will obviously require a lot of activity between now and then.

I do not know whether Nel has anything to add in that regard.

Nel Whiting (Scottish Government): The other thing to raise is that capacity is an issue not just for the Scottish Government but for our stakeholders. We need to engage with a range of stakeholders—the police, the Convention of Scottish Local Authorities, local authorities and the third sector—who will be at the heart of implementation. We have been working behind the scenes to consider their capacity and to prepare the way for the implementation of the act. That is why we now have a programme of intense work starting at the beginning of next year.

Pam Gosal (West Scotland) (Con): Good morning. The Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020 received royal assent in April 2020. However,

almost five years later, it has yet to be implemented.

FGM is an abhorrent practice. There are an estimated 24,000 people living in Scotland who were born in countries where FGM happens. In 2022, I asked the then Minister for Equalities and Older People:

“Has there been more of a focus on collecting that data to accurately identify communities and spaces where this horrific practice might be taking place?”

The minister responded:

“The FGM guidance has been delayed as a result of difficult decisions that had to be taken at that time, but we are now re-establishing that work.”—[*Official Report*, 22 March 2022; c 18, 19.]

Every day of delay is a day too long.

The act strengthens the legal protection for women and girls at risk of FGM. Minister, as the pandemic is now over, why has there not been any progress? You just mentioned that the act could be implemented in 2026—given that we are at the end of 2024, that is another one to two years. There still is no guarantee that the act will be implemented. Minister, can you shed any more light on that?

Jamie Hepburn: My answer to the convener’s question still stands in relation to the challenges that we face. We recognise the importance of FGM as an issue. That is why we introduced the 2020 act, why we are still committed to it and why its provisions remain important to us.

I agree with Ms Gosal that FGM is an abhorrent practice. It was already illegal and had been illegal for some time. The purpose of the act was to try to make sure that women and girls would be better protected through the system. The task at hand is to get on with implementation—I would like that to happen as soon as possible.

I am being candid with the committee about the information that I have been provided with, which is that the timescale that I mentioned is the realistic timescale that is being worked towards. There have been interruptions and there are resourcing issues—I am not shying away from that. I have given an indicative timescale of when we hope to fully implement the act. Of course, every sinew will be strained to see whether it can be done sooner than that. However, I do not want to mislead the committee by suggesting something that would be unrealistic given where we are right now in December 2024.

I do not disagree with Ms Gosal’s point that implementation has taken too long. There have been reasons for that delay. The task now is to actually get on with it and make sure that the act is put into effect so that we can ensure that cohorts

of the population who might be at risk are better protected.

Nel Whiting might have something to add.

Nel Whiting: We recognise that the law is not, in itself, enough. We have also committed to work with our stakeholders to raise awareness of the issue. That is really significant. We learned from the experience down south that, when awareness raising and training activities with stakeholders took place in England, there was an increase in the number of victims coming forward. We know that FGM is very much a hidden crime, and we want to boost the confidence of victims to come forward. The awareness raising that will run alongside the implementation of the act is a really important part of that work, and we will be progressing it.

To be clear, the commitment to implement the Female Genital Mutilation Protection and Guidance (Scotland) Act 2020—which, as the minister said, is contained within the equally safe delivery plan that was published earlier this year—is part of a suite of work that we are looking to carry out with our stakeholders to address black and minority ethnic women’s experiences of violence against women. We are looking at how to tackle extended family abuse, how to work on issues around honour-based abuse, and how to improve the multi-agency risk assessment conferencing process to better cater for the needs and issues of black and minority ethnic women. The FGM act needs to be seen as part of that bigger suite of work and the awareness raising in that area.

Pam Gosal: Thank you for those responses. I have a question on data. In 2022, I was told that some work had to be done on collecting the data to identify those communities and spaces where this horrific practice takes place. What work has been done on data collection since I asked that question in Parliament in 2022?

Jamie Hepburn: I will need to invite Nel Whiting to respond to that. I am not directly involved in that work.

Nel Whiting: That work has not been progressed; it has been paused until this stage. The data collection is part of the work that we will be doing as part of the implementation.

Pam Gosal: I just want to echo how important the implementation of the legislation is and that there are women and girls out there who are suffering. Minister, I am really hoping—and will hold you to your word—that the act will be implemented in 2026, as you mentioned, because people out there are suffering right now, especially women and girls.

Jamie Hepburn: To respond to that point, I am not directly involved in the sense of having policy responsibility in that area. However, as I have been invited to the committee, I will pay particular attention to the implementation of the act.

Pam Gosal: Thank you.

10:15

Maggie Chapman (North East Scotland) (Green): Good morning, minister and officials. Thank you for coming and for what you have said so far this morning. My first question, which might be more appropriate for Nel Whiting than for the minister, relates to the FGM act and follows on from Pam Gosal's questions about data collection and the on-going preparatory work. We know that some data is already being collected. NHS Lothian's Alnisa service reported a 50 per cent increase in FGM cases in 2023, so clearly it is collecting some data. Is there an understanding of what has driven that increase? Is it because of the awareness that was raised around the FGM act and its passage through Parliament, or is it due to the multi-agency work that you have done? Are we asking the right questions in the right places to make sure that we are collecting the right data?

I heard what you said earlier about work on implementation starting in earnest next year, but could you say a little bit more about that?

Nel Whiting: Alnisa has a representative on the addressing violence against minority ethnic women and girls network that we have set up—as do the police and other people who hold relevant data. We have brought together the right people so that we can map the data and find out what the gaps are. We are really confident that we have got the right people around the table to do that, which is the first step.

Having spoken to the midwife in question, I know that her sense is that there are several reasons for the increase. One reason—this was reported in Government reports and in the research that was done—is that, during the pandemic, there was a decrease in the number of black and minority ethnic women coming forward to seek help in relation to a range of forms of violence against women, including FGM. We have seen an increase in cases after the pandemic. Her sense is that people being able to access services again is an important reason for that increase.

NHS Lothian is really lucky to have Vickie Davitt as a dedicated resource—she is going out and raising awareness. Part of the reason for the increase is that she is incredibly proactive, which is possible, in part, due to the recovery from Covid-19. While we were all focused on Covid-19, she did not have the opportunity to do the awareness raising on FGM. She is now back and

able to focus on that, which is part of the reason for the increase.

Maggie Chapman: That is helpful, thank you. Could you give an indication of what work you are doing around some of the multi-agency guidance?

In response to one of Pam Gosal's questions, you said that some of the work on data collection had been paused. Given what you have said about the groups that you have brought together, I am interested in how you think the multi-agency work on guidance—particularly on FGM protection orders—will be tackled. Is the guidance going to be issued in 2026, all at once, or is there a way of phasing some of that work in order to reach organisations, third sector partners and others that might support or come into contact with minoritised communities?

How do the FGM protection orders fit in to the next few months of work?

Nel Whiting: Over the next couple of months, the legal division will be having conversations with the tribunal service to work out more detailed timetables. I cannot provide details at the moment, but I am willing to come back with a more detailed timetable in a couple of months.

We are just thinking at the moment. We have gathered the people together, and we are starting to do the mapping. I am afraid that the detail about when the orders will come in is a couple of months down the line.

Maggie Chapman: That is fine. Given the committee's interest and what the minister said about keeping a close eye on the matter, I wonder if reasonably regular—not frequent, but regular—updates on progress over the coming year would be useful.

Jamie Hepburn: I am very happy to commit to doing that for the specific act that we are discussing—indeed, for all three acts that we are discussing today.

The Convener: We have another question from Tess White.

Tess White (North East Scotland) (Con): Minister, you say that you have not been involved with the issue. It is a horrific crime. It is about mutilation. It is about violence against women and girls. When I read the papers for this meeting, I was disturbed and shocked that nothing has been done in four years. I read Pam Gosal's question, which was from years ago. I am shocked and appalled. You say, "Oh well, it will happen in 2026", but 2026 is the next election. Minister, you are kicking the can down the road, and letting women and girls down.

Do you accept that the women who contributed to the consultation on the bill years ago are not

just disappointed, but appalled, shocked, upset, and let down that the act has not been implemented, especially given that, as my colleague Maggie Chapman said, there is a report saying that there has been a 50 per cent increase in cases? Do you accept that it is not good enough? For you to say that you are not involved is shameful.

Jamie Hepburn: First of all, let me be clear: I do not think that the term “Oh well” came out of my mouth at any stage, Ms White. When I said that I am not involved, what I meant is that I am not involved in direct implementation because I am the Minister for Parliamentary Business. I do not have policy responsibility for that area—that is not in any way, shape or form to say that the area is unimportant. Given the level of detail with which Nel Whiting laid out the actions that have been taken to try to implement the act, it is unfair to suggest that nothing has happened at all.

The point was well made about the challenges that have been faced across Government, not just for this specific piece of important legislation but for a range of legislation—although I would observe that I do not think that delays are a systemic part of our approach to legislation. However, there are—and have been—challenges as a consequence of some of the bigger challenges that we have faced as a society.

The point was made that we have seen the 50 per cent uplift in cases reported through NHS Lothian partly as a consequence of some of the awareness-raising activities that we have undertaken. The existing resource in NHS Lothian was diverted during Covid-19, and it is only as a consequence of having gone through that period that we have been able to refocus the activity. That speaks to the fundamental point that there is not only a challenge for the Government; there are also challenges for all of the stakeholders and all of the partners that are involved in the implementation of the FGM act—and of the other two acts that we are discussing today, because they have had to divert activity similarly.

However, in answer to your fundamental question: yes, I can understand why the women and girls out there who are relying on us to implement the act would be disappointed. I am disappointed, too. If you were to ask me, “Is it good enough? Is it acceptable that we face this delay?”, I would say that, in essence, no, it is not; but we are where we are. I am determined to make sure that we implement the FGM act as quickly as possible.

You mentioned the election. The election happens to be in 2026; that has absolutely nothing to do with the timescale in which we are seeking to implement the act.

Tess White: It just so happens. Can I ask you, minister—

Jamie Hepburn: What do you mean, “It just so happens”?

Tess White: There have been six cases recorded and not a single prosecution—not one—in five years. Can you explain why?

Jamie Hepburn: The Scottish Government is not responsible for taking forward prosecutions. That would ultimately be a question for the Crown Office and Procurator Fiscal Service; it is not one that the Scottish Government can answer. The Scottish Government does not take forward prosecutions.

Tess White: The Law Society of Scotland has expressed a view that

“a formal decision never to bring the provisions into force would be unlawful.”

Maybe you have not made a formal decision not to bring the act into force, but you have been back-peddalling and doing very little to implement it.

Jamie Hepburn: I disagree. We have set out the reasons why there has been a delay. Nel Whiting has gone into some of that territory. We are happy to expand further on some of the challenges that we have faced but, to be frank, the notion that there has been back-peddalling is nonsensical and insulting.

Tess White: Nel Whiting mentioned the police, COSLA and local authorities. Not once have you mentioned general practitioners and the national health service. Why are GPs and the NHS not part of the stakeholder mapping?

Jamie Hepburn: I will bring Nel in on that but, fundamentally, when it comes to the national health service, NHS Lothian has been mentioned—

Tess White: That is one. What about the others?

Jamie Hepburn: The—

Tess White: You have not mentioned the NHS and you have not mentioned GPs.

Jamie Hepburn: Is there a possibility of answering your question, Ms White? Is there a possibility of your asking me a question and my coming back with an answer? Can we operate on that basis?

Tess White: I would just like to know why you have missed out the NHS and GPs.

Jamie Hepburn: The point that I was making is that the national health service will be a fundamentally important part of the effective implementation of the legislation. There will be a point at which women and girls present with what

could be an area of concern, and the national health service will of course be involved there. I am happy to bring in Nel Whiting to speak to that in further detail.

Nel Whiting: Apologies. I mentioned a couple of stakeholders. Absolutely, the NHS—

Tess White: It is one of the key stakeholders.

Nel Whiting: It is huge, obviously.

Tess White: Back to you, convener.

The Convener: This is a very impassioned inquiry, and I acknowledge the feelings on it, but I ask that we allow people to answer the questions without interruption.

We move on to questions on the Children (Scotland) Act 2020.

Paul O’Kane (West Scotland) (Lab): Good morning. We heard in the minister’s opening remarks about the generic challenges in the implementation of the Children (Scotland) Act 2020. The committee is keen, I think, to understand what has caused the particular delay in relation to parenting disputes and whether there are different challenges, apart from the broad general challenges that the minister mentioned at the outset. It would be helpful if those could be elaborated on for the committee, if the minister is able to do so.

Jamie Hepburn: I will happily speak to that and bring in Simon Stockwell as is felt necessary.

Some of the challenge around delay relates to the points that I have already made. The Children (Scotland) Act 2020 is wide ranging and covers a range of complex implementation activity for regulating the child contact services sector, establishing a new register of child welfare reporters, setting up a pilot of information meetings and alternative dispute resolution, setting up funding for that, and ensuring that child advocacy services are available in contact and residence cases. There is a lot of complexity in there, which speaks to part of the reason why there has been a delay.

However, a lot of the act has been implemented. Yes, there are delays to elements of it, but if you look across its various provisions, you can see that many elements are already in place. Some have been in place since 17 January 2021—namely, sections 15, 23 and 24. Others—sections 13, 14, 25 and 26—have been in place since 26 July 2021. Still others have been in place since October 2021. There are delays and challenges to some aspects of the act, but a lot of it has been implemented.

Paul O’Kane: A number of stakeholders raised concerns that, particularly on the contact centre issue, implementation has been driven by finance

and resourcing. What is the minister’s response to that? Given that he said in his opening remarks that he intends to bring in SSIs in 2025, is he content that the resourcing is appropriate?

Jamie Hepburn: Any legislation that comes with resource requirements poses a challenge in so far as we have to find that resource. However, we are committed to making sure that, where we take the act forward, it will be adequately resourced. We are bringing forward statutory instruments to further implement the provisions of the act; where resource is required, we will identify and deploy that.

Simon, do you want to say anything else?

Simon Stockwell (Scottish Government): We should have sufficient resource to implement some of the work on child contact centres next year. That has been one of our priorities. Child contact centres are not a regulated service, and there were a number of representations in the past that there should be regulation to ensure that the children and parents who use the service are safe.

10:30

We have bid for, and have been successful in getting, the money for the next financial year—assuming, of course, that the budget is passed by the Parliament. We can say that we have sufficient resources in that area, and we have had a number of discussions with the Care Inspectorate, which would be the regulator, about how much it would need to extend its function in that area. One of the reasons why child contact centres do not necessarily cost as much as some other services is that we are building on existing work. The Care Inspectorate already regulates a number of other children’s areas, and the addition of child contact centres to the inspectorate’s list will not mean that a completely new system is being set up.

Paul O’Kane: Perhaps that is something to which we will return in post-budget scrutiny.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. In your opening contribution, minister, you advised that you will make regulations for child welfare reports. It might be helpful to the committee if you could say a bit more on the Scottish Government’s plans for that.

On the regulation of child welfare reporters, Scottish Women’s Aid and Children First suggested to the committee that some worthwhile changes could be made to current practices just now, even if the full implementation of the relevant part of the Children (Scotland) Act 2020 cannot be delivered at the present time. Is that something that the Scottish Government could consider? What engagement is planned with those

stakeholders—or is the work plan still to be worked up?

Jamie Hepburn: On the first element of your question, I have already made the point about the activity that we plan to take forward, when we will make four more sets of regulations in the new year. For example, we will use secondary legislation to put the Care Inspectorate in place as the independent regulator of child contact services. That work is on-going, and I plan to make the SSIs to enable that in 2025.

The second point was on what we might be able to do just now around child welfare reporters. I am not saying that we do not want to fully implement the Children (Scotland) Act 2020, but there might be things that we could do now, short of fully implementing it. We are actively considering that in advance of implementing the new register.

There is a working group on child welfare reporters, which contains a range of stakeholders, and it met for the first time on 20 November. It was chaired by Siobhian Brown as Minister for Victims and Community Safety. The working group has a remit to look back at how changes from the previous working group are working in practice and to look ahead at what is needed for any new register.

In relation to your fundamental point and your question on how any improvements could be made now, I am given to understand that there are concerns around training, so the working group could look into that. In fact, I think that the group is going to consider that at its next meeting.

We are here to talk about the implementation of legislation, and that remains important. However, where there are things that we can do in the immediate here and now, we should seek to do that and we should try to take things forward.

Marie McNair: I do not want to put you on the spot—

Jamie Hepburn: But you are going to.

Marie McNair: You have said that you will be making regulations. Will that be at the start of 2025, or is it likely to be nearer the end of the year? I would like to get clarity on that.

Jamie Hepburn: I will perhaps bring in Simon Stockwell in to see if he can provide any more detail around timescales. Clearly that involves dialogue to ensure that the regulations are fully informed and appropriate and will achieve their specific purpose. From my perspective, that should be done as soon as possible, but with the caveat that the regulations have to be effective.

Simon, do you have any more information on timescales?

Simon Stockwell: It will probably be done around the middle of next year, to be honest. We have been looking, internally, at draft SSIs in this area, and we are speaking to the Care Inspectorate about when would be a good time for it to take on the new functions. We have another meeting planned with the Care Inspectorate early next year. The middle of next year is when I would hope to get the regulations laid before Parliament.

The Convener: Maggie Chapman has a supplementary.

Maggie Chapman: I have a quick question, which might be best directed to Simon Stockwell.

Minister, you talked in your opening remarks about how we can support children in giving evidence and participating in processes. What have we learned from the bairns' hoose model? Is there stuff that we can translate across from it? After all, really good work can happen in one bit of a world, but it does not always find its way across departmental or other boundaries. Are there things that we can learn from the bairns' hoose approach that will allow us to support children and young people to be part of the process in a safe and supported way?

Jamie Hepburn: I will defer to Simon Stockwell, as he knows more about how the bairns' hoose model is working in practice.

Simon Stockwell: Actually, we have just had another internal discussion about that, and I think that our conclusion is that the answer to your question is probably no, but we will need to look at that further.

One of the issues with contact cases is that they are mostly disputes between parents over how the children should be brought up and whom the child should see. It means that, often, there will have been no previous contact with other statutory agencies or with Bairns' Hoose—we will largely be starting from scratch. Therefore, we tend to think that we have to stick with what we have in our existing system, particularly the interviews that are undertaken by child welfare reporters to obtain information and views from the child about how they feel, whether they have experienced abuse, whom they want to live with and things like that.

We will look at the area further, but our initial view is that, although we will want to continue speaking to colleagues who are leading on the bairns' hoose model to see whether there is anything that we can learn in that respect, we think that the issues that are raised in a child contact case are quite different from the sorts of issues that Bairns' Hoose tackles. Therefore, I think that the answer to your question is "Probably not", but we will not completely close our minds to any synergies that there might be.

We are speaking to colleagues quite a bit. The issue came up in preparation for this committee, and it has come up in the past, too.

Maggie Chapman: I just thought that some of the cultural stuff, if not the process stuff, around the bairns' hoose model might be quite useful. I would be interested to know more as those discussions progress over the coming months.

Jamie Hepburn: Again, as part of our commitment to keeping the committee regularly informed, we will ensure that we take a note of that and make it part of our work.

The Convener: We now move on to questions on the Domestic Abuse (Protection) (Scotland) Act 2021. I call Pam Gosal.

Pam Gosal: Minister, today is the last day of the 16 days of activism against gender-based violence. For many women, 16 days are a lifetime. Indeed, the latest Scottish Government statistics paint a very shocking picture, with almost 64,000 domestic abuse cases reported to Police Scotland, and a reoffending rate of 65 per cent, which is a 3 per cent increase.

Next month, we will be in 2025; the last domestic abuse act was passed in 2021, which is almost four years ago. I have spoken to many survivors and organisations who put in so much effort to ensure that that legislation was introduced and eventually passed, but they are still waiting. Can you update the committee on the Government's target date for implementing part 1 of the 2021 act?

Jamie Hepburn: I recognise that there will be disappointment—I am disappointed, too, that the act is not yet fully in place. I would refer back to my earlier answers on the general challenges that we face; nonetheless, this is a very important area, and the very stark figures that Ms Gosal has provided speak to the absolute necessity for us to try to ensure that the provisions are in place as soon as possible.

There is on-going engagement with various justice partners on the challenges of the current legislation and the changes that might be required to make the act operational. Various pieces of work are under way on how we better obtain the views of children involved in cases; Ms Gosal has indicated some of the figures involved, in so far as they have been reported, but we need clarity on the estimated number of cases and, in turn, on how we would cost and implement the scheme and on the timescales required to process and implement domestic abuse protection notices and orders, which justice partners have suggested could be a challenge.

Those are the issues that we need to work through. That work is happening, or will happen,

as quickly as possible, and we would then seek to put in place part 1 as quickly as possible thereafter.

I will hand over to Jeff Gibbons to see if he can say any more on the activity that is under way and the timescales that are involved.

Jeff Gibbons (Scottish Government): I think that it is fair to say that when the legislation was passed, Parliament acknowledged that the biggest challenge would be implementation. Bringing life to the legislation was always going to be a challenge. That work has continued, and the written responses that the committee has received from Police Scotland and Scottish Women's Aid highlight some of the operational challenges that we are looking to progress.

Those discussions are continuing. We have had recent meetings with both Police Scotland and Scottish Women's Aid about options for how we might look to move things forward. We are also conscious that the challenges are not particular to Scotland. For example, although England and Wales have piloted their approach, they have avoided addressing the issue of how to take evidence from a child. That is a very difficult aspect of the legislation, which was added late, so we are looking at options around that.

I cannot give a definitive date as a timescale, but I can say that our work is moving forward, with a view to putting advice to ministers on next steps early next year. We recognise that the operational challenges are not insignificant; stakeholders have raised those on a number of occasions.

The cost factor is a matter of debate, depending on the number of cases that one feels may well be processed through the system. Again, as the committee will have picked up from the written submissions, there is a difference of opinion between Scottish Women's Aid and Police Scotland on what those figures look like; nonetheless, it is expected that some of the operational challenges will add to the cost.

We are looking to bring all that together to work out what the options are as we go forward. One of the challenges that we note is that, unlike England and Wales, we do not have a power in the legislation to run a pilot, which would have been an attractive proposition. While there is a view that that might be an option, it would clearly add additional complexity around the timeframe, so we would need to take that into consideration.

I anticipate that we will be able to say more early in the new year.

Pam Gosal: Minister, as I said, 64,000 cases were reported to Police Scotland—that is a 3 per cent rise on the year before. The number of reoffenders has gone up as well. What can you

say to the survivors and victims who are out there listening today? Are they part of the Scottish Government's consciousness?

Your officials have just said that next year, you are going to look at next steps. Those survivors are looking for an implementation date—I emphasise that to you, minister. People are suffering out there, and domestic violence is an abhorrent and shocking crime. We need to ensure that people who are going through domestic abuse have confidence that the Scottish Government is implementing the acts that are passed.

When you say that next steps will happen next year, what does that mean? Does it mean another year, or two years, later? What are we looking at here?

Jamie Hepburn: I think that we have already answered the question around the timescale as best we can. It would be wrong of me to sit here and try to give a definitive timescale at this point. That would not be fair to the many women to whom you have just referred. You mentioned that 64,000 cases have been reported to Police Scotland, and I would not want to let those women down by giving a specific date, here and now, when I am not well informed enough to do so.

Jeff Gibbons spoke about the urgency with which we are trying to take forward the work now—early next year—to work out how we can implement the FGM act as quickly as possible. That is an earnest and sincere commitment.

The first part of your first question was about what I would say to women who have been expecting the legislation to be implemented soon. I would say that I am sorry that it has not been implemented yet. Ideally, it should have been, but we are where we are now. The task for us is to try to ensure that it is put into statutory effect as quickly as possible, and that is our commitment.

Maggie Chapman: I thank the minister and Jeff Gibbons for their comments so far. This question might be for you, Jeff. You referred to some of the information that we have received from Police Scotland and other organisations in advance of today's session. Police Scotland said that the Scottish Government could be considering legislative amendments to part 1 of the 2021 act. Can you say a little more about how you see that happening, and what sort of plans you have in place for that? Are you looking for a vehicle for those amendments? Could that be done through secondary legislation? Do you agree with Police Scotland's assessment that changes are needed?

10:45

Jamie Hepburn: Jeff can respond to that.

Jeff Gibbons: As part of our discussions with stakeholders, we explored all options, but we have not said that we will progress legislative change.

I highlighted, for example, the attraction of piloting and learning lessons from that. The legislation as currently drafted does not allow piloting, but going back to the legislation to change that would clearly have implications for timetables and delay. It would be wrong for me to say that that is not part of our considerations, but we need to understand what the consequences of a change would be, and that is alongside our efforts to address the operational challenges that partners have raised, which are real and have been detailed. If the legislation is not fit for purpose in terms of delivery, we need to look at that; however, at the moment we are looking at all options so that we can bring light to the legislation.

Maggie Chapman: On a related but different issue, the Law Society has said that the Scottish Law Commission also might have some issues with part 1 of the act as drafted. Is that part of the same conversations? What do you see as the commission's influence or role in those conversations? If it cannot influence things, why is it there?

Jeff Gibbons: All stakeholders with an interest play a critical part. To go back to my initial comment, when the legislation was first considered, the principle of the approach was hugely supported, but the implementation of it was very much a second part. Implementation has inevitably thrown up challenges, and we need to work through those with colleagues and stakeholders to ensure that we have a model that is fit for purpose, instead of just introducing a model that we know will raise issues in implementation.

I again refer to the challenges faced in England and Wales because they had not picked up on the point about evidence from a child, which is quite fundamental, and we need to address that anew. There is no point in progressing something that will not be fit for purpose for those who it is aimed at.

We absolutely involve the Law Society and anyone else with an interest in how we can implement legislation effectively. We are very much taking a solutions approach, rather than saying, "There is a difficulty here," and then not progressing it.

Maggie Chapman: If there are barriers related to existing institutional structures or remits, are conversations about that part of the mix?

Jeff Gibbons: We are in deep discussions with all the relevant organisations.

Jamie Hepburn: The Law Society has flagged that as a concern of the Law Commission. As you would expect, and as would be my expectation and the expectation of any minister who had a direct responsibility for the area, we will pick that up directly. If there are things that we need to do as a consequence, we will get on with it and do them.

Simon Stockwell: The Scottish Law Commission currently has a discussion paper out, which is its equivalent of a consultation, on civil remedies against domestic abuse. It is looking at remedies that the person at risk might apply for, rather than the police applying. It is considering the current range of civil protection orders against domestic abuse, such as interdicts, civil non-harassment orders and exclusion orders, with a view to proposing some reform of those. That is at the consultation stage. We expect the Law Commission's report on that in two or three years' time, once it has considered the consultation responses.

Jamie Hepburn: One thing to flag from that is that such consultations can lead to recommendations from the Law Commission for specific legislation. There is an arrangement with the Delegated Powers and Law Reform Committee that at least one bill proposal that arises out of a Scottish Law Commission consultation will be referred to the committee per parliamentary year. Although we cannot say definitively that that will happen in this instance, there is that possibility.

Evelyn Tweed (Stirling) (SNP): Stakeholders are clearly worried about the non-implementation of the acts that we are considering. How can Parliament reassure people and build trust for the future in further legislative processes?

Jamie Hepburn: First, we are talking about three specific pieces of legislation on which people have communicated with the committee. They are understandably concerned, and it is incumbent on us to respond to those concerns. However, I do not think that there is a general issue or trend across the piece of non-implementation of legislation. If you look across the statute book, you will see that, in most areas where Parliament has decided to pass an act, we get on with the legislation and implement it, but sometimes we find that there are challenges.

We are talking about three acts. I have already made the point that a substantial amount of the Children (Scotland) Act 2020 has been put into effect. Going back to the point that I have just made, we have gone through that process. We have made sure that a substantial number of the provisions are in place. I have referred to—Simon Stockwell picked up on this, too—our plans to implement more of the legislation through statutory

instruments that we will introduce next year. Of course, we understand the concerns that have been expressed by stakeholders, and it is incumbent on us to respond to them insofar as they relate to the specifics of the act.

We also need to respond to the overall concerns, which we can do in other ways. With regard to the Domestic Abuse (Protection) (Scotland) Act 2021 and the Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020, an awful lot of work goes on through our equally safe strategy, which is resourced by quite a significant amount and backed by the Scottish Government. In that respect, 119 projects from 100 organisations have been supported, with £19 million of annual funding. So, yes, we must respond to concerns about the implementation of those acts but, equally, we also have to get on with dealing with some of the fundamental challenges that those acts are designed to deal with, in advance of their implementation.

Evelyn Tweed: Just to follow up on that, minister, do you feel that people should have trust in the legislative process in future?

Jamie Hepburn: Yes, I do. I could point to our statute book and make the point that, overall, where Parliament has decided to act and legislate, and where it is incumbent on the Government to take forward that legislation, across the board, that is what we seek to do. Sometimes, we face specific challenges, which we try to deal with. Although it may take a bit longer, we need to ensure that we address the challenges, too.

The Convener: Are members content that they have asked the minister and his officials everything that they would like to ask?

Pam Gosal: I have one final question.

Minister, the committee has been hearing evidence on other legislation, and one of the issues that has been raised is that consultations are quite time consuming and resource intensive. Organisations sometimes do not have the manpower or the time, but consultations have deadlines, because the legislation eventually has to be implemented.

What would you say to those stakeholders, partners and organisations, who put a lot of time and effort into responding to consultations? We are talking about three crucial acts that, for various reasons, have not been implemented. You have rushed that through in a way—well, not rushed, but put in the right consultation time, only for there to be no results at the other end. What would you say to those stakeholders and partners?

Jamie Hepburn: First, I know that you clarified your remark, but I do not think that we rush consultations. We have quite a deliberative and

considered process for legislating in the Scottish Parliament. It starts with a fairly extensive and detailed consultation process, whether it is the Government or a member that is taking forward a bill. Indeed, you have a bill proposal, so you will have undertaken a consultation. That proposal develops into a specific legislative proposition and goes before a committee to consider in detail. I certainly do not think that the process is rushed. It does not take a long time; rather, it takes the appropriate amount of time to ensure that it is thorough and that all relevant stakeholders and interested parties can participate and get involved.

On the question of how valuable individuals might feel the process is, I can speak only for the Government and say that we find it very valuable. The three acts that we have discussed are still on the statute book and we still plan to take them forward. The consultation process that was undertaken in advance of those bills being laid before the Parliament and as they went through the parliamentary process was invaluable. No effort was wasted on the part of those who took part in the consultation process.

Pam Gosal: I want to put on record that, in my original question, after I described the consultation process as rushed, I said straight away that it takes the appropriate amount of time. I know that you made that point.

I agree that consultation is very important to allow people to have their say. Committees are also important, as we can scrutinise and take evidence. My question was not about there being an issue with consultation. I am saying that the process is resource intensive—sometimes organisations are one-man bands or have only five people. I was asking what you would say to organisations when there is not a result at the end of the process and they have done all that hard work.

Jamie Hepburn: I think that I responded to that. There has been a result, which is that there are acts of the Parliament, and the consultation that took place in advance of the bills being laid before the Parliament informed the legislation. I thank those who took part in the consultation processes, as their efforts informed our consideration.

On one of the three acts that we are discussing today, the Children (Scotland) Act 2020, a substantial amount has already been enacted and put into effect. The consultation was an important part of the process. I make the point again that that work has not been wasted. It has informed the legislation and our on-going engagement with the stakeholders will continue to inform how we take forward the work as we seek to implement the act.

Pam Gosal: I wait to hear feedback next year on how the acts have been implemented.

The Convener: I thank the minister and his officials for joining us. We now move into private session to consider the remaining items on our agenda.

10:57

Meeting continued in private until 11:15.

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