

# **HEALTH AND SPORT COMMITTEE**

Wednesday 11 March 2009

Session 3

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## HEALTH AND SPORT COMMITTEE

8<sup>th</sup> Meeting 2009, Session 3

### CONVENER

\*Christine Grahame (South of Scotland) (SNP)

### DEPUTY CONVENER

\*Ross Finnie (West of Scotland) (LD)

### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)

\*Helen Eadie (Dunfermline East) (Lab)

\*Michael Matheson (Falkirk West) (SNP)

\*Ian McKee (Lothians) (SNP)

\*Mary Scanlon (Highlands and Islands) (Con)

\*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

### COMMITTEE SUBSTITUTES

Joe FitzPatrick (Dundee West) (SNP)

Mr Frank McAveety (Glasgow Shettleston) (Lab)

Jamie McGrigor (Highlands and Islands) (Con)

Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Iain McIver (Scottish Parliament Access and Information Directorate)

### THE FOLLOWING GAVE EVIDENCE:

Keith Brown (Minister for Schools and Skills)

Dr Fergus Millan (Scottish Government Public Health and Health Improvement Directorate)

Dr Claire Monaghan (Scottish Government Schools Directorate)

Adam Rennie (Scottish Government Primary and Community Care Directorate)

Shona Robison (Minister for Public Health and Sport)

Kate Vincent (Scottish Government Equalities, Social Inclusion and Sport Directorate)

### CLERK TO THE COMMITTEE

Callum Thomson

### SENIOR ASSISTANT CLERK

Douglas Thornton

### ASSISTANT CLERK

David Slater

### LOCATION

Committee Room 1



## Scottish Parliament

### Health and Sport Committee

*Wednesday 11 March 2009*

[THE CONVENER *opened the meeting at 10:03*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Good morning and welcome to the eighth meeting in 2009 of the Health and Sport Committee. I remind all members and witnesses to switch off mobile phones and other electronic equipment.

Under item 1, the committee is invited to agree to take in private item 9, which is consideration of evidence heard during the pathways into sport inquiry. That is in line with usual practice. Is that agreed?

**Members indicated agreement.**

## Pathways into Sport Inquiry

10:03

**The Convener:** Item 2 is the pathways into sport inquiry. I welcome Shona Robison, Minister for Public Health and Sport, and Keith Brown, Minister for Schools and Skills. I also welcome, from the Scottish Government, Fergus Millan, team leader for the health improvement strategy; Kate Vincent, deputy director for sport; Dr Claire Monaghan, deputy director for the curriculum; and Pat Morrison, team leader for curriculum content. As is our usual practice, we will move straight to questions.

**Ross Finnie (West of Scotland) (LD):** Good morning, ministers. As you will have seen from the *Official Report* of the evidence sessions, one of the matters that has been exercising us recently is our concern about the promotion of sport, particularly in schools, and particularly at primary level—I appreciate that the educational bit is not necessarily to do with you. There appears to be a tremendous disconnect between those operating at a higher level, in local government and elsewhere, and those who are on the ground delivering, such as active schools co-ordinators.

We have heard evidence of difficulties—although they are not insurmountable—and that the pathway into sport for young people is not an easy route. That contrasts starkly with the evidence from people at a higher level who appeared to indicate that we were moving in the right direction and that it was all going very well. As ministers who are exercised by the inquiry and what we are trying to achieve, are you aware of a disconnect between those on the ground and those operating at a slightly higher level in our local authorities?

**The Minister for Public Health and Sport (Shona Robison):** My view is somewhere in the middle of the two views that you mentioned. There is good practice out there, which is working well in some areas, but there is clearly room for improvement.

I was at Lochside primary school in Dumfries yesterday, which is a fantastic example of everyone working together. The active schools co-ordinator acts as the glue in the process by ensuring that the teachers are involved, that there are good links to local clubs and facilities and that there is a pathway for those who want to progress in sport. The sports development team at Dumfries and Galloway Council is very much involved, too. I thought that everything hung together well. Is the situation the same everywhere? No. Can we get to that position? Yes. The community sports hub model is good; it can be varied depending on the

urban or rural circumstances. The model is already working in a number of places and it can work throughout Scotland. I agree that there are areas where we need to do better.

**Ross Finnie:** I do not necessarily disagree. You will have read the evidence given to the committee. We heard about the good example of East Renfrewshire, where, to use your phrase, the active schools co-ordinators are the glue in the process, which works well. One was very encouraged by that. What one was less encouraged by was not that other schools could not get there but, rather, that it was difficult to see how they would get there if people operating at a higher level took the view that everything was all-singing and all-dancing and that the active schools co-ordinators and so on were all working well. The evidence from people at a higher level was quite disturbing. That is not your fault, minister. It is not a question of fault; it is about how we improve the situation. You have just acknowledged that improvement is needed and the committee found evidence to support that, but we did not find that those at a higher level, in positions of authority in local authorities, appeared to appreciate that there was a disconnect. Are you concerned about that?

**Shona Robison:** We have to take the opportunity presented by the excitement and commitment that we have in relation to the potential legacy of 2014. We have the ability to leave something much better.

The community sports hubs are a good model, which I want to be embraced in all areas of Scotland. Discussions are being held across Scotland about what each local authority wants to do and how it will contribute to the overall plan. It is important that we ensure that we take everybody with us on that. We want to ensure that more work is done in areas where it needs to be done. Kate Vincent might want to say something about the more detailed discussions that are going on about the community sports hubs.

**Kate Vincent (Scottish Government Equalities, Social Inclusion and Sport Directorate):** As the minister said, we are developing the community sports hubs model through the legacy plan. We are conscious that each community in Scotland is very different and has its own particular requirements. We are working throughout Scotland with local authorities and community planning partnerships to discuss how that model can be developed in their area.

In a city such as Edinburgh, there might be six community hubs because there are a number of major sports facilities, but in some communities there could be just one small hub around a swimming pool, a tennis court or whatever. The aim of the community sports hubs is to create a network of the key players in sport in the local

community. They could be volunteers, coaches, parents, sports development staff, active schools co-ordinators or members of clubs. The creation of the community sports hub will mean that those people can work with whoever owns the facility, which is usually, but not always, the local authority.

Our aim is to build the local infrastructure and enable better access to the particular facility that the community wants to use. We want to consider how we can get better access to the facilities that we already have. As we know, there has been frustration for a long time about the fact that people can only get access to school facilities between 9 and 5. There are practical issues around that, but if we bring together the stakeholders as a community, they can work together to consider how they can make the most of the facilities that they have.

For example, one strategy for improving access to facilities is to take a multisport approach. Sport tends to be slightly possessive. People want facilities for their particular sport because they are passionate about it, but if we can get people to work together more closely and in a co-ordinated way, we will have more opportunities to develop multisport facilities that can be used for a wide range of sports.

One of the challenges is that, at present, an awful lot rides on the active schools co-ordinators. Through the community sports hubs, we aim to create a much more robust, co-ordinated network.

**The Convener:** We have had evidence about the number of things that the active schools co-ordinators have to deliver. Your approach is heartening, because the committee heard in evidence that there will be no legacy from 2014 if we wait for them to kick it off, and that it is important to have everything in place and to have the momentum going well in advance.

**Ross Finnie:** I thank Shona Robison for her remarks, but I direct my question to Keith Brown, because it relates more to schools, and in particular to primary schools.

One issue to be addressed is the disjunction between what was reported to us in evidence about things that can be positively addressed at the primary level and the views of directors of education and others, who got close to being—I hesitate to say it—somewhat complacent about the difficulties to do with the delivery of physical literacy at primary level. Would you care to comment on that?

**The Minister for Schools and Skills (Keith Brown):** There are substantial pressures at the primary school level, and indeed throughout the school system, on schools' ability to cope with the things that we ask of them, including the two hours

of physical education and the other requirements. However, in the short time for which I have been in office, I have had no indication that the officials to whom I have spoken are not aware of those pressures. They are aware of them.

The situation might be partly explained by the fact that our approach is very much to encourage rather than to instruct. It might be that the process of senior officials' encouraging schools perhaps comes across as their not being aware of the problems, but my experience is that officials certainly are aware of the problems. We have had a number of discussions about the pressures that councils face in relation to the school estate, the curriculum and so on, and people are aware of the issues.

In addition, my officials have had a preliminary discussion with David Cameron, the president of the Association of Directors of Education in Scotland. I think that you are saying that it is at director of education level that you have found that there is less awareness of some of the problems in the schools, but the preliminary indication that I have had is that directors of education are aware of those problems. Perhaps your perception is accounted for by the fact that we are being as positive as we can in encouraging schools. I have seen no indication of a lack of awareness of the pressures that schools face.

10:15

**Michael Matheson (Falkirk West) (SNP):** I will stick with the issue of community sports hubs because, as well as receiving evidence on it, we have witnessed some of the practice that surrounds that approach, particularly in the Stirling Council area, where it appears to be working fairly successfully.

Having said that, I have some concerns about what I have heard, because there is no doubt that there is a considerable amount of frustration at the lack of progress in ensuring that joined-up thinking happens on the ground more quickly. For example, the target of providing two hours of quality physical education per week in schools was set more than five years ago, but Her Majesty's Inspectorate of Education has told us that it reckons that only about a third of primary schools are reaching that target. Five years on, that is—to put it bluntly—unacceptable.

The approach that involves community sports hubs, in which schools and sports co-ordinators play a role, is a good one, but when will we reach a point at which all local authorities will have signed up to it, so that it starts to be adopted on the ground and we see a meaningful change in how things are done on the ground?

**The Convener:** Which of the two ministers would like to answer that?

**Shona Robison:** I am sure that Keith Brown will comment on progress on the delivery of two hours of PE, but there is a lot happening on physical activity and sport more generally. The picture is quite impressive when one looks at all the pieces of the jigsaw, including the active schools co-ordinators and the resources behind them, and the physical activity strategy, which has brought in YDance and the initiative to get teenage girls involved in physical activity. The jigsaw has many pieces, but what is important is that they all hang together and that the whole is greater than the sum of its parts.

When? My answer to that would be as soon as possible, because if we are to take advantage of the opportunity that 2014 offers us, we must ensure that there is a clear pathway for children who show an interest and an aptitude in a sport that they might be doing at school. In some areas, that pathway is well developed. Children get involved with community sports clubs, which gives them a route into the use of facilities—I saw that for myself in Dumfries yesterday. In other areas, active schools co-ordinators will do some of that work if there is a lack of co-ordination. It is not rocket science—we know what works and what has to be done.

As Kate Vincent said, it is a question of ensuring that we support local partners in areas in which the pathways into sport are not as developed as they should be. If we help them to get a better system in place, we will leave a legacy to a generation of children and young people who want to get involved in sport and physical activity by ensuring that there are no barriers to their doing that and that clear pathways exist in their local community that will enable them to do that. That is where we need to get to, and I want to get there as quickly as possible. There is a clear timeline. We must do a lot of preparation in advance of 2014 if we are to ensure that we capture a legacy from the games.

**Keith Brown:** I acknowledge the point that Michael Matheson makes. The target of providing two hours of PE per week was first announced by Peter Peacock in 2004. The baseline study that came out two years later showed that there was a lot of ground to make up to reach that target.

How do we intend to achieve it? HMIE, which I know that the committee took evidence from, is being asked to ensure that it raises the issue every time it undertakes an inspection. The point was made at a previous meeting that it is sometimes not possible to know from the feedback that HMIE provides whether a school is meeting the two-hour target. The cabinet secretary has asked HMIE to be more transparent in how it

reports on the matter so that some of the concerns are addressed.

The two-hour PE target is the Government's only input measure. We have moved much more in the direction of output measures, but we have retained the input measure of the two-hour PE target because of its central importance. We hope to achieve it by having all councils sign up to the curriculum for excellence, as they have now done. The outcomes and experiences that we expect from the curriculum for excellence have been published in draft form and will be published in final form at the start of next month. Councils will be obliged to achieve the target by implementing the curriculum for excellence and delivering its outcomes and experiences. For the first time, there is a process that will enable councils to provide two hours of PE per week.

Ross Finnie referred to the pressures that apply in schools. We acknowledge that there are issues with school facilities and that we must ensure that PE fits into the curriculum. For that reason, it seemed to us that there was no point in our hectoring or instructing local government. You are right to say that there has been a lack of progress in some areas, but we are aware that great progress has been made in places such as East Renfrewshire, which you mentioned. East Renfrewshire Council has taken quite a single-minded approach. I think that I am right in saying that the majority of primary school children in the area have two and a half hours of PE per week. We want to promulgate such best practice and to encourage schools to think beyond the school gates and to use other facilities. That has not been done sufficiently until now. Some schools have made the point that they have one hall that must accommodate school lunches, some classes, assemblies and PE. The committee has heard about that issue. There are practical problems—in a school that I visited this week, one classroom was directly off the school hall. However, some schools have not been as good as others at making use of adjoining facilities—going to fields that are further away, at other sports facilities.

We are trying to encourage best practice, but the means for achieving the target is the curriculum for excellence. We hope to achieve it by 2011.

**Michael Matheson:** You mentioned that sometimes there are physical barriers that make it difficult for schools to meet the target of providing two hours of quality physical education per week. When taking evidence last week, we heard two different stories from two different local authorities. The chief executive of Glasgow City Council could not tell us how many primary schools in his area could not meet the two-hour target because of physical barriers, although that was the main

reason given for their inability to achieve it. East Renfrewshire Council, which appears to have taken a much more direct approach, confirmed that it has schools—in smaller numbers—with the same physical barriers. Its director of education has decided to mandate teachers to get on with meeting the target, whereas Glasgow City Council's approach appears to be, "We will try our best and do what we can, but it is difficult".

I have no doubt that Glasgow is not alone in taking what could be classed as a softer approach to driving forward efforts to provide two hours of physical education per week in our schools. We can encourage local authorities as much as possible, but the evidence from East Renfrewshire Council was compelling. If councils do not mandate teachers to meet the target, excuses will continue to be offered for the failure to achieve it. What can the Government do to ensure that local authorities get the message that they should not just be trying to achieve the target, but mandating teachers on the ground to get on with doing so?

**The Convener:** You are challenging the policy of providing encouragement.

**Michael Matheson:** Yes.

**Keith Brown:** Glasgow is an interesting case. There has been a substantial renewal of both the secondary and the primary school estate in the area, so the physical barriers to which you referred should be overcome over time. Unusually, Glasgow City Council has bought out the public-private partnership contract that imposed an extra charge for access to school facilities at weekends. At some cost to itself, the council has ensured that the price for access to the facilities is the same throughout the week. That shows that Glasgow is trying to address some of the challenges that it has always faced because of its socioeconomic deprivation statistics. I expect that Glasgow will also have had, because nearly all councils do, a school estate strategy that should give it the information that it apparently could not provide to the committee, so I am surprised by that. However, that does not change my view that we want to put the East Renfrewshire approach to Glasgow—I am touring councils to try to show best practice. I appreciate that, to an extent, it comes down to political willingness, but Glasgow has signed up to the outcomes and experiences in the curriculum for excellence, so it is now tied in to the target to provide two hours of PE a week. Given that, and given the fact that local authorities are tired of getting further instruction, regulation and legislation from the centre, we are determined to take the approach of encouraging councils, promulgating the best practice that is in place in, for example, East Renfrewshire and asking councils such as Glasgow to copy it.



**Mary Scanlon (Highlands and Islands) (Con):**

On the point that Michael Matheson and Ross Finnie made about best practice, I agree with Michael that East Renfrewshire is a shining example of a can-do attitude and a joined-up approach.

I decided to look for the two-hour target. I looked at the health improvement, efficiency, access and treatment targets, but it is not there. I looked in the budget to see whether money had been moved to achieve the target, but there is nothing there. I looked at the HEAT targets for 2009-10, but it is not there. I checked with the Scottish Parliament information centre before I came to the committee meeting and PE is not mentioned in the historic concordat with local authorities. It is not a HEAT target and, as John Beattie said, it is unlikely to be in any single outcome agreement.

Highland, the area that I represent, currently faces job evaluations that will lead to redundancies in outdoor education and cuts in salaries for swimming and other instructors. At Culloiden academy, 450 pupils are on a waiting list to learn to swim. The best that I could find by way of a target—I got this information from SPICe—is the statement that

“The Scottish Government expects schools to continue to work towards the provision of two hours of good quality PE for every child”.

I have not been able to find a target, SPICe has not been able to find a target and, according to John Beattie, there is not a target in the single outcome agreements. Does that not explain why, although East Renfrewshire is fantastic, councils in the rest of the Scotland think that, given the other pressures on their budgets, they can ignore the target? Is the problem not that, because the Government is not firmly committed to the two hours of good-quality PE, it has not provided the driver and that has allowed local authorities to think that they can opt out? That is the impression that I get.

**Shona Robison:** Obviously, we have a physical activity target, which is that 50 per cent of adults and 80 per cent of children will meet recommended levels of physical activity by 2022. We inherited that target and want to stick to it, because we feel that it is the right target and that it is achievable.

It is interesting that you mentioned John Beattie. I have had many discussions with him since the review of the physical activity strategy. You will be aware that one of its recommendations was similar to the point that Mary Scanlon makes about whether there needs to be a HEAT target or a national framework target. I have said that we will consider introducing a physical activity target into either HEAT or the national framework. In respect of a HEAT target, there is only so much that the

health service could do towards such a target, so it will have to be very much a partnership target. Nevertheless, your point is valid. Given that so much flows from the HEAT targets or the national framework targets, there is an issue there. That work is on-going and I am happy to keep the committee informed of progress on the issue.

10:30

**Mary Scanlon:** You have had discussions with the Convention of Scottish Local Authorities, so why was the subject of two hours of good quality PE not included in the concordat with local authorities? Is its non-inclusion the reason why the committee has found that some local authority areas are wonderful but others are not? Because PE is not in the concordat, you have allowed local authorities to make PE a low priority or to ignore it.

**Keith Brown:** First, I will say that I am well aware of John Beattie's commitment to PE. At a sports awards ceremony at Alva academy, he challenged one of the winners to a press-ups competition during the ceremony, and lost very badly. At least he made the effort.

**The Convener:** Some day he will challenge you to press-ups.

**Keith Brown:** No, not me.

**The Convener:** No? That would be something to see.

**Keith Brown:** I think he would win that one, but at the school he lost against a 14-year-old karate expert—especially when they moved on to one-handed press-ups.

I challenge what has been suggested. Obviously, the concordat includes specific reference to the curriculum for excellence. As I think I mentioned, it is through the curriculum for excellence that we intend to achieve our aims. The outcomes and experiences required from the curriculum have been published in draft and they are very specific. They include the sentence:

“The Scottish Government expects schools to continue to work towards the provision of at least two hours of good quality physical education for each child every week.”

**Mary Scanlon:** That is just an expectation.

**Keith Brown:** No, it is not. People are obliged to achieve the outcomes and experiences. That is part of the process.

You mentioned the single outcome agreements. We did not necessarily expect that PE would feature in the single outcome agreements; it is not as broad an issue as some of the other issues that do appear. Not all the single outcome agreements are in yet. Six councils so far have made specific reference to the two hours of PE. Some councils,

such as Clackmannanshire Council, are making very good progress towards the target already.

It is not for me to say why there has been a lack of progress in some areas. However, if you try to effect a change such as this one at the same time as you are changing the curriculum—one of the biggest changes in many years—you have to go through the process. We are committed to achieving the PE target. To drive home the point, I will be meeting ADES shortly, and I have been going round councils meeting directors of education, council leaders and, when I can, education conveners. As yet, nothing has indicated that councils are unwilling to take this on. They are signed up to the curriculum for excellence and they want to achieve its aims.

**Mary Scanlon:** Has there not been failure? By your own admission, fewer than 20 per cent of local authorities include the PE target in their single outcome agreements. For the past two years, we have heard that it is the single outcome agreements that drive the priorities and the resource allocations in local authorities. The heart of the matter is that fewer than 20 per cent of local authorities—only six out of 32—are signed up, and that is why we are not offering the excellent PE that children should be getting in Scotland.

**Keith Brown:** The total is six, so far. Until all the single outcome agreements have come in, we will not know how many councils have made an explicit commitment to the PE target. We have never expected that, for a council to show its commitment to achieving the target, it has to make an explicit reference to the target in its single outcome agreement—councils have already committed themselves through the concordat. You suggested that resources would follow single outcome agreements, but resources follow the commitments in the concordat as well. Councils have signed up to the curriculum for excellence and the obligation to achieve its outcomes and experiences will provide the process by which we hope to see progress towards the target of two hours of PE.

**The Convener:** The single outcome agreements that you are talking about, are they the next batch?

**Keith Brown:** Yes.

**The Convener:** You say that six councils have included the target. How many single outcome agreements have come in that did not include the target, and how many single outcome agreements are awaited? If you do not have that information just now, the committee would like to hear it in due course.

**Keith Brown:** Information comes in daily. We can write to the committee with information on how many single outcome agreements have come in

and on how many councils have signed up to the PE target.

**Mary Scanlon:** Local authorities can choose whether to include it or not. It is their choice.

**The Convener:** I am not disputing that. I simply wanted the facts, because I was getting a bit muddled. Six agreements have come in; others are in but might not include the PE target; and others are still to come in. The agreements are coming in daily, but when will the process be concluded?

**Dr Claire Monaghan (Scottish Government Schools Directorate):** Within the next couple of months. We can write to the committee with full details, but local authorities are making progress at different rates.

**The Convener:** We will be producing our report over the next month, so it will be helpful to have the information so that we can include it.

**Keith Brown:** If you can tell us the latest date by which you would need the information, we could give you the information up to that date.

**The Convener:** It would be helpful just to get a note.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** I add my welcome to that of other members to Keith Brown on this, his first appearance before the committee. Shona Robison is an old hand at this, of course.

**Jackie Baillie (Dumbarton) (Lab):** An experienced hand.

**Ross Finnie:** An experienced hand.

**The Convener:** That was not very gallant, Richard.

**Ross Finnie:** It was not the most felicitous choice of words.

**Dr Simpson:** All right—experienced, then.

I also welcome the fact that we appear now to have it on the record that HMIE will be required to report on PE. The committee was appalled when, after Mary Scanlon opened up a line of inquiry on the matter, it emerged that there was a presumption that if PE was not reported on, the requirement was being achieved. We felt that that would not be the case for any other requirement, such as those for numeracy and literacy. I am sure that every MSP will seek to ensure that PE is recorded in all future HMIE reports. We felt that the situation with reporting reflected a lackadaisical attitude.

Single outcome agreements are surely agreements between two parties. Why is the Government agreeing, in the second round, to any single outcome agreement that does not include

the two-hour target for PE? We are five years down the line. There had to be a certain amount of latitude initially, but we have now reached the point at which provision should be in place.

Should there not be a specified entitlement for every pupil? If they do not receive two hours of PE through school provision, should there be alternative provision, to which they are entitled, so that it becomes absolutely fixed?

The committee has been trying to distinguish between physical literacy and physical activity. They are separate things. If physical literacy is in place—as increasingly it is in East Renfrewshire—pupils get into sports in secondary school and do not have to start with training in physical literacy before they can get into sports training.

Under the curriculum for excellence, will there be a requirement that every pupil receives a report not only on literacy and numeracy but on physical literacy?

I have a further question, but that will do to start with.

**The Convener:** We will hear first from Keith Brown, who is not yet old—or experienced.

**Keith Brown:** I think there were four questions in there. Richard Simpson mentioned reporting by HMIE. The Cabinet Secretary for Education and Lifelong Learning has asked HMIE to be more transparent. HMIE always asks a question about this. Judging from the exchanges with Mary Scanlon and Michael Matheson, the point about the changes that have been taking place in HMIE, where there is a much more proportionate scrutiny, was perhaps not conveyed sufficiently well—

**The Convener:** I will stop you there, minister. “More transparent” is not helpful to the committee. What does it mean? I will explain what the committee is driving at. There is always a report on the delivery of other school subjects, with a comment such as “good”, “average”, “fair”, “could be improved” and we want to see the same for physical literacy. If you cannot provide us with an answer now, and if it is a matter for the cabinet secretary, it would be very helpful if the cabinet secretary could write to the committee to clarify exactly what “more transparent” means in this context—otherwise, it might mean different things to everybody round this table and in this room.

**Keith Brown:** I take the point. That is what the cabinet secretary has asked HMIE to do. However things pan out, I am happy to get back to you to inform you what the final agreement is.

**The Convener:** We need that to be nailed.

**Keith Brown:** I am happy to get that information.

We see entitlement for individual pupils as arising from their entitlement to the curriculum for excellence. They have a personal entitlement to the curriculum and to the outcomes and experiences within it.

Dr Simpson raised a point about single outcome agreements. The Government has received a number of single outcome agreements, although that does not mean to say that they have yet been signed off. On Dr Simpson's point, which is important for the committee, we can let the committee know exactly what the situation is when the single outcome agreement comes in.

That covers three of Dr Simpson's questions; I do not know whether I have missed one of them.

**Dr Simpson:** That is fine. Have any single outcome agreements that do not include PE come in?

**Keith Brown:** Yes.

**The Convener:** That have been signed off.

**Keith Brown:** Some have not included PE; a number of them have not included numeracy or literacy.

**The Convener:** I think that we are asking whether those have been signed off.

**Keith Brown:** No.

**The Convener:** None of them. Right—that is clear.

**Dr Simpson:** I have two other—

**The Convener:** No—you have not had an answer to the one about report cards.

**Dr Simpson:** Oh yes. Should reports for individual pupils include a statement about their physical literacy as well as about their standard of numeracy and literacy?

**Keith Brown:** The report cards are a matter for schools, so they have autonomy to do that. I am certainly happy to raise the issue with the directors of education when I speak to them.

**Dr Simpson:** That would be helpful. I have two further, brief questions. First, the current statutory duty in the Local Government and Planning (Scotland) Act 1982 refers to “adequate provision of facilities”. Rod Stone said at the meeting on 4 March that there is no

“definition of ‘adequate’ or guidance on what is meant by it”. —[*Official Report, Health and Sport Committee*, 4 March 2009; c 1589.]

Does the Government intend to define facilities, whether in or outwith the school, more precisely? Every school should be able to allow pupils to participate in physical literacy programmes and in pathways into sport.

My final question—

**The Convener:** We will get an answer to your question about the definition of “adequate” first.

**Shona Robison:** I will take that one initially. It would be difficult to define anything beyond “adequate”. For example, would a list of required facilities be involved? I struggle to see how we could define beyond “adequate”, but perhaps it is a matter for debate.

It is worth putting it on the record that the infrastructure investment plan, which consists only of projects over £5 million, shows a further £1 billion being invested in schools over the next five years. Substantial resource is going into school infrastructure. Keith Brown may say a bit more about the school estate strategy. There are discussions with COSLA about that. In addition, sportscotland has a budget that councils can access to develop school facilities. The requirement is that they must be open for community use. Kate Vincent will say something about guidance.

**Kate Vincent:** Further work is being done on what the concept of physical literacy means. Going back to the point about—

**The Convener:** I am sorry, but we are a bit surprised because the committee has been given many definitions of physical literacy in our evidence sessions. Others have defined it for us.

**Shona Robison:** As I understand it, the expectation on physical literacy is explicitly reflected in guidance to support the three-to-18 curriculum. I am not sure what stage that is at, but I understand that there will be guidance on physical literacy in the curriculum for excellence. We can get more information on that.

**The Convener:** It would be helpful if ministers can give us further information before we write our report. I do not want to put you on the spot about that just now, as we are of course entitled to do, but we would like more details. We have a clear idea of what physical literacy means because of what we have heard in evidence, but we would like to know what the Government is doing.

**Shona Robison:** One thing that I can tell you is that the guidance says explicitly that physical activity and sport is in addition to the two-hour PE provision. We need to get back to the committee on anything beyond that.

**The Convener:** We were told that physical literacy consists of simple running, jumping, balancing and catching things, but we have discovered in our evidence that, unfortunately, some children reach secondary without being able to achieve those things. We therefore start from a low base with some of our children.

**Keith Brown:** Physical literacy is a building block that allows a child to get the benefits of PE and makes it easier for them to get into sport. A child entering secondary school who wants to develop in a particular sport must have physical literacy already.

It is worth acknowledging that the previous Administration made a huge and determined effort to renew the school estate, although there are differences over how that was financed. That was done because of the appalling state into which school facilities had fallen over several decades. As has been mentioned in evidence to the committee, some city centre schools had virtually no facilities and small playgrounds, and they were not close to playing fields. That is being addressed, but it will not be solved overnight.

In relation to playing fields and other sports facilities, sportscotland is a statutory consultee. If it is unhappy with a proposed development, it can have it referred to ministers. That check is in place.

On physical literacy, Claire Monaghan might want to add one or two points to clarify what has been said.

10:45

**Dr Monaghan:** The committee might find it helpful to see the health and wellbeing experiences and outcomes that have been developed in the curriculum for excellence, which are due for formal launch on 2 April. That would give members a sense of the entitlements that will be set out for young people. From the way in which the experiences and outcomes are being couched, it is clear that they are entitlements that young people will have. Since the draft was published last spring, the experiences and outcomes are increasingly being bedded into the curriculum, and the expectation is that that will happen progressively from August 2009 to August 2010. The experiences and outcomes make clear what progression can be expected of a young person in PE and all other aspects of health and wellbeing.

More generally on the curriculum for excellence, one of the key points is that although children will have an entitlement to the full suite of experiences and outcomes, the curriculum places a strong emphasis on literacy and numeracy and on health and wellbeing, which is where the PE entitlement and the expression of moving towards the target of two hours of PE a week sit. By virtue of that positioning, directors of education and the education community more generally are clear about the emphasis that the Government is placing on the target, and they have all subscribed to that. So, despite the real practical difficulties

delivering the target, there is an agenda to work jointly with the education community to address those difficulties. The target is positioned strongly within the health and wellbeing aspect, which sits at the fore in the curriculum for excellence, alongside literacy and numeracy, in setting out what a young person's education should be.

**The Convener:** We hope to start consideration of our draft report on 1 April. What will be published on 2 April?

**Keith Brown:** The experiences and outcomes for the curriculum for excellence. They have been published in draft form already and they are about to be published in final form.

**Dr Monaghan:** In the interests of being helpful, we can give you a set earlier than that.

**The Convener:** That would be helpful. After we have considered the first draft of our report, we can have a look at the experiences and outcomes and take them into account in the second draft.

**Dr Simpson:** As with everything, the active schools co-ordinator programme has involved the very good and the somewhat less good, but everyone agrees that it has been relatively successful at linking communities to schools. However, with some exceptions, such as those in East Renfrewshire, active schools co-ordinators are on short-term contracts and there is concern about whether funding will continue. As we move into tighter funding arrangements that will put a lot of pressure on local authorities, what steps will the Government take to protect active schools co-ordinators in the contracts between sportscotland and local authorities? Should the posts become more permanent? We would not have temporary posts at that level for a programme in, for example, mathematics or science. That is another example of sporting aspects being treated in a more Cinderella way.

**Shona Robison:** We have continued the funding of £12 million per annum for the comprehensive spending review period of 2008 to 2011. There is always a difficulty with committing beyond a spending review period, but when I was asked the same question at the physical activity conference, I gave as clear a steer as possible on that. The value of the active schools co-ordinators has been proven. Work is being done to find the hard evidence on the programme's results, for example in relation to the number of children who take up sport or join a club. Kate Vincent can say a bit more about that if the committee wants. Gathering that hard evidence is important. Having said that, I am convinced—and it sounds as though the committee is pretty convinced—about the role of the active schools co-ordinators. They are the glue in the system that pulls all the bits together.

I take your point that, in relation to many Government-funded programmes, there is sometimes a worry about the temporary nature of things. It is unlikely that the funding for the active schools programme will not continue after 2011, given the programme's importance, the evidence to support it and the fact that we will be entering the run-up to the 2014 Commonwealth games. Suffice it to say that it would be a priority for any Government to continue that funding beyond 2011.

**The Convener:** Does Kate Vincent want to say something about the evaluation? Was it quite useful?

**Kate Vincent:** There has been one evaluation report, which was, as you know, very positive about the activity and the quality of that activity—

**The Convener:** Can you explain for the record when that evaluation report was produced?

**Kate Vincent:** It was produced about a year or so ago—Loughborough University was involved in it. Sportscotland is now taking forward another piece of work to examine the outcomes of the active schools programme. The activity side is very encouraging, but we want to be clear that there is a long-term change—the programme aims to change the culture in schools so that children become used to being involved in physical activity.

**The Convener:** The committee members who went to Wester Hailes community school—Dr Ian McKee, Mary Scanlon and I—were very cheered by the attitude of the young people there towards the activities. It seems to be going in the direction in which I think you would want most places to go. It certainly cheered us up a bit.

**Dr Simpson:** For the record, we should perhaps move from three-year temporary contracts to rolling contracts for active schools co-ordinators, which would at least give people a degree of certainty up to 2014. I realise that you cannot commit beyond 2011, but at least if people are made aware on an annual basis that their contract still has two years to run they will not start looking for other jobs.

**The Convener:** That is now on the record.

**Jackie Baillie:** I return to the curriculum for excellence, given the importance that you have placed on it in driving the target for two hours of PE. I would like to test the extent of that commitment. I do not know whether the minister happened to tune in to "Good Morning Scotland" today. If he did, he would have heard the former rector of Alva academy—in the minister's constituency—attempting to dilute the two hours of PE by suggesting that the wider issue of physical activity should be contained within the curriculum for excellence. Can you pinpoint whether it is only

the two hours of PE that are contained in the curriculum for excellence or whether it contains other measures too?

**Keith Brown:** There are other measures—the two hours of PE sit within the health and wellbeing strand of the curriculum, and a series of other areas come under that heading.

I did not tune in to GMS this morning, but I got a transcript of it afterwards. I was surprised that Ian Lamont was on the programme—he was actually the rector of Shona Robison's old school—as he has not been involved with the school for some time. He made three other points that we have touched on already and which it would be useful to bear in mind. He mentioned the fact that facilities are key, the need to look beyond the school gate—which I was pleased to hear him say because sometimes that is not fully exploited—and the point about the need to use current best practice, which I have tried to make. Crucially, he said that, as an education professional with long experience in a number of schools, he thinks that local authorities and schools need time and space to do the work. He challenged the idea, which is sometimes prevalent, that teachers are not willing to get involved in extracurricular sports and so on. He recognised that issue, speaking as someone who has been at the chalkface for a long time. If you want some more detail about the areas that come under health and wellbeing, I am sure that Claire Monaghan is able to supply that information.

**Jackie Baillie:** I would like some clarification on a particular point because I am interested in the political commitment that drives what is in the curriculum rather than a civil service explanation of what it contains. You give a reassurance that working towards a target by 2011 is the same as achieving it, but because the language is different I am seeking to understand the political drive that delivers the outcomes and experiences within the curriculum for excellence.

**Keith Brown:** That is our commitment—to achieve, within this session of Parliament, two hours a week of PE for every child in every school. The concordat backs that up by asking councils to make progress towards that target. All councils—and, I think, all members of the committee—are signed up to the curriculum for excellence. That is where the political drive for it comes from.

**Jackie Baillie:** Sure, but what if a local authority gets to 2011 and says, "We tried hard and we have made progress, but we're still well short of two hours." Will that be okay?

**Keith Brown:** That implies a passive approach on our part, which is not the case. As I have said, we are meeting ADES because leadership in schools is key to the policy and ADES is there to

help us provide it. We also need leadership within the Government, which means visiting schools and local authorities and talking to them during the course of the curriculum for excellence, which will come in this year and is meant to be implemented by August next year. Parents, other schools, pupils, teachers and the Government will not be happy to sit by and see a particular school fail to achieve the objective. There will, therefore, be continuing pressure on schools to reach the target; however, it is not our intention to legislate for it.

**Jackie Baillie:** Can I pursue this—

**The Convener:** Before you proceed, do you want to hear from the civil service as well?

**Jackie Baillie:** Absolutely. I am interested in the detail, but I wanted to hear about the political drive behind the target.

**The Convener:** We have had the political view; now, we will get the civil service view.

**Dr Monaghan:** As I said previously, the curriculum for excellence is structured by way of an articulation of the outcomes and experiences that we would expect young people to have. Within the physical education category that sits within health and wellbeing, there is a range of headings. The principal one around physical literacy is that of movement skills, competencies and concepts. That sets out the entitlements that we would expect young people to have in the early years at the first, second, third and fourth levels. The fourth level is the equivalent of S3, before the young person moves into their qualifications and credit phase.

In the early phases, one of the outcomes is

"I am developing my movement skills through practice and energetic play."

That is how it would be described and how a teacher would approach it. Behind that are good practice illustrations that support the curriculum for excellence. It is a statement of the entitlements. Some of the outcomes towards the upper levels for young people are:

"As I encounter a variety of challenges and contexts for learning, I am encouraged and supported to demonstrate my ability to select and apply a wide range of complex movement skills and strategies, creatively, accurately and with consistency and control."

For example, if they are playing volleyball, do they understand what all their choices are around approaching the net, et cetera? It allows the maximum scope for a school with a set of facilities to decide how best to deliver that experience for a young person, focused around that young person's needs.

We will get you a set of the health and wellbeing experiences and outcomes ahead of publication.

**The Convener:** I am glad that you have given us an example of “complex movements”. I was beginning to wonder what we were talking about.

**Jackie Baillie:** Indeed.

The Minister for Public Health and Sport made it clear that physical activity is in addition to the two hours of PE. I take it that the curriculum for excellence adopts a similarly clear approach.

**Dr Monaghan:** Yes.

**Jackie Baillie:** It is helpful to know that.

We have mentioned Ian Lamont already. One quotation that the minister did not give is his suggestion that the target of two hours of PE a week is unachievable within current resources. Do you agree? What else, beyond encouragement, will you provide to make it happen by 2011?

**Keith Brown:** I do not agree with Ian Lamont that the target is unachievable. I did not hear him and I have not quoted him at all—I have just mentioned some of the things that he is reported to have said. He may have been saying that some schools do not have the facilities to provide the two hours as easily as they might. I gave the example of a primary school that has to use one hall for several different purposes. I acknowledge the fact that facilities do not always exist.

Shona Robison mentioned the money that is going into the school renewal programme, which will improve facilities over time. We are trying to make schools more aware of the other opportunities that they have in the curriculum to use facilities beyond the school gate in order to reach the target of two hours of PE a week. For those reasons, I do not agree with Ian Lamont on that.

**Jackie Baillie:** I am pleased to hear that.

I want to focus on two things that lie at the hand of Government. The first relates to the number of PE teachers. The officials may be able to write to the committee on these matters. As we went around various schools, we saw that it was important to have a specialist PE teacher in a school, as some primary school teachers do not feel sufficiently confident to teach PE. How many PE teachers are there in primary schools? How many are there in secondary schools? How many do you expect there to be? What will success look like? This time next year, will there be more PE teachers? How many probationers, whom we met when we visited schools, do you expect to end up with full-time permanent contracts after their probationary year?

11:00

**The Convener:** It helps to have information about secondary schools—we certainly want

that—but I make it clear that our focus is on primary schools. Perhaps I missed part of Jackie Baillie’s question, but while we are asking about PE teachers in primary schools, we are also interested in the uptake of and the forecast for the postgraduate course for primary teachers. I realise that the course started just this year.

**Keith Brown:** Are you referring to the courses at Edinburgh and Glasgow universities?

**The Convener:** Yes.

**Keith Brown:** We can provide information on that now.

Jackie Baillie asked about the number of PE teachers. There are 154 PE teachers in primary schools and 1,768—that is a six, is it not?

**Dr Monaghan:** It is a zero.

**Keith Brown:** I am sorry—there are 1,708 PE teachers in secondary schools and 68 in special schools.

Claire Monaghan has more detail on the throughput of the Edinburgh and Glasgow university postgraduate courses, if members would like to hear that now.

**Dr Monaghan:** Six hundred primary teachers enrolled on the courses. Of those, 138 have completed the course at Glasgow university and they received their certificates on 3 February.

**The Convener:** I will ask for more facts. Where are the primary teachers who have taken the course? We will want to know about that. Are they still looking for positions or are they in positions?

**Dr Monaghan:** We can follow that up.

**The Convener:** It would be useful to have the geographical spread.

**Michael Matheson:** I have a quick point. Are we satisfied that all local authorities are buying into the additional qualification for teachers? Some local authorities might be more enthusiastic than others about encouraging their teachers to participate.

**Keith Brown:** I do not have to hand information about the geographical spread, which the convener asked for, but we can provide it later.

Whether to present teachers for such courses and whether to employ teachers are ultimately questions for local authorities. They, not the Government, are the employers. There is evidence that the postgraduate courses have not been pursued as enthusiastically in some areas as in others, but we can certainly obtain the information about the geographical spread.

**Jackie Baillie:** I understand absolutely that although the Government might train sufficient

teachers and ensure the supply, it is up to local authorities to employ them. Will success therefore look like more PE teachers in primary schools and more primary teachers who have undertaken the postgraduate course? Do you have any idea what the position next year is likely to be, given that much lies at the hand of local authorities?

**Keith Brown:** On the sum total—the quantum—we are satisfied that we will have enough qualified teachers throughout Scotland in secondary and primary schools to deliver the two hours of PE. It is obvious that the process continues. It cost about £260,000 this year and money will be committed to continue the process.

If authorities' ability to achieve the target has a constraint, it does not relate to the number of PE teachers. That constraint does not apply to secondary schools. Throughout the school sector, that constraint should not apply in the future. We do not see the number of PE teachers as a constraint, but the situation is changing.

**Jackie Baillie:** Given that a shortage exists—we have heard evidence on that from primary schools—how many teachers do you need? If you are content that you will be able to deliver, how many more teachers do you expect to have?

**Keith Brown:** It is for councils to decide what they need and what they want to present teachers for. Quite a lot is in train on continuous professional development. Councils must balance whether to send a teacher away for continuous professional development on PE or on other aspects of the curriculum for excellence, so the pressures are on them. In the meantime, councils are also trying to deliver a service.

It is for councils, not us, to decide when to put people forward and to ensure that they put forward enough people to make the provision. Our role is to enable councils to do that. We help to fund training and we provide facilities, as we are doing in Glasgow and Edinburgh universities.

**Jackie Baillie:** So PE teachers who are well trained because you made training available might not have jobs because local authorities have decided for whatever reason not to employ them?

**Keith Brown:** Councils decide on such matters. Claire Monaghan can talk about the process, if you would like to hear more about it. Councils, not the Scottish Government, are the employers.

**Jackie Baillie:** I understand that.

**Dr Monaghan:** Primary teachers are trained to deliver the full curriculum, but we recognise that some will lack confidence in this area and the continuous professional development requirements aim to address that. This is the sort of practical issue that we know local authorities face in their attempts to deliver two hours of

physical education a week. We are setting up discussions with ADES and other key organisations to work through the practical difficulties to see how Government can help knock those barriers down.

**The Convener:** You are saying that a person does not need a postgraduate qualification in the subject but that some primary teachers are up for that anyway. However, would a person with a postgraduate qualification get more pay? There is nothing like money for getting people to take things up

**Keith Brown:** They will get more job satisfaction.

**The Convener:** That is a diplomatic answer.

**Helen Eadie (Dunfermline East) (Lab):** I, too, welcome Keith Brown to his new post. I have been delegated by one of my constituents to bring you her best wishes as well. She is a former lady friend of yours—my chiropodist and close friend, Helen Todd. I therefore bring you good wishes from Dalgety Bay.

**The Convener:** I have a feeling that that will crop up in *Holyrood* magazine's "Wholly Rude" column this week. Too much information, Helen.

**Jackie Baillie:** I would like the *Official Report* to record that the minister is blushing.

**The Convener:** I think we have an imminent scandal here. We are all blushing.

**Helen Eadie:** That was a conversation stopper, wasn't it?

I would like to pick up on strategies, which is a theme that has come up throughout this inquiry. The other week, the convener expressed exasperation with strategies—I think she said that we have strategies coming out of our ears. This morning, we have heard the Minister for Public Health and Sport talk about strategies, as well. The shelves of every MSP are adorned with strategy documents. However, I am keen to get at what the action plans and timelines are for some of those strategies, so I have a question for each minister. What six things in the context of this inquiry would you want to prioritise and see being achieved by a certain date?

**Shona Robison:** I will try not to use the word, "strategy" for the rest of the day. Perhaps I might use it one more time and say that a strategy is only as good as the tangible improvements that it delivers.

I will not give six priorities, but I will say that it is important, for example, that young kids have good physical literacy and the core skills that will enable them to develop an interest in particular sports. Early years intervention is key.



Secondly, there must be a clear pathway, which means that the schools, the facilities and the clubs must be linked to the local authorities' sports development teams. That should ensure that, if wee Jeannie or Johnny shows an aptitude in basketball or golf, for example, there will be an obvious place for them to go. There is nothing worse than getting a kid interested in a sport only for him or her to find that there is nowhere they can go from there. The infrastructure around the child is critical.

If we get those two elements in place—I knew that I did not need to set out six priorities—the win will be that we will have a system that is more likely to produce high-level sportsmen and sportswomen for Scotland. Such a system will give people more of a chance of spotting and harnessing talent and it will give children a way to develop their skills.

Overall, we need to make it easier for people of all ages to participate in physical activity. I have spoken about the children whom I saw at the school yesterday, but I also saw that people over 60 use the sports centre every day to do whatever activities they want to do. Physical exercise is a lifelong activity, and we must remove barriers that prevent people from getting involved in it. If we can get that right, we will become a nation of participators rather than spectators. That has got to be what we are all in it for.

**The Convener:** I suggest that you visit Wester Hailes, as well. The area has such a bad name, which we found is undeserved. We saw toddlers learning to swim, pensioners swimming and other people from the community playing badminton. The redemption of Wester Hailes is important and either you or your officials should visit it.

**Keith Brown:** I lived in Wester Hailes when the Wester Hailes education centre—or the WHEC, as it was called—first opened.

**The Convener:** It is still called that.

**Keith Brown:** At that time, the way in which it involved the whole community in the life of the school and in recreational activities was pretty far ahead of its time.

I understand the point that was made about strategies, but the curriculum for excellence is what lies behind everything that we do in this context and it is how we see things being delivered.

Helen Eadie asked about definite timescales. I would highlight August this year, when implementation will start, and August next year, when we expect it to be completed. Those dates are definite.

I have been helpfully provided with a list of six things that I would prioritise. My particular

preference would be for teachers to develop confidence in delivering the policy. The curriculum for excellence presents teachers with many new options and gives them a lot of autonomy, if they choose to use it. If teachers have that confidence, they will be able to generate enthusiasm for physical education among the pupils, and pupils whose health is being looked after and who are interested in sport from an early age will be better able to do the other things in the curriculum. In particular, I would like us to work to encourage girls not to move away from sport during the course of their school careers, but tackling that will take a fair bit of imagination and resourcing.

When I recently picked one of my kids up from a school sport event, I went past Dollar academy, which is close to where I live, and noticed that, at 6 o'clock at night, every playing field was being used. Obviously, Dollar academy has lots of benefits when compared with schools in the state sector, but that is the kind of thing that we should be aiming for.

**Helen Eadie:** Policy makers always have to think in terms of carrots and sticks. This morning, ministers have talked about people being obliged and expected to do things. Those are aspirational words, but we also need to know about the sanctions that you plan to use. What resources are you going to put into the work that will be required? What incentives and rewards will you give to schools that achieve the outcomes that we hope will be achieved?

**Shona Robison:** Substantial resources are going into the infrastructure and into sport and physical activity. I will briefly run through some of those, and will write to you with more details.

As I said, £1 billion is being invested in the school estate. I should also put on record the fact that 90 per cent of the funding that goes into sports comes from local authorities. Last year, that funding came to £558 million, which is a substantial amount of money. In addition to that, there is sportscotland's budget, which local authorities can access, subject to certain conditions around community use. Around that, we are funding the active schools co-ordinators, the physical activity strategy—the funding for which we have doubled, bringing it to £12 million—and initiatives such as cashback for communities, which is working in an imaginative way with some of the governing bodies to reach children who might be more reluctant to take part in sport. Some of the street rugby, basketball and football initiatives that are happening are exciting. People who are involved in those initiatives told us about taking the mobile rugby pitch to the east end of Glasgow. Some of the kids there had never touched a rugby ball before, but they got into it.

Some of them were known to the authorities, shall we say, but they kept coming back.

We need to do all the things that I have described. If we add up all the resource that is available, it is substantial, but we must ensure that what we get out of it is bigger than the sum of its parts and that we get added value. All the initiatives must work together and be joined up, so that we get as much as possible out of the available resource. The icing on the cake is 2014 and how it can inspire young people—and people of all ages.

11:15

**The Convener:** Dr Millan, an invitation was extended to you. Do you wish to take it up?

**Dr Fergus Millan (Scottish Government Public Health and Health Improvement Directorate):** Last June, we published our action plan on healthy eating and active living, which sets out what we are doing to increase physical activity. As the minister said, the budget for that has been doubled to £12 million over the next three years. The committee should already have access to that information.

**Helen Eadie:** Can we also hear from the Minister for Schools and Skills?

**Keith Brown:** This year about £2 billion will go to local government for general infrastructure, which includes schools. We have 11 projects and are investing about £1 billion in the school estate. As has been mentioned, over our four-year term we will provide 250 new schools, all of which will have new facilities. Some will be better than others because some councils have chosen—for whatever reason—to build schools without swimming pools. That is a decision for councils: they commission such projects.

I have already mentioned the money that is being invested in teacher training, which amounts to £1.8 million over three years. There is also continuous professional development for the curriculum for excellence generally. Substantial resources are being provided.

Carrots and sticks were mentioned. We are not looking to legislate and are determinedly not waving a big stick because we believe that we have entered a new era of partnership with local authorities, which is a change from what went before. During my time in local government, there was substantial central control of education, but that is now changing. I hope that the quid pro quo from our signing up to a partnership with local authorities is that they will respect their side of the bargain. In a democracy, power is diffuse. We have a partnership with local authorities, which

have a substantial mandate in their own right. We do not intend to wave a big stick.

**The Convener:** We are going over old ground a bit.

**Helen Eadie:** May I ask one more question?

**The Convener:** Yes—but Ian McKee, Michael Matheson, Ross Finnie and Jackie Baillie are waiting.

**Helen Eadie:** The minister made a point about swimming pools. We heard from Glasgow City Council that it is considering swimming pools in relation to the whole area, not just schools.

Throughout the morning you have mentioned school facilities. The most recent audit that we have received of facilities and the time that is allocated to teaching children PE was from 2003, if my memory serves me right. If you are to make informed judgments for the future, surely you must have an up-to-date audit of the position to serve as a baseline and to identify the barriers that schools face, with regard both to facilities and to the ability of teachers to be trained. Do you plan to carry out a further audit? If so, will you consult the committee before it is issued to schools and to the entire community? We all know that sometimes the issue is to provide swimming pools not just in schools, but in communities, because there are massive areas in Scotland that do not have such facilities. I invite you to comment on that point.

**Keith Brown:** The previous and only baseline study was commissioned in 2005 and published in 2006. The Administration at the time did not intend to conduct a follow-up baseline study and neither do we, partly because of the need for scrutiny of local government to be proportionate. We think that far too much scrutiny and bureaucracy have been attached to the matter.

However, we will get from the rolling HMIE inspections the information that we would expect to get from a baseline study. I acknowledge the point that the inspections should be transparent so that the information comes back. Over a six or seven-year period, which we are well into, all the schools in Scotland will be inspected and that information will come back. That and the curriculum for excellence should provide us with sufficient information without the need for a baseline study.

**The Convener:** This message is not for Ian McKee, who can ask his long questions, but for Michael Matheson, Jackie Baillie and Ross Finnie, who are coming back in again. I want short questions so that we can keep to our timetable. We have a lot of work to get through today. Before Ian McKee gets miffed—a peeved look crossed his face—I do not refer to him.

**Ian McKee (Lothians) (SNP):** Thank you, convener. My paranoia has settled again for the moment.

**The Convener:** Keep taking the tablets, doctor.

**Ian McKee:** I will also resist the temptation to ask the ministers for 26 points to see whether we can test Ms Monaghan to destruction in the advice that she gives.

The committee is inquiring into pathways into sport, but I want to turn a bit more towards the obstacles on those pathways from school into sport in the physically active world. Audit Scotland produced a report in 2008 called “Improving the school estate”, which seemed to imply that private finance initiative funding for schools was not a particular problem. However, I was at a PFI primary school last week asking about use of the playing fields out of hours. The teacher told me that they are too expensive for the pupils to use but she believed that the lads shinned over the fence in the evening. As I left the school, I saw that the fence was about 20ft high, so I presume that they got their physical activity doing that.

We visited Wester Hailes education centre yesterday and saw excellent use of its facilities. However, the deputy head told us that, because the facilities were built such a long time ago, they do not have a decent Astroturf pitch, and they could not use their existing football pitch because it was waterlogged. Again, it was too expensive, especially at weekends, for the pupils there to use the good pitches at nearby PFI schools. However, people from the more affluent areas of the city can use those pitches because parents can afford to pay £30 or £40 an hour, or whatever it costs, to use them. Again, we heard on our visit to Stirling that, although there is good access to a swimming pool from 9 o'clock onwards, the local authority had not organised access before 9 o'clock. People training for national and international swimming events need access to the pool earlier on.

There seem to be quite a few obstacles. Do you have a view on that? Is there an overall audit that would show whether there is, in fact, a problem or did I just happen to hit a run of exceptions to a rule?

**Keith Brown:** I think that what Ian McKee has described was an even worse problem in the initial stages of what was then PFI. I remember that Falkirk had the biggest PFI project in the United Kingdom at the time and—I could be wrong about this—as I remember it, a number of clubs folded at that time because they could not afford the new facilities and the old facilities had been taken away. However, the information and the impression that I have is that that situation has been refined over time. Through the transition from PFI to PPP and because of public pressure,

there is much more awareness that people expect to have access to facilities. There is nothing worse than there being fantastic facilities, not just in sport but in music, that sit unused out of hours. That was never the intention. Councils strike those contracts, so they can put provisions into them when they sign them to ensure that there is continued community access to facilities. Councils can also decide at what level to pitch the access fees. I mentioned previously that Glasgow City Council bought out the weekend part of a contract, I think, in order to ensure that people could get access for the same rates as during the week.

The councils are the drivers in contracts, but things are moving. For example, sportscotland is much more satisfied with sports pitches and getting access to them than it was. Things are moving in that direction, but I acknowledge that councils strike the contracts and that private contractors have held the key as to whether people get to use the facilities.

**Shona Robison:** The committee might be aware that there is, under the School Premises (General Requirements and Standards) (Scotland) Regulations 1967, a requirement for every school to have available to it playing fields whose area is related to the roll of the school.

The committee might be aware that sportscotland must be consulted on planning applications that would affect land that is used as playing fields. If the planning authority wishes to grant permission contrary to the advice of sportscotland, the application must be notified to ministers.

**The Convener:** As the minister has raised the issue, I will ask a supplementary question that I had intended to ask at the end. When did sportscotland become a statutory consultee? If we cannot get an answer just now, I would like to know at some point. Secondly, I would like to know how many such referrals have been made to ministers.

**Shona Robison:** We can provide that information to the committee.

**The Convener:** Anecdotal evidence—certainly in my patch—suggests that playing fields are still being sold off for development without extra space being provided for the school that has lost out.

**Shona Robison:** We will get an answer to that.

**The Convener:** I am sorry to have pitched in with that during Ian McKee's questions, but I thought that I would just ask the question while he was on the subject.

**Ian McKee:** The question added to my point.

**The Convener:** Thank you. You may have as long as you like—except that I hope to finish by about 11.30.

**Dr Simpson:** That will put his paranoia up again.

**The Convener:** However, I know that we have no prospect of finishing by that time.

**Ian McKee:** I appreciate from the answers that have been given that the issue is probably an historical legacy and that things are improving. The situation at Wester Hailes has arisen not because the playing fields had been taken away but because they have become unsuitable following the development of the canal near-by. It is a local problem.

What is more than a local problem is the fact that people in more affluent areas can afford high charges whereas people in less affluent areas cannot, yet people who live in areas of socioeconomic deprivation are often those whose health causes most concern. Is any general guidance provided to councils, or is any discussion undertaken with them, on how to overcome such obstacles so that communities that are not wealthy use facilities near them, which would otherwise be used only by people whose need is perhaps less great?

**The Convener:** In addition to that question, we should perhaps ask about travel costs, which is also part of the issue.

**Shona Robison:** I would certainly expect those issues to be very live in discussions on community sports hubs. Clearly, in developing a hub in an area of deprivation, issues of affordability and access will be critical. Local authorities that serve areas of deprivation are aware of the need to ensure that there are no financial barriers, and we need to ensure that they are acutely aware of that issue when developing the hubs. Ian McKee is right that the hardest-to-reach communities and the hardest-to-reach children and young people are exactly the people that we need to target. Extra effort will be required to ensure that, in developing the hubs and in taking advantage of the opportunity of 2014, we are focused on ensuring that no community is passed by because of affordability issues.

**Keith Brown:** I will give an example, which the committee might have heard about already. Where provision of PE facilities is poor, Angus Council provides access to local leisure centres and provides support with transport costs for people who seek access to the facilities. That is not replicated throughout the country, so we could use it as an example for other councils. The committee might want to look further into that.

**The Convener:** We are pretty near the end of our inquiry, so perhaps we could do that.

**Ian McKee:** We would appreciate it if both ministers could drive best practice forward to deal with the impediment that we have discovered in our inquiries.

My final question is along similar lines and is about access. In our visit to Wester Hailes yesterday, it became apparent that there is a perception that it is difficult for young people who want to pursue their interest in sport to find a local—or even not so local—club that is involved in that activity, because some clubs do not have junior branches.

Earlier, we heard that certain areas such as East Renfrewshire have special units—I was about to say “incubator units”, but I am not sure that that is the right term—to make young people feel welcome in the club or activity and to keep their interest going, which can be difficult if they join clubs that do not have a junior section.

11:30

On the other hand, there are public and private clubs and such an approach will involve resources and a change of attitude. Can the general situation, rather than areas where there is best practice, be improved?

**Shona Robison:** From what I have seen and heard, active schools co-ordinators, sports development teams and sports’ governing bodies have been critical in ensuring that, where there are gaps, such developments happen. In the Highlands, for example, basketball development has been funded through the cashback for communities programme, but the junior infrastructure required a lot of development, because there was hardly anything there. It is a chicken-and-egg situation: if you want to get children excited about sport, you have to give them somewhere to go. That was recognised in the Highlands and so the necessary infrastructure was put in place. These things go hand in hand, because you cannot raise expectations in children and then say, “I know you enjoyed that, but we don’t have anything more to offer you.”

The people who work in sports development teams and with clubs, sports’ governing bodies and the active schools co-ordinators all play crucial roles in that respect. Moreover, the development of coaching and the involvement of volunteers are important in ensuring that there are people who can provide coaching and support for junior teams.

I know that there are gaps, but we know what is needed to fill them. We simply have to ensure that it happens consistently everywhere.

**Ian McKee:** This point has been made several times, but I, too, am concerned that, when we visited a school that had a real interest and good record in sport, there seemed to be a lack of knowledge of the various mechanisms for taking up golf, getting into rugby and doing all the things that we heard are happening.

**Shona Robison:** It sounds to me as though the appropriate links had not been made. Of course, that is not the school's fault. Sports development teams and so on need not only to help schools link with local clubs but to find out whether local clubs have, for example, a junior section and, if not, to establish how they can develop such a mechanism. Someone needs to take ownership of that activity and I think local authority sports development teams are very well placed to do it—after all, they can bring all the different elements together and find out where the gaps might be.

**The Convener:** Before we move on, I point out that there will be a second review of the efficacy of active schools co-ordinators, who will forever be known as the glue. Is that correct, or did I pick that up wrong?

**Shona Robison:** I do not think that the review is on the efficacy of active schools co-ordinators. Work will be done to ensure that we have an evidence base on whether children who have been exposed to active school co-ordinators go on to join clubs and remain active in sport.

**The Convener:** In a way, however, that work relates to the efficacy of active schools co-ordinators.

I really want to move on, but three members still have questions. I ask that they be put to the ministers en bloc.

**Michael Matheson:** First, I want to make a quick comment on the back of Helen Eadie's point about resources. If they are not aware of it, I refer ministers to evidence from East Renfrewshire Council, which said that its active schools programme did not cost it any extra money. Instead, it used the £800,000-worth of savings that it made through restructuring its education programme. We should be rolling out that sort of best practice across the country.

Following Ian McKee's questions, I want to ask about the infrastructure of different sporting bodies in communities.

I agree that sports development officers and teams should work actively in partnership with community sports clubs, schools and the national governing bodies to try to get things right locally. However, several national governing bodies have said in written evidence and before the committee that things are often driven by them rather than by the local authorities. A piecemeal approach

appears to have been taken to ensuring that local authorities have strategies—I will use that word—in place to develop the capacities of community sports clubs. It appears that the national governing bodies very much drive things.

The final issue that I want to raise is what more can be done to ensure that we sweat the assets of our school estates, local authorities and sports facilities to ensure that we do not find—as we have heard in evidence—that clubs cannot get access to swimming pools until after 8 o'clock in the morning and must be out of them before quarter to 9, although they can get into them from 7 o'clock to 10 o'clock in the evening. Those pools are often resources owned by local authorities or trusts that have been set up, but clubs cannot get in the door outwith core hours.

**The Convener:** Once all three members have asked their questions, I will abbreviate what was said into several points.

**Ross Finnie:** I return to the complexities of delivering physical education in primary schools. I think that Dr Monaghan said that primary teachers are qualified to deliver the curriculum, that there is continuing professional development and that there is a new postgraduate qualification. I hope that I have not misrepresented what she said. Of course, that implied that primary teachers are qualified to deliver PE, but what was said is in stark contrast to practical evidence that we were given. PE teachers said that the physical literacy levels of those presenting at secondary 1 appear to be in decline.

When an inventory of primary teachers' qualifications was taken in East Renfrewshire, it was concluded that teachers there were, for whatever reasons, hopelessly ill equipped to deliver a PE curriculum. The authority set about righting that by providing support and additional resources. What is the Government's view? Does it believe that physical education is generally available or are there problems to be addressed?

There is linked evidence that suggests that there are pressures in the curriculum, which we understand, and that, whether we like it or not, those who shout loudest about normal literacy and numeracy will tend to win in the current climate over those who want a battle for physical literacy. Evidence suggests that that has created a crowding in the curriculum that needs to be addressed and that we need to get back to an issue that we understand—that physical literacy can assist with literacy and numeracy. However, that appears to have got slightly lost somewhere.

**Jackie Baillie:** I will try to be brief.

We are hearing that the Government is training teachers, but it is up to local government whether to employ those teachers. We are also hearing

that the Government is trying to put money into renewal and refurbishment, but Ross Finnie and I have attended a school that has little prospect of renewal. Its gym hall is a former vegetable shed and part of the higher PE course cannot be delivered because of the dimensions of the facilities. Given those two constraints, how will the Government ensure, beyond through its partnership with local government, that its target—which it says matters to it—is delivered by 2011? Is it simply a case of sending in the officials for a group hug, or is the Government going to do something more to deliver? So far, I have not heard what that is.

**The Convener:** I will repeat what was said. I hope that my colleagues will tell me if I have got what they said wrong.

Michael Matheson's point was that the national bodies seem to be driving sports in schools, that a piecemeal approach is being taken and that infrastructure is not being used to the maximum.

Ross Finnie is concerned about the situation of PE-skilled teachers who have not taken the postgraduate course and children going to secondary schools lacking physical literacy. Another point was on competition and prioritising in the curriculum.

I am obliged to Jackie Baillie for asking this crisp question: how will you ensure that the target is delivered by 2011, given all the obstacles that have been put before you? You said that you are going to deliver it. Have I got your question right, Jackie?

**Jackie Baillie:** Yes.

**The Convener:** I invite the ministers to answer the three questions.

**Shona Robison:** I will deal with Michael Matheson's question first. I know that I have talked a lot about the community sports hubs today, but I see that model as the solution to the issues that he raised. The purpose of the community sports hubs is to sweat the asset of the school estate to some degree, but it is also to bring together the schools, clubs, council officers and national governing bodies locally under the umbrella of a single community sports organisation to add value to what is already going on, fill the gaps and get things working. It is good that the national governing bodies have shown enthusiasm, which we have to harness. I believe that the hubs are the answer. A lot of effort is going into deciding how they will be structured and engaging each local authority in considering how they will participate in that. We will keep you updated on developments in that regard.

**Keith Brown:** I assure Ross Finnie that every conversation that I have had suggests that

physical literacy—and the role of physical education in that—is now seen as much more central. It is right up there with numeracy and literacy as a crucial part of children's development. I said earlier that a healthy child has more chance of achieving in other parts of the curriculum if they have proper physical education. I assure Ross Finnie that that is acknowledged and appreciated by officials and everyone in local government to whom I have spoken so far.

Ross Finnie and Jackie Baillie made points about qualified teachers. Initial teacher training provides teachers with the ability to teach PE; they should not graduate if they have not developed that ability. Ross Finnie mentioned the study in East Renfrewshire that showed that some teachers did not have those skills. That is the reason why we have provided additional resources for teachers to make use of the postgraduate courses at the University of Edinburgh and the University of Glasgow. It seems to me that East Renfrewshire Council has done exactly what a council should do, which is to find out what it has and what it needs if it wants to achieve the objectives. It goes back to what I said earlier about best practice. I would happily undertake to ensure that that example is investigated and presented to other councils.

However, I have to say that the employment and training of teachers are the responsibility of councils. We have to help with that and we are putting resources in to make training available, but teachers have to do it. I acknowledge that they have to do it against the background of other curriculum pressures.

On Jackie Baillie's point, it is not as simple or attractive as simply telling people to do something and that if they do not, we will make them do it in some other way. That is not the approach that we are taking. There is reliance on the curriculum for excellence. If the aims and experiences are to be achieved, two hours of PE have to be done and the health and wellbeing criteria that we set in the curriculum for excellence have to be met.

I acknowledge the point about the vegetable shed and the constraints on facilities, but the situation has not arisen simply in the past two years; there have been decades of underinvestment in our school estate to the point when the massive renewal programme started. The situation is not going to be resolved very quickly. As we have heard already, I do not think that that is a constraint on the achievement of two hours of PE a week, because PE can be provided in other ways while the new facilities are being developed. I do not think that those constraints—real though they are—will prevent us from achieving two hours of PE a week as long as

councils, which are very much in the driving seat, show the necessary drive and willingness.

**The Convener:** I ask the ministers to provide us with more expansive information on Angus Council and any other councils in relation to the use of facilities and travel. We do not have time to hear the evidence on that, but it would be helpful if we could get it before we prepare our report.

I thank everyone for their evidence.

11:45

*Meeting suspended.*

11:54

*On resuming—*

## Subordinate Legislation

### Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 (Draft)

**The Convener:** Item 3 is subordinate legislation. We have before us two affirmative instruments for consideration. I welcome Adam Rennie, who is deputy director, community care, Scottish Government. He will give evidence on the instruments along with the Minister for Public Health and Sport.

I remind members that we will take evidence first; after that, the minister will move the motion and there will be a debate, so there are two sections to the item. [*Interruption.*] Pardon? I was about to read it out.

What I am reading is highlighted in green. I do that myself; the clerk does not do it for me.

We come first to evidence on the draft order—

**Michael Matheson:** Is that highlighted in green?

**Ross Finnie:** I look forward to reading the *Official Report* of this item.

**The Convener:** I am now miming to the official reporters.

**Dr Simpson:** The committee is getting hysterical.

**The Convener:** As is usual practice, I invite the minister to make some opening remarks.

**Shona Robison:** I am pleased to support the draft order, which will amend the minimum frequency of inspection by the Scottish Commission for the Regulation of Care for a further group of care services. The Parliament granted the Scottish ministers the power to do this in the Smoking, Health and Social Care (Scotland) Act 2005, as I recall from my membership of the Health Committee at the time. The power was used in 2007 to amend the minimum frequency of inspection for types of care services for which the commission had evidence that the required frequency was unnecessarily high in the light of the risks in those service types.

Reducing the frequency of inspections by the commission provides more flexibility in regulating care services. It supports a more proportionate, risk-based regulatory framework. It does not mean that all the services in any category will be subject to less inspection, because the care commission

retains the ability to use its resources to target poorer-quality care services for improvement.

The order that the committee is considering builds on the foundation that was laid in 2007. It extends the commission's regulatory flexibility to more care service categories. The new minimum frequency of inspection for childminders will be at least once every 24 months rather than once a year. Independent hospitals and hospices will be inspected at least twice in every 24 months rather than twice a year.

For school care accommodation services, the new minimum frequency will be at least twice in the first 24 months following registration and at least twice in every 48 months thereafter, rather than twice a year. However, because of the particular risks in the sector, the reduction does not apply to special residential schools, which the care commission will continue to inspect at least twice every 12 months.

The last category is the remainder of housing support services that are not delivered in conjunction with any other care service. They will be inspected at least once in every 36 months rather than once a year. That matches the frequency of inspection for such services provided by registered social landlords, which was reduced in the Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007.

The changes are based on sound evidence from the care commission, including the number of complaints against services and regulatory activity by the commission, such as its recommendations and requirements on services, its risk assessment of them and the grading that it gives them following inspection. The vast majority of respondents to the public consultation supported the proposals.

Members will have noted that care homes and secure accommodation services are included in the draft order. That is a technical requirement because of the way that the power in the 2005 act was drafted. However, I reassure members that the order does not change the frequency of inspection for those services. They will continue to be inspected at least twice every 12 months, as shown in the order.

I emphasise that the inspection frequencies in the order are the minimum. The care commission retains its power to inspect all care services without notice at any time they are operating. In practice, it inspects care services that are new to regulation more frequently than the minimum.

I commend the draft order to the committee.

**Mary Scanlon:** I will ask about day care for children aged three and over. If I wrote down your remarks correctly, you said that there was

evidence that the required frequency should be more proportionate for this risk-based service.

I did a little bit of work on nurseries in Inverness about a year ago when my granddaughter came back to stay. The ones that we looked at were not inspected twice a year.

12:00

Whenever I have lodged parliamentary questions on the care commission, nine times out of 10 the answer has been, "This is an operational matter for the care commission." I got the same answer from the previous Government. When I try to find out who audits the care commission, that is impossible. When I looked at reports, I found one from 2005 that contained recommendations that had not been implemented by 2007, when the same matter was reported again. When the inspector returned, they accepted that what they had said was inadequate in 2005 was all right. Earlier this morning, we expressed concern about physical education and activity in schools, but I am talking about staff who were not trained, premises that were not right and infection control that left a lot to be desired.

I will not vote against the draft order, but I am seriously concerned that the care commission's work is not properly monitored and audited. Little information is available in the Parliament about what it does. I read its annual report, but that is just a glossy document that praises everything that it does.

An answer that I received from either the minister or Nicola Sturgeon said that only 15 per cent of carers and users of care services are aware of the care commission. If people do not know what it is or what they should expect, they will not know whether they should make a complaint or whether it would be justified.

I am happy that the care commission is to be merged with or taken over by NHS Quality Improvement Scotland. That is a good move. However, I have serious concerns about the operation of the care commission, particularly in relation to vulnerable children, parents who do not know what to expect, and the grading of nurseries. If there is a lack of complaints, we know the reason—it is because people do not know what to expect.

The bottom line is that I am concerned that the number of inspections of nursery schools will be reduced.

**Shona Robison:** You raised quite a lot of points there. I will respond to them, although not necessarily in the same order.

For clarification, the restructuring will create two separate bodies. One merger will bring together



the Social Work Inspection Agency, part of HMIE's function and the care commission, except the part of it that deals with independent hospitals, to form the social services body. The health body will be formed by merging NHS QIS with the remaining part of the care commission.

On the point about raising awareness of the care commission's function, it has been doing quite a lot to make people aware of its work. That is probably partly in response to the fact that only 15 per cent of carers and users know about it. It has been going round and doing a lot of local radio to try to make people aware of its existence and its important role in picking up on any concerns and complaints. We will need to wait and see whether that has an impact on the awareness among carers and users of care services.

The requirement is for nurseries to be inspected a minimum of once a year. Obviously, the care commission can inspect a nursery more frequently if it has concerns about it. That will not—

**Mary Scanlon:** Is that an announced visit?

**Shona Robison:** The care commission can make an unannounced visit if it wants to do so in the light of concerns, or it can make an announced visit followed by an unannounced visit if it—

**Mary Scanlon:** But generally the visit will be announced.

**Shona Robison:** Yes, but if the care commission has concerns, it can make an unannounced visit, or it can follow up an announced visit with an unannounced visit. That will not be changed by the order.

I will meet the care commission later this month. I am happy to make it aware of the concerns that you raise and ensure that it responds to you directly.

I am not saying this just because I am the minister responsible—I felt that the care commission was doing a pretty good job when I was in opposition and my view has not changed. There is room for improvement in every organisation, but when I have raised concerns with the care commission—as I know other members have done—about services in its area, its response has been robust. It has ensured that any issues that have been raised are followed up and addressed. In fact, the care services sometimes complain that they are under too much pressure and too much scrutiny. It is a difficult balance to achieve, but I will certainly raise with the care commission the concerns that you have raised with me and will ask it to respond directly.

**Dr Simpson:** I have three points. First, the concept is right. The assessment of risk is very important and when risk is shown to be low, on the basis of a number of reports, it is inappropriate for

there to be continued inspection and a continuing requirement for care homes, in particular, to fill in bits of paper. I therefore welcome the order, because it sets the minimum frequency of inspections but does not fix the number of inspections so, if risk is detected or reported, the care commission can still go in. What will happen when there is a change in the ownership of any of the organisations to which the order refers? A change of ownership sometimes results in a change in standards or in the conditions of work for those involved.

Secondly, I am concerned that awareness of the care commission will decline rather than improve once it is merged. I want to be sure that its role will continue to be self-evident and promoted within any new set-up, because I have concerns about the number of different inspection organisations that are sometimes involved.

Thirdly, are you taking any steps, not in the order but as part of the change in the regulatory framework, to ensure that reporting, for example to local authorities on contracts as well as to the care commission, is co-ordinated to reduce the regulatory load on the organisations that are involved and to redefine the requirements on the basis of risk in the way that the care commission proposes?

**The Convener:** The issues that have been raised are change of ownership, knowledge of the role of the care of commission when it merges—because there is apparently a lack of knowledge out there—and the number of inspections.

**Shona Robison:** I will work backwards. The regulatory load is one reason why Crerar looked at what efficiencies and better practice could be introduced to the system—the resulting merger is only a part of that. I accept that there is still a dialogue to be had about what more can be done to reduce the regulatory burden, to reduce the bureaucracy and to make it easier for services that are being regulated and inspected, so that is still work in progress, although I suggest that the mergers following Crerar represent a fairly large step in that direction.

Dr Simpson asked about the effect that the merger will have on knowledge and awareness of the care commission, which relates back to Mary Scanlon's point. That is an important issue. I want to ensure that users and carers will notice no difference in the service that the care commission provides, but we need to address practical matters such as getting across the new name of the organisation and ensuring that people know how to contact it. People should experience the same response as they get now, but there is a bit of work to be done to ensure that the public are aware of the new organisation when we get to that stage.

Dr Simpson asked whether the inspection frequency would change in the event of new ownership. I said in my opening remarks that the care commission might pay particular attention to a new body. I am sure that if it had any concerns about new owners—because, for example, it had had concerns about them in a previous context—the inspection frequency would increase. Those are matters that the care commission will deal with on a day-to-day basis.

I make it clear that the order will not alter the inspection regime for care homes; it affects only the services that are laid out. We had to include care homes because of the way in which the previous legislation was drafted.

**Michael Matheson:** It might be that in trying to understand the order, I have become a little confused, so I will try to obtain some clarification. Am I correct in saying that the inspection regime for nursery provision for children of three or over will change from an annual inspection to one inspection every 24 months?

**Adam Rennie (Scottish Government Primary and Community Care Directorate):** The inspection regime that the commission will operate for the day care of children between the ages of three and 16 will involve a minimum of one inspection every 24 months. An additional 10 per cent of services in certain positions will be randomly selected for inspection. For childminders, the regime will be one inspection every 24 months.

**Shona Robison:** My previous answers probably confused Michael Matheson, because I said that there would be an inspection every 12 months.

**Adam Rennie:** That is the regime for services that are provided to children under three.

**Shona Robison:** Providers of those services will be inspected every 12 months.

**Michael Matheson:** That is fine; that is what I thought. There will be a minimum of one inspection every 12 months for services for children under three.

I agree with the risk-based approach that is being adopted with the proposed changes in minimum inspection frequencies, but I wonder how the new regime will work out for a nursery school that provides care for children from six months to a year and a half, that has a unit for children of between a year and a half and three and that also has a unit for three to five-year-olds. For example, my son attends a nursery where he is in the two-to-three unit—the tweenies. I am conscious of the fact that—*[Interruption.]*

**The Convener:** I am so sorry—I am being distracted by the Arctic draught that is coming in at our backs. It is very rude of us to be murmuring

about it, but I think that it is time that we made this public: for the record, the computer says that the window is closed; it probably also says that we are all warm. Neither of those things is true.

**Michael Matheson:** My concern is that such an establishment will now be in a situation in which two parts of it will be inspected annually, but one part of it might be inspected only every two years. People from the care commission come along to the nursery that my son goes to and we benefit from a comprehensive report on the full unit. There is a single inspection regime for the different parts of the establishment. If there were two separate inspection regimes, that might involve extra time for such units, which are quite common.

**Shona Robison:** Let me explain. It depends on how the nursery is registered. If it is registered as one unit—in other words, if it serves all age groups—it will be inspected once a year, because its children will include under-threes. However, it could be registered as two separate units—there might be a pre-school unit for three to five-year-olds, as well as a unit for younger children. If that is the case, the pre-school unit will be inspected every 24 months, but the other unit will be inspected once a year. It depends on how the nursery has registered itself. If it is registered as a single unit, it will be inspected once every 12 months because it caters for younger children.

**Michael Matheson:** What is the common approach to registering those types of units?

**Shona Robison:** It varies.

**Adam Rennie:** We need to ask the care commission about that.

**Shona Robison:** We can certainly get you that information.

**Michael Matheson:** I am conscious that if the majority register as one unit, the effect of the order may be minimal.

**Shona Robison:** The inspection frequency will remain at once a year.

**Michael Matheson:** That is what I am conscious of, but if a significant number register as separate units, in some areas it could increase the resource that will have to be spent on inspecting establishments.

**Shona Robison:** I appreciate that. Maybe we could follow up with a note on what the balance is in the registration of units.

12:15

**Jackie Baillie:** Like others, I agree that inspections should be proportionate, but I have a couple of niggling concerns. Obviously, risks will evolve in real time, and I would be interested to

know how the care commission will monitor those, given that it will not be inspecting as frequently. What circumstances would trigger an inspection on a timeframe that is much quicker than the one that is set out in the order?

**Shona Robison:** That can happen now. A risk might emerge in a service that has just been inspected and given a clean bill of health. The important thing is that, no matter what the frequency of inspection, there are safeguards to pick up on any concerns. That is why we encourage staff working in care services to raise any concerns with the care commission, through the whistleblowing avenues. We very much encourage users of services, such as families, to do likewise.

In my experience, once people are assisted in doing that, the reaction is pretty swift. The care commission will follow up those concerns. Issues can be raised anonymously. The care commission has seven years of experience, so it knows how to probe, and it knows how to deal with vexatious complaints—if someone has a grudge against a service. It is able to get through that.

Those are issues that stand, no matter what the frequency of inspection is. Risks can emerge at any time, and it is important that people have confidence in the system and know that if they raise a complaint, it will be acted on.

**The Convener:** We move to the formal debate on the order. I invite the minister to move motion S3M-3509.

*Motion moved,*

That the Health and Sport Committee recommends that the draft Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 be approved.—  
[Shona Robison.]

*Motion agreed to.*

### **Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 (Draft)**

**The Convener:** I invite the minister to make any opening remarks on the regulations.

**Shona Robison:** Thank you for the opportunity to speak in support of the regulations.

Ensuring that the right people provide care services is an essential element of ensuring that those who use services receive good-quality care. It is part of the care commission's responsibility to ensure that potential providers are fit to carry out that role. Under the current arrangement, the commission has no discretion when someone who has a conviction applies to register as a care service provider: if an applicant has a conviction

that resulted in a sentence of not less than three months—whether or not it was suspended—the commission must refuse their application. It does not matter what the sentence was for or how long ago it was.

The committee's first thought might be that anyone who has any conviction cannot possibly be fit to provide a care service to vulnerable people. I understand that, but there are circumstances in which convictions do not affect a person's ability and suitability to provide a care service. I shall give you an example. A couple apply to provide a childminding service. The husband has a spent conviction for a driving offence from his youth, since when he has married and been in steady work and the couple have successfully raised their own family. He has had no further convictions, and all the other indicators suggest that the couple should be registered. Their references are good and their health is fine but, under the present rules, the commission must refuse to register them. It has no discretion in the matter.

The proposed amendments to the fitness requirements give the care commission the discretion to decide whether a given conviction is relevant to an application to provide a particular care service. In the example that I have just given, the commission would consider carefully the circumstances of the conviction and decide whether it made the husband unfit to provide a childminding service.

The changes will bring the requirements on providers' fitness into line with those of the Scottish Social Services Council, which has the discretion to consider convictions when registering social services workers. In practice, that means that someone with a conviction can be registered with the SSSC as a social worker and carry out that role but, if they applied to provide a care service, under the current arrangements the care commission would have to refuse their application.

In proposing the power for the care commission, I make it clear that it will not be a charter for unsuitable or unscrupulous people to register care services. The commission will be required to come to a reasonable opinion, having regard to the circumstances of the conviction. It is currently preparing guidance for potential applicants who want to register care services, which will explain the criteria that will be taken into account and how the commission will exercise the power fairly and transparently. My officials will scrutinise the guidance carefully before it is published.

I support the regulations, which will amend the provisions on fitness to register, provide and manage care services.

**The Convener:** I have a question, although it might not be necessary. It is common sense that the commission should have discretion, given the example that you gave involving a de minimis offence, but if somebody applies to register and they are refused on the basis of that discretion will there be an appeal procedure?

**Adam Rennie:** Do you mean an appeal against the refusal of an application?

**The Convener:** Yes—against a refusal to register.

**Adam Rennie:** I do not think that there is such a procedure, but we will get back to the committee on that. I am sorry that I do not have the information with me.

**The Convener:** Once a discretion is introduced, decisions will be taken at the edges. The minister gave an easy example, but there will be some cases that are on the cusp.

**Shona Robison:** We will have to clarify that. We would look to the SSSC to find out whether there is something in line with what it does.

**The Convener:** It might simply be an application to the sheriff court relating to a decision by the commission. An appeal procedure is important when discretion is introduced.

**Shona Robison:** We will get back to the committee on that.

**Adam Rennie:** That is a general point. The commission already takes all sorts of decisions that potential providers might or might not want to appeal against.

**The Convener:** But it is absolute at the moment, is it not?

**Adam Rennie:** We are discussing another type of decision that the commission might take. I am sorry that I do not have the answer to that question.

**Shona Robison:** We will get back to you on that.

**Michael Matheson:** I was going to raise the same point. As soon as discretion is introduced, some recourse will have to be introduced for those who wish to dispute the way in which the care commission applies the discretion. I encourage the minister to consider that. If the care commission's decision is to be final, that will have to be made clear to people when they apply for consideration under the discretionary power.

**Mary Scanlon:** My point goes back to one that I made previously. Given that we know so little about the care commission, as it is monitored so lightly and audited even more lightly, how can we be sure that it will always come to a reasonable

decision about who is a fit and proper person? The example that the minister gave was excellent and I fully understand that situation, but we are asked to recommend that the regulations be passed when we have no idea how the commission will exercise the discretion. We have no way of checking on the operational guidance for the care commission.

**Shona Robison:** Ultimately, the care commission is accountable to me as the minister. I am happy to raise with it any concerns that members have, but I do not share the member's view about the commission. In the past seven years, it has built up a real competence in dealing with difficult situations, and it has produced a practical set of proposals to deal with a situation that was perhaps not envisaged when the Regulation of Care (Scotland) Act 2001 was drafted. It is common sense that the commission should not have to rule out people from running a care service for something that is absolutely unrelated to their ability to run a care service. The guidance that the commission is drawing up will come to me before it is published. There are enough checks and balances in the system to ensure that the care commission carries out its work with all due probity and professionalism.

**The Convener:** As we have no more questions, I invite the minister to move motion S3M-3511.

*Motion moved,*

That the Health and Sport Committee recommends that the draft Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 be approved.—[*Shona Robison.*]

*Motion agreed to.*

**The Convener:** I thank the minister for her evidence; it has been a long morning for her. Mr Rennie will remain to answer any questions on the negative instrument that we will consider next.

### **Regulation of Care (Miscellaneous Amendments) (Scotland) Regulations 2009 (SSI 2009/32)**

**The Convener:** The regulations follow the draft Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009, which the committee has just discussed. As the Subordinate Legislation Committee indicates, they are intended to ensure that the terminology used in the relevant regulations is consistent.

Members have indicated that they have no questions for Mr Rennie—it is easy-peasy lemon-squeezy for him today. Do members agree that the committee does not wish to make any recommendation in relation to the instrument?

**Members indicated agreement.**

**The Convener:** The cold is getting to me so I will rattle through the agenda in the interests of our health.

## Cross-border Health Care

12:26

**The Convener:** The next item on the agenda is the proposed European Union directive on cross-border health care. I ask members to consider the correspondence that we have received from the Cabinet Secretary for Health and Wellbeing about the proposed directive, and I draw their attention to paper HS/03/09/8/8, which contains a note by the clerk, a letter from the cabinet secretary and a paper by SPICe outlining the timetables that are involved in the process.

There are a number of suggested options for members to peruse. First, we could agree to be briefed on developments regarding the progress of the proposed directive until the European elections and any revival of the proposal following the elections. The note contains a correction that indicates that the proposal will lapse, to be returned to later, when the current session of the European Parliament ends. The procedure there is different—legislation does not fall, it lapses. It does not have to be revived totally but can continue during the next session.

Secondly, we could invite the Cabinet Secretary for Health and Wellbeing to give oral evidence, further to her letter. Thirdly, we could agree an alternative course of action. I invite comments from members.

**Helen Eadie:** You said that the proposal will lapse rather than fall. In reality, it will not just continue in the next session—we will go back to square 1. I know that that statement is factually correct, as I checked with Catherine Stihler and the Labour member of the committee that is considering the proposal.

The cabinet secretary's response is helpful, but it raises a number of questions. Rather than our engaging in correspondence back and forth, my preference is for her to give further evidence to the committee, as suggested in option b). In addition, I suggest that, prior to her coming, we hear from the Scottish Parliament's European officer, who briefed us on the matter last August. Those are my preferred options.

**The Convener:** I ask Mr McIver to clarify what is meant by the proposal lapsing. To lapse or not to lapse, that is the question.

**Iain McIver (Scottish Parliament Access and Information Directorate):** We looked into the matter, because Brussels is not entirely clear about what happens to a directive that is in the process of going through the European Parliament when a session ends. Both the Scottish Government's EU office and the European

Parliament office in Edinburgh have told us that the proposal will lapse in May but that when the European Parliament returns, probably in September, it can decide to bring it back at the stage at which it stopped. The Parliament does not have to do that—the proposal will lapse and need not return at the second codecision stage—but we understand that the Parliament could vote to bring it back at that stage.

12:30

**The Convener:** So there is an option to bring the proposed directive back.

**Iain Mclver:** Yes.

**The Convener:** That is an option for the European Parliament.

**Helen Eadie:** My understanding was slightly different, but I hear what the official is saying.

**The Convener:** We will try to reconcile that. We have a note of your position, Helen, and we will get as definitive a position as can be achieved on European matters—which I suspect is not always easy.

**Mary Scanlon:** I am sorry to look back, but how did the committee fall out of the communications loop on the proposed cross-border health care directive? It has enormous implications for Scotland, but it fell off our agenda and no one kept us in touch until Helen Eadie raised the matter at committee. Why was that? Whose responsibility is it to ensure that committees are kept in the loop when such things come up?

**The Convener:** We had spoken about having a watching brief. The question is how we define a “watching brief” on such matters and how closely we monitor things. Do not feel obliged to add anything, Iain.

**Iain Mclver:** I would not wish to add anything.

**Helen Eadie:** It is actually easy to identify where committees have an interest—we simply need to do a search on the European Parliament website. We are doing work on mental health, for example, and work is being undertaken on the same subject in Europe. The committee needs to do more itself, proactively, with regard to such issues. When they have such a financial and policy impact on Scotland, we really need to understand what is going on. There is no point saying, five years down the line, “Oh, I wish we had realised, because we wouldn’t have done that otherwise.” It is time for us to wake up to what Brussels is doing.

**The Convener:** That is a fair point, especially with regard to our inquiry into mental health services for the young and adolescents in particular. As you say, we should be proactive.

I want to move on, because the temperature is so unpleasant in here. I am not minded to invite the cabinet secretary, as I think that her letter on the matter is pretty full and I do not know what could be added, but I will go with the feeling of the committee. What is the position of the committee?

**Michael Matheson:** I am open to the idea of the cabinet secretary coming along, but to be honest I am not sure what benefit would come from that. If the proposed directive will lapse to some degree, I am not sure whether such an approach is appropriate. It might be worth trying to find out, as soon as possible after the European parliamentary elections, exactly what the incoming Commission is planning to do with the directive, so that we can engage at that stage and, if necessary, involve the minister or cabinet secretary.

**The Convener:** We know your position, Helen, and I am happy to let other members in. Michael Matheson’s suggestion seems sensible, and I am attracted to it. We can find out the position after the election—aside from the clarification on the question of proposed directives lapsing or not lapsing.

**Helen Eadie:** In that case, I would like a letter to go back to the cabinet secretary. I have five questions that I would like to put to her. I am willing to give those questions to the committee clerk and to have them circulated among other members to see whether they are agreeable.

**The Convener:** That would be helpful, Helen. I wish to move on rapidly so that is agreed: you will give your five questions to the clerks, who will draft a letter and then circulate it to see whether other members are content—and we will put a deadline on that.

Before members all go out the door to get their hot water bottles, I want to move on to item 9. Business in public is concluded for today.

12:34

*Meeting continued in private until 12:36.*

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