

# **COMMUNITIES COMMITTEE**

Wednesday 6 December 2006

Session 2

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## COMMUNITIES COMMITTEE 33<sup>rd</sup> Meeting 2006, Session 2

### CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

### DEPUTY CONVENER

\*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

### COMMITTEE MEMBERS

Scott Barrie (Dunfermline West) (Lab)

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

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

\*Patrick Harvie (Glasgow) (Green)

\*John Home Robertson (East Lothian) (Lab)

\*Tricia Marwick (Mid Scotland and Fife) (SNP)

\*Dave Petrie (Highlands and Islands) (Con)

### COMMITTEE SUBSTITUTES

Chris Ballance (South of Scotland) (Green)

Alex Johnstone (North East Scotland) (Con)

Christine May (Central Fife) (Lab)

Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

Ms Sandra White (Glasgow) (SNP)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

David Cowan (Scottish Executive Education Department)

Hugh Henry (Minister for Education and Young People)

Maria McCann (Scottish Executive Education Department)

### CLERK TO THE COMMITTEE

Steve Farrell

### SENIOR ASSISTANT CLERK

Katy Orr

### ASSISTANT CLERK

Catherine Fergusson

### LOCATION

Committee Room 5



## Scottish Parliament Communities Committee

*Wednesday 6 December 2006*

[THE CONVENER *opened the meeting at 11:31*]

### Decision on Taking Business in Private

**The Convener (Karen Whitefield):** I open the 33<sup>rd</sup> meeting in 2006 of the Communities Committee. I remind all those who are present that mobiles phones and BlackBerrys should be turned off. We have received apologies from Scott Barrie, who is unable to attend today's meeting.

The first item is a decision on taking business in private. I propose that we take in private item 3 and that we do the same for consideration at future meetings of our draft stage 1 report on the Schools (Health Promotion and Nutrition) (Scotland) Bill. Are we agreed?

**Members** *indicated agreement.*

## Schools (Health Promotion and Nutrition) (Scotland) Bill: Stage 1

11:32

**The Convener:** The second item is our further consideration of the Schools (Health Promotion and Nutrition) (Scotland) Bill at stage 1. I welcome Hugh Henry, the Minister for Education and Young People. The minister is supported by David Cowan, the bill team leader, and Maria McCann, who is branch head of the support for learning division in the Scottish Executive Education Department. Do you want to make an opening statement, minister?

**The Minister for Education and Young People (Hugh Henry):** No—I am happy to go straight to questions.

**The Convener:** That is great. It gives us more time for questions.

Why does the Executive consider legislation in this area necessary, given that the proposals reflect much of what is happening in schools at the moment?

**Hugh Henry:** As the convener rightly suggests, there has been a significant improvement in what is happening in schools. However, we all need to accept that poor diet is a significant contributor to Scotland's poor health record. All of us have seen and heard about the consequences of that poor diet; we can see that a generation of people are dying prematurely because of their lifestyle. We know the implications of heavy drinking—which is something we have to look at—and the consequences of smoking. The Executive has taken action on the latter.

Over the years, we have paid insufficient attention to the contribution that diet makes to health. Nowadays, all of us are more aware that what we eat has a direct impact on how long and how well we live. Our view is that the earlier we start the process, the better. There is evidence that if we can influence very young children, some of that influence will last through the years. It would be wrong to avoid considering the significant impact that what is provided in schools in terms of diet can make to a child's health.

We want to build on the success that we have had. Encouragement is preferable, but we owe it to the children who are most at risk to go further than just trying to influence, encourage and cajole. We must accept our share of the responsibility for ensuring that what is provided gives them the best possible start in life.

**The Convener:** The hungry for success initiative is being taken on board by many local authorities throughout Scotland. Is the Executive under the impression, or do you have evidence to suggest, that it is being embraced more fully in some local authority areas than in others?

**Hugh Henry:** I do not know whether I would go so far as to say that it is not being embraced in some local authority areas, although we can see that, for whatever reason, certain local authorities are more successful. For example, I know that some of the changes that North Lanarkshire Council has made in the vending machines that are provided have been successful. We will probably return to that and to the initiatives that have been taken by East Ayrshire Council—many people will have seen the evidence on the food and preparation of meals at Hurlford primary school and the significant success that it has had.

As well as considering legislation, we are keen to ensure that good practice is shared. There is no good reason why, if the initiative is successful in one area, it cannot be successful elsewhere. The future of much of what we are doing lies in learning from each other. I would prefer to concentrate on the authorities that have done particularly well and not state that there has been a failure to embrace in other areas. We all want to ensure that the authorities that are—for whatever reason—not as far advanced try to accelerate their efforts to come up to the standards of those that achieve the best results.

**The Convener:** I want to move on to health promotion. Under the bill, local authorities will have a statutory duty to ensure that schools are health-promoting by 2007. How will such a statutory duty differ from what is in place at the moment?

**Hugh Henry:** We want to make health promotion a central feature and purpose of schooling, partly because there is a fundamental recognition of the impact that health has on life chances, life expectancy and so on. However, it is also right to reflect on the contribution that healthy eating and, through it, health promotion in general can make to a child's ability to learn. A child who is clearly in good health will be able to absorb, learn and develop better than a child who suffers from ill health. Health promotion is a central tenet of trying to ensure that children receive the best possible start in life.

The convener questioned the changes, but they will ensure not only that health education is integral to the curriculum but that it pervades the atmosphere and ethos of schools, including their policies and services. The changes will also ensure that health education pervades the extra-curricular activities in schools, addresses physical, mental and social well-being, and helps to produce

confident and healthy individuals who are able to develop to their full potential.

The bill seeks to amend the Standards in Scotland's Schools etc Act 2000, the aim of which is to ensure that strategies for ensuring that schools are health-promoting form part of the statement of improvement objectives. We are talking about drilling down in order to ensure that health promotion is not left to chance but is made central to everything that goes on in our schools. As I said, there are educational, personal and social benefits from doing that—indeed, some argue that there are also behavioural benefits from children eating healthily.

**The Convener:** Probably all of us would agree with much of what the minister said about the importance of the proposal and how it will improve the child's chance to learn. That said, the bill covers only primary and secondary schools but learning begins long before a child goes to primary school. Has the Executive considered the evidence that the committee has heard that a duty on health promotion should also rest in the pre-school setting? That is when children begin to develop their tastes, habits, likes and dislikes and their ability to engage in the learning process. Early years provision is as important as that of primary or secondary education.

**Hugh Henry:** I could not disagree with that. Early years provision is fundamental to everything that the Executive sees as being necessary and vital for the development of education in Scotland. I have, from my days as a councillor, a long-standing interest in the issue. I am delighted to see the significant improvements that have been made in early years provision right across Scotland, in not only the quantity but the quality of provision.

We also need to reflect on the need for early intervention. That is not about the nanny state: it is about recognising that some children who do not receive early help will be significantly disadvantaged in educational, social and developmental terms. By the time those children get to primary school, and on into secondary school, they will be the problem children. Tragically, later in life, they will be the fodder for our criminal justice system. The more we can do in the early years, the better. That maxim should apply not only to the food that they receive in the early years setting but to the learning process that they go through. Children need to learn from an early age that there is as much enjoyment in eating healthy food as there is in eating unhealthy food. For some children, the early years experience of eating healthy food will mark the first time they eat food that is different to the run-of-the-mill standard fare that they receive at home.

The simple answer to the question is that the pre-school setting is important to us.

In terms of ensuring that that happens, we know that children in local authority establishments will be covered. There is, of course, mixed provision in early years education, but the issue can be caught in a number of ways. For example, all early years providers require to be registered with and inspected by the Scottish Commission for the Regulation of Care. In addition to examining the broad atmosphere that a provider has created, part of the commission's responsibility is to look at an establishment's food and nutritional provision. The commission has statutory powers to issue recommendations or requirements to providers to improve practice.

Inspection of the quality of food in early years provision is a critical part of an inspection. As the convener knows, if the commission were to decide that a provider's food did not reach the required standard, it could withdraw registration. In such a case, the non-local-authority provider would cease to be able to take in children. That approach builds on the nutritional guidance for all providers of early years education and child care, which we published in January. We think that we have the enforcement mechanism to back that up.

11:45

I will reflect on whether we will need to do more at a later stage, but I do not underestimate the significance of the care commission's intervention or the implications of providers' failure to meet the required standards.

**The Convener:** Cathie Craigie has some questions on nutritional standards, so we will come back to that, but I am interested in whether nursery schools should be health promoting. The issue is not just about the quality of food—it is also about an emphasis on a whole-life approach to healthy lifestyles and whether that style of teaching and learning should be extended to pre-school provision rather than beginning in primary schools.

**Hugh Henry:** That is right. Nursery schools are subject to inspection by Her Majesty's Inspectorate of Education, which considers many of the broader issues. A great deal of work is being done outside the local authority sector—in voluntary and private early years establishments—on the education curriculum that should underpin early years provision. I know from experience of using such establishments that many are driving up standards as best they can, but there is a need for support from local authorities to ensure that training takes place and that standards are adhered to. The inspection process is also crucial to that.

I am confident that the broader ethos will be embedded and that mechanisms are available should the standards to which we aspire not be adopted. However, I will reflect on whether anything further needs to be done.

**The Convener:** Are you concerned that, although that ethos might be adopted in good establishments that want to do well and have the interests of the child at heart, there may well be other establishments that are not necessarily bad but which do not regard health promotion as a priority? If no duty is placed on pre-school facilities that are not local authority establishments, health promotion might be less of a priority for them. They might say, "We'll get round to it one day," but they will not take the holistic approach that will be adopted in local authority establishments.

**Hugh Henry:** You raise the broader issue—which extends beyond the issues that are particular to the bill—of how we might drive up standards in the early years sector, and support and develop staff. Local authorities give significant thought to how that should best be done, but we need to reflect on the constraints that exist, particularly in the private sector, because of issues to do with wages, conditions of service, access to training and so on.

I suppose that there are two factors that weigh on that broader discussion. The first is market choice: if parents think that an early years provider is not reaching the standards to which they aspire, they can move their children elsewhere. The second critical factor is that, where the local authority purchases service provision from voluntary or private sector establishments, it can use its purchasing power to ensure that it does not place children in establishments that fail to meet the required standards in relation to either the bill or the wider expectation that health will be promoted. I also think that health promotion in the general sense involves ensuring that the requisite levels of support, encouragement and learning are given to all providers.

Local authorities have a key role in ensuring that the message is given out. I know from being in some private establishments fairly recently that those who run good private establishments are desperate for that support. Where provision is less good, the local authority's role is to ensure that something is done, not just for health promotion reasons, but for other reasons.

**John Home Robertson (East Lothian) (Lab):** We need to press the minister a little further on that. I take his point that the care commission and local authorities can get at the issue from other angles, but would not it be odd for Parliament to pass an act entitled the Schools (Health Promotion and Nutrition) (Scotland) Act that excluded one of the most important parts of education—pre-school

education? Since we are addressing the issue, why not include in the bill's scope privately and publicly run nursery schools?

**Hugh Henry:** I do not want to get into an argument about semantics, but John Home Robertson's point that the bill's title includes the word "Schools" is important. Many of the establishments that we are discussing are not schools. Even in local authority provision, some early years establishments are nursery schools or nursery classes as part of primary schools, but some of the more successful establishments are family centres and children's centres, which are not schools.

There is a semantic and legal difference between a school and an early years provider that is not classified as a school because it may not necessarily employ a qualified teacher or be subject to the normal requirements. If the committee wanted to extend the bill's scope, we would be talking no longer about the Schools (Health Promotion and Nutrition) (Scotland) Bill but about an educational and social provider bill.

**John Home Robertson:** It would be an education (health promotion etc) (Scotland) bill.

**Hugh Henry:** We would have to turn to a different argument about the legal and functional nature of many such establishments, which clearly are not schools. However, that should not minimise the need to ensure that what the bill will achieve is provided in those establishments. I have explained how we will ensure that the standards that we expect can be provided and will be inspected by the care commission, and I have said that the care commission will be able to put establishments out of business if they fail to meet those standards. That is probably a more powerful tool to use against them than even that which can be used against many local authority schools.

**John Home Robertson:** We may need to reflect on that.

**Christine Grahame (South of Scotland) (SNP):** I have a technical question. I think that the minister said that the bill cannot cover nursery provision because of its title and its purpose. Cannot they be amended?

**Hugh Henry:** I did not say that. I said that I would reflect on whether anything further need be done. I raised with John Home Robertson a different argument about whether such establishments are schools. It is a semantic and legal nicety that many of them are not schools, although they are nonetheless important providers of educational services that are critical to children's development as they move towards primary school. We have the means to ensure that what we say in the bill is implemented when the local authority is a purchaser of services.

**Christine Grahame:** I was asking more of a technical question. The long title refers to

"the promotion of health in certain schools and ... school hostels".

Would it be legislatively competent to add to the long title "nursery schools and educational establishments"?

**Hugh Henry:** We should not necessarily dwell on some of the legal niceties. Even if the purposes referred to nursery schools, many of the establishments that we are discussing are not nursery schools in the legal sense. Nursery schools are specifically defined; although we might refer casually to many private providers as nursery schools, I understand that they are not legally nursery schools.

**The Convener:** That is an issue on which the committee, as well as you, minister, will reflect.

**Hugh Henry:** The key point is that, no matter whether those establishments are defined legally as schools—I do not think that they are—we can take steps to ensure that standards are driven up and adhered to as we expect. We will set out the guidelines. To ensure that the standards are implemented in the early years sector, as well as in our schools, our tools are the care commission and—for many establishments—the local authorities, which purchase provision. If a local authority knows that an establishment is failing to deliver the required standards of health promotion and healthy meals, it can choose not to place children there or not to pay for them. Also, the care commission will be able to use its existing powers to ensure that standards are adhered to and, if they are not, to withdraw registration, which would put an establishment out of business.

**The Convener:** My final question is about the Executive's intention with regard to the duty on health promotion. How do you envisage the duty tying into the Executive's wider developments in education on the review of the curriculum and better integration of children's services and health services? Does the legislative proposal sit separate from those matters? Does the duty have a role in supplementing on-going work on improving children's services and health?

**Hugh Henry:** The duty certainly will not and should not sit separately—it would be a disaster if it were to sit separately. It fits neatly into our work on the curriculum, the Scottish diet action plan, healthy living and our aspiration to have more young children involved in physical activity, as well as our work on children's mental and emotional well-being, on sex education and on drug and alcohol abuse prevention. Our aim is to develop healthy, confident and aware children who can make informed decisions and who can follow through our work on the type of meals and snacks

that are provided and start to make choices for themselves.

I cannot be the only one who never ceases to be shocked when I drive to my office in the morning and I see children on their way to school eating crisps and drinking Coca-Cola or Irn-Bru—I do not know whether they have had breakfast. That reflects a certain attitude about what they enjoy and it displays limited horizons, not only in relation to what is good for them, but to what is available.

Interesting evidence from HMIE inspections shows that some children who have been exposed to positive changes in primary school are starting to manifest different choices about what they eat when they get to secondary school. It would be foolish to suggest that that is happening universally, but it is nevertheless welcome that children are making progress as a result of early exposure to healthy eating and suitable choices. To speak anecdotally, I also see that in my family—my children and others that I know now reach for bottled water as quickly as for fizzy drinks, and they are starting to think about some of the things that we say about eating fruit. I accept that not every child has had the same support and opportunities, but the evidence from HMIE suggests that that is beginning to happen.

**Patrick Harvie (Glasgow) (Green):** I have a quick supplementary question. I was pleased that the minister mentioned sexual health, the implication being that a health-promoting school is one that has good-quality sex education as part of its work. Why did the Executive not include sexual health in the definition of “health-promoting” at the end of section 1? It covers

“physical, social, mental and emotional health and wellbeing”

and it might have been appropriate to include sexual health in that definition.

12:00

**Hugh Henry:** I suppose that there is a range of things that we could include. Sexual health is a function of the things that you mention and I am not sure that specifying it in the bill would necessarily add value. Sex education is part of promoting mental and emotional well-being, but so is drug and alcohol education, which we do not specifically mention. The damage that drugs and alcohol cause can be even more considerable than the damage that a lack of sex education causes, although some might argue about that. We do not specify all the factors that have an impact on mental and emotional well-being, but I give them as examples of things that are important.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** Why do nutritional standards need to be

given a statutory basis, given the work that is taking place in schools under the hungry for success programme? Is there a danger that giving them a statutory basis might prevent local authorities from taking a more flexible approach?

**Hugh Henry:** I have no concerns about flexibility. There is considerable flexibility in the moves that we are making. Indeed, some local authorities have already taken a flexible approach to the matter—I gave examples of that earlier. I hope that that flexibility will allow some local authorities to race ahead, be innovative and develop, and allow others that see successful approaches to copy, develop and adapt them and apply them to their circumstances.

We have gone for statutory standards because healthy eating is so fundamental that we wanted to ensure that there was no inconsistency in standards throughout the country. We will set out the standards that we expect and our aspirations; we have provided the resources and are providing the framework. That is about building on what has been achieved through the hungry for success programme and taking it on to a new level.

There are people who would argue that the less interference there is from Government, the better and that we should perhaps set out our aspirations but not legislate on a range of matters. However, at some point, we need to reflect on what is happening in our country. We need to reflect on the levels of obesity in our primary and secondary schools and on the fact that adults in Scotland still die significantly before their time compared with those in other countries. Our lifestyle—smoking, drinking and lack of physical activity—is a factor, but so is what we eat. Standards will make an important contribution towards setting the framework within which we expect our schools to operate.

**Cathie Craigie:** The Executive’s position is that there is a benefit to be gained from giving the standards a statutory basis. You said earlier that the more we can do the better, and you mentioned that nutrition will be an important public health issue for the future. We have taken evidence from a number of organisations, and one point that has been raised with us is that the bill does not cover the independent school sector or the private nursery schools that we spoke about. Unison, which considers the bill to be a public health measure, challenged the response that Scottish Executive civil servants gave when they were asked why the independent sector had been left out, which was that the Executive would not normally legislate for independent schools. However, given the importance that you attach to the bill in terms of health promotion, do you not agree with Unison’s evidence?

**Hugh Henry:** Not necessarily. I would not want

to be unfair in my categorisation; nor would I want to dismiss the children who go to independent or private schools or say that they are of no concern to me. I am not saying that, because every child in this country deserves the best possible start in life. However, if we try to reflect objectively on the issues, we see that health, life expectancy and opportunities in life are not the same for the average pupil who attends those schools as they are for many who attend secondary schools in our more deprived areas.

By and large, children in independent schools probably eat better, live longer and have better life opportunities. That is no reason to say that, if there is something that we can do to help them as individuals, we should not do it, but there is also a different relationship with those schools, because we do not provide public funding for them in the way that we do for other nursery, primary and secondary schools. Nor is there the same relationship that exists when we buy provision for early years establishments in the voluntary and private sectors.

The relationship is different, and there is a different set of social circumstances. Having said that, there is the opportunity to ensure that independent schools aspire to, and reach, the same standards. We think that that can be done in two different ways. We have been in touch with the Scottish Council of Independent Schools to discuss the bill and to encourage independent schools to take on board the legislation and to adapt and apply the guidance that we will develop on promoting health and nutrition in schools. We will work in partnership with them on developing that guidance and encourage them to adopt it. HMIE also inspects those schools, and it will inspect them to the standards that we have set. If they are not providing meals to the standards that we have set in the bill, HMIE will take up the matter in the appropriate way.

The bill empowers ministers to impose conditions or, in more serious cases, to serve a notice of complaint on registered grounds for specific complaints. If HMIE reported that schools were failing their pupils because they had ignored the standards, action could be taken. As was said earlier, we will reflect on that. We think that there are ways of ensuring that the standards are met without having to legislate for those schools. We will reflect on whether anything further needs to be done, and we can return to the issue during the passage of the bill.

**Cathie Craigie:** HMIE has that responsibility in relation to schools that are run by local authorities, and you have said that local authority schools will benefit from having the nutritional standards set in legislation. I accept that the number of people who attend private schools may be small, but if every

child is important and we feel that it is important to legislate for local authority education establishments and grant-aided establishments, I hope that between now and the next stage of the bill the Executive will seriously consider extending its scope to cover the independent sector.

**Hugh Henry:** We will reflect on the points that have been made.

**Christine Grahame:** I support Cathie Craigie's position absolutely. The policy memorandum says that the bill is not discriminatory, but of course it is because it discriminates between the public sector and the private sector. I do not think that the claim that the Executive does not usually legislate for independent schools holds water. You mentioned HMIE inspections, and we know that Disclosure Scotland also performs checks in the independent sector. There are substantial regulations and pieces of legislation that cover the private sector; I am pleased that the minister has mentioned them, but I think that there are issues about excluding the private sector from the scope of the bill.

**Cathie Craigie:** My theme is the nutritional standards duty in the bill. The convener asked about the health promotion duty and the fact that it does not extend to the non-local authority pre-school sector. I listened carefully to the minister's response on how the title of the bill might not cover our many different pre-school establishments and nurseries. Barnardo's and Children in Scotland have suggested that we could refer to pre-school establishments rather than to nursery schools or child centres, for example.

You might be detecting a feeling among committee members that the bill should cover all of the pre-school sector. Would that be possible?

**Hugh Henry:** As I said, I will reflect on those issues. However, unlike the case with the independent school sector, the care commission has considerable powers for inspecting the early years sector. The commission will inspect nutritional standards and will have to pay heed to the bill. In extreme cases, the commission will be able to take action to close an establishment if it is failing—although I emphasise that that could happen only in extreme cases.

We have powerful tools to enact the provisions of the bill in the early years sector but, as I say, I will reflect further on the issue. I will come back to the committee to discuss whether anything further needs to be done.

**Cathie Craigie:** Does the care commission have a responsibility to inspect all pre-school establishments?

**Hugh Henry:** Yes—in the private and voluntary sectors, as well as in the local authority sector.

**Cathie Craigie:** Whether the establishment is a

school, a pre-school facility or a care nursery?

**Hugh Henry:** Yes.

**Patrick Harvie:** I want to ask about the nutritional standards. You have received the expert working group's recommendations; the committee has had the chance to ask questions on those recommendations in previous evidence sessions. What was your reaction to the recommendations? When can we expect a response from the Executive?

**Hugh Henry:** We have yet to finalise our view; I expect us to do so in the new year. The report from the expert working group is very helpful. We might not agree with every aspect of the report—any statement today that we did so would be premature—but it is a helpful piece of work and it sets out a useful framework.

**Patrick Harvie:** So you would not expect there to be major changes.

**Hugh Henry:** There might be some, but our response would not be significantly different.

**Patrick Harvie:** How do you respond to the criticism that the standards overemphasise nutrient levels? The standards say nothing about additives or about the freshness of food. Should we not be using the nutritional standards to talk about everything that impacts on nutritional value, rather than just nutrient levels?

**Hugh Henry:** I am no expert on food science, so I hesitate to drift into that area. I am not sure that primary legislation has to prescribe every detail; some issues can be addressed in subsequent regulations. If we set appropriate general standards, there will be opportunities later to reflect on more particular issues.

I would want to be much surer of my ground before replying to the question on additives, because it is a contentious issue. Although there is evidence about the impact that some additives have, others argue differently. Indeed, some argue that certain additives can help to change behaviour, and pilot projects have been done on supplements, rather than additives, being provided to both young people and children.

The issue is emotive, highly complicated and technical. I do not know whether we would be able to specify in the bill a provision that adequately covered all the additives that may be harmful, and I am not sure whether the point should be returned to in regulations. I probably need further advice.

12:15

**Patrick Harvie:** Most of us would probably agree that introducing additives to have an impact on behaviour would take us into dangerous territory. We would perhaps not want to go there.

Is there not at least some contradiction in the Executive's intention to remove artificial sweeteners from drinks while those same chemicals will not be removed from foods? For example, why should we remove aspartame from drinks but not from yoghurts?

**Hugh Henry:** Again, you are getting into a much different debate, and we would have to analyse every food product that is made available. There are firm views on both sides of the debate on aspartame. Some believe that it has hugely harmful effects, while others believe that it is far better to include it than some of the alternatives. However, if we started to drill down into every product to examine each minute additive before it was provided in a school, we would be imposing cumbersome conditions on education authorities and schools. Such is the accepted level of concern about the impact of fizzy drinks, it is right to consider them in the first instance. Whether something more prescriptive is needed would be a matter for conjecture, but we can undoubtedly return to that point as the bill proceeds.

**Patrick Harvie:** I am still a little puzzled about the Executive's intention in seeking to remove artificial sweeteners from one category of product but not from another. The chemicals are the same.

**Hugh Henry:** Officials who have been working on the bill for longer than me may have some thoughts on that.

**David Cowan (Scottish Executive Education Department):** The issue was discussed by the expert working group, and the advice of its dental expert was that the additives were not as harmful to teeth in milk-based drinks as they were in non-milk-based drinks. That was the evidence presented by the dentist.

**Patrick Harvie:** So it was decided purely on the issue of teeth and ignoring any possible impact on wider health.

**David Cowan:** As I understand it, the issue with artificial sweeteners in drinks relates to the pH level. The expert working group would be able to answer the question better, but I understand that the problem is to do with pH levels and erosion of teeth and that the additive is not as erosive when it is in a milk-based drink.

**The Convener:** Tricia Marwick has a related supplementary question.

**Tricia Marwick (Mid Scotland and Fife) (SNP):** In its evidence, the expert working group said that it would recommend that there should be no salt on the table but that it would not set targets for the reduction of salt or, if there were targets, that they should be less stringent than those south of the border. When pressed, the group suggested that the reason for the low salt reduction target in

Scotland was that there might be salt in manufactured foods, which would be more difficult to address. Do you have a view about the percentage level of salt that is acceptable in Scotland?

**Hugh Henry:** Acceptable salt levels, or salt levels that are regarded as healthy, are fairly well established not only in the United Kingdom but internationally. However, there is general concern about salt levels in processed or manufactured foods. It is implicit in the bill that there should be a move away from such food products so that not only will salt not be available on tables, but less salt will be included in the products that are delivered to children as a result of the standards being met. Perhaps the officials can say something about the debate in the expert working group.

**David Cowan:** The expert working group set out its thinking about salt in its report. That thinking was in keeping with the Food Standards Agency's target for reducing salt levels in food. The argument for slacking off the salt target in Scotland was that schools were particularly struggling in that area. It was thought that the target was too stringent and that it would be okay, in the light of the impact that doing so would have, to slacken it and to get schools to phase in targets. The expert group tried to take a pragmatic approach.

**Maria McCann (Scottish Executive Education Department):** Under the proposals, salty snacks will be removed, so there will be a reduction in overall salt levels in food in schools. That was why there was a willingness to be flexible on the amount of salt in meals.

**Tricia Marwick:** Mr Cowan said that a pragmatic approach had been taken in Scotland, but the standards will still be less stringent than those that will be set in England, where there will also be a reduction in the salt that is consumed in snacks. I do not understand why targets for Scotland should be different from the targets that have been discussed for England.

**Maria McCann:** The overall context of the targets for England, which can be described as very low or very high, must be considered. The expert group's view was that it would be difficult to produce appetising food as a result of some of the things that people in England are trying to do. However, the proposed reductions in salt will still mean that healthy overall amounts will be consumed. We did not simply want to replicate what was being done in England, because it was thought unnecessary on the health side to go as far as people there want to go and that doing so could make it difficult to produce food that meets requirements on zinc levels, for example.

**Patrick Harvie:** The minister spoke about the work that is being done at Hurlford primary school in East Ayrshire. Members of the committee were impressed when we visited that school. We will discuss environmental matters later, but it is clear that the underlying philosophy behind what is being done there is that real cooking should be done using fresh ingredients and that unprocessed food should be eaten. Such an approach reduces the additives that are consumed. The minister said that there is no good reason why that approach cannot be successful everywhere if it is successful there. Celtic Football Club's children's menu is going down the same route; indeed, there is no reason why such things cannot be done in urban settings. Is the Executive open to finding out what else can be done in the bill or guidance to get people closer to adopting such a philosophy rather than the fast-food philosophy that is in evidence elsewhere?

**Hugh Henry:** The bill and the guidance will make a significant difference. We are talking about a distinct move away from the fast-food philosophy. Indeed, in order to achieve what will be required as a result of the bill, there will be a direct incentive for people who make meals to use fresh local products. I hope that not only will we see more people buying fresh, local produce and preparing it well and in an appetising manner, but that we also help to reduce the environmental footprint, as a result of not having to transport food over significant distances. There has been some evidence that that is starting to happen, and that is a welcome by-product of the bill.

**Patrick Harvie:** Do you intend to conduct any further consultation with other groups before the regulations are laid?

**Hugh Henry:** We do not intend to have another round of consultation before the bill is passed. When the regulations are produced, people will have the opportunity to come back to us. As far as the bill is concerned, we have consulted and reflected. We have the work of the expert group and there has been consultation, comment and debate on that. We are up against a fairly tight timetable to get the bill through before the end of the parliamentary session, so there would not be a lot of opportunity to pause and to consult. Thereafter, if there are any changes to be made, people can comment and we will listen to what they say.

**Christine Grahame:** I do not know whether it would be appropriate to ask about procurement at this point. It was touched on briefly.

**The Convener:** No, we will come back to that later.

I am conscious that we have now been questioning the minister for almost an hour and

that we still have a substantial number of areas to cover, so I ask both committee members and the minister to keep questions and answers as succinct as possible.

**Dave Petrie (Highlands and Islands) (Con):** How would you respond to the concern of some witnesses that implementation of the regulations could lead to a drop in the uptake of school meals, particularly in secondary schools, bearing in mind the fact that the hungry for success initiative has not exactly resulted in a massive increase in uptake?

**Hugh Henry:** An increase may happen. It happened in primary schools. The evidence shows that, after the initial dip, there was an increase in uptake as people got used to the meals and started to appreciate them. Although we may see some initial adverse impact, I am confident that, in the longer term, uptake will improve.

When children get to secondary school, there are other factors that we need to pause and think about. Young people of that age are starting to become more independent, so they might not want to stay in school for their meals. Instead, they want to go out to explore and socialise at lunch time. That is a big issue for us. Short of confining them in school, we cannot do anything about that, although there are things that can be done with the providers of the snacks and meals that sometimes proliferate around schools.

I am confident that, because we are attempting not only to legislate but to make a significant change to culture and habits, people will start to respond over a period of time. We must also ensure that, within the school, not only the meals, but the whole environment in which children eat the meals, are attended to. It must be warm, welcoming and friendly and an environment in which they wish to stay. Some of the brand new public-private partnership schools in my area have reported a significant increase in school meals uptake because pupils like the environment in which they are eating.

**Dave Petrie:** That is a fair point. As I have said before, and as has been mentioned in evidence, if you can introduce attractions for kids to stay in school at lunch time, that will increase uptake, but then there is the queuing issue.

**Hugh Henry:** The biggest queues that I see when I am out on my rounds are outside some of the local shops, where pupils will queue in the rain for a significant period. People tell me that queuing is a deterrent to eating school meals, but if pupils are prepared to suffer the conditions that they suffer at the shops, a few minutes in the queue at school is nothing.

12:30

**Dave Petrie:** You are suggesting that kids are queuing at chip shops, but we heard in evidence that it should not be assumed that all kids who choose to eat outside of school are eating unhealthy food.

**Hugh Henry:** No, I do not assume that, but from the evidence that I see before me I know that chip shops are the most attractive destination for kids. The point is fair: kids may well make healthy choices, although not that many healthy choices are available in the areas surrounding some schools. That is another issue that we want to address. We want to encourage local shopkeepers to think about the type of meals they are providing. We believe that there is a financial benefit to shopkeepers in providing a wider range of healthy food.

East Renfrewshire Council and West Dunbartonshire Council have used the powers that are available to them as licensing authorities to move on vans from which unhealthy food is sold. They have done so by imposing licensing restrictions on those who run fast-food outlets. We are also interested in the work that is being done to encourage those people to understand what more they can provide. As the member rightly says, we should not assume that all kids who eat outside of school are eating unhealthily. That said, we would be foolish to ignore what our eyes tell us.

**Dave Petrie:** In evidence to the Finance Committee, Glasgow City Council stressed:

"we need to be extremely careful in developing the right balance between the health agenda and reality".—[*Official Report, Finance Committee*, 31 October 2006; c 3973.]

How will you ensure that the balance is right in the final standards and their implementation? Will it be illegal for schools to provide non-nutritional foods?

**Hugh Henry:** I am not sure about illegal. Even in a healthy eating regime there may be some things that do not provide any great nutritional benefit. Given that I am not a nutritionist, I do not want to go into detail on the subject.

In terms of the Glasgow argument, I agree that a balance has to be struck. The committee heard earlier about the ways in which we have attempted to strike that balance. Indeed, some of the evidence from elsewhere in the country shows that we are achieving a degree of success. In addition to making a legal shift, we are making a cultural shift.

The first shift that many authorities made was to try and keep children in the dining hall. They did so for a number of reasons other than nutritional reasons, including safety. Having captured the children and created a better environment, schools

then had to look at what children ate by choice and introduce healthier food options.

The shift has taken place over a period of time. We have now reached the stage when we think we can go one step further. It is a bit like the debate on smoking in public places. I remember raising the issue about six or seven years ago, at which time it was dismissed out of hand—there was hostile press and God knows what else—but the public mood shifted. We knew that the time was right to introduce a ban. The situation is similar in this case. Young children's attitudes to what they eat are changing.

The member made a point about secondary schools. If we can get in and influence what children are eating in early years settings and primaries, they will be well used to eating healthily by the time they get to secondary school. We have to start at some point; now is the right time.

**Dave Petrie:** Thank you.

**Tricia Marwick:** In evidence from the education authorities and others, we heard about the revenue that vending machines produce for schools. If school vending machines are stocked only with healthy foods, what impact will that have on the revenue stream? Does the Executive intend to do anything about that?

**Hugh Henry:** Let us be honest: if we refused to make a change simply because it affected revenue streams, we would be doing the wrong thing by our children. We would be betraying them.

Although revenue streams might be a factor for schools—many schools have shown commendable initiative in trying to add value to school trips and other facilities in the school and I do not want to damage that—the gains for individuals in schools and for us as a society are far too big for us to be deflected or distracted by small gains from vending machines.

The evidence that the reduction in revenue is damaging is not that persuasive. For example, North Lanarkshire reports that its switch to healthier products in vending machines has been cost neutral. Some of the big providers of vending machines have said that healthy products can be as profitable as less healthy items. It might just be a matter of process; some of the evidence that we have seen today suggests that the switch can be made successfully. Even if there is a momentary dip in or disadvantage to revenue streams, I am not persuaded that it is enough in itself to stop us trying to improve our children's health.

**Tricia Marwick:** We heard evidence from the Automatic Vending Association that it had great difficulty getting healthy snack options for its vending machines. As I recall, some of the food

manufacturers suggested in evidence that the way to meet nutritional standards might be to reduce the quantity of chocolate bars and the like. You spoke about a culture change: do you agree that it needs to extend not just to parents, children and school teachers but to the large food manufacturers, which must embrace the changes that we want?

**Hugh Henry:** I agree entirely with Tricia Marwick. It is about time some of those big companies showed more responsibility.

**Tricia Marwick:** The requirements to be health-promoting and to set nutritional standards will also apply to hostels that are provided and maintained by the education authority. Do hostels have the resources and infrastructure to ensure that they are health-promoting and that all food and drink that they provide will meet the nutritional requirements that we set?

**Hugh Henry:** There are different parts to that question. The local authority that is responsible for a hostel should ensure that it has the necessary infrastructure. The other part to consider is whether we treat hostels in the same way as schools. I am not encouraging kids to eat unhealthily at home because they are subject to a healthy eating regime at school—we hope that that influence will extend outwith school. However, we recognise the element of choice that is available to children who go home that might not necessarily exist for those who stay in hostels. There is provision to let those children feel that they are in a home-like environment and that we do not place a burden on children who live in hostels that is not on children who go home. I invite one of my officials to explain the technicalities.

**Maria McCann:** As young people who live in hostels are effectively at home, a subsection in the regulations will take into account what is called a 24-hour approach, which recognises the need for flexibility. My understanding is that not all confectionery will be completely banned from hostels, although we want children to eat healthily in general. However, treats will still be available.

**Tricia Marwick:** That is important. We have heard evidence on this issue from young people who live in a hostel. After 4 o'clock they are, in effect, in a home situation, so they should not be denied a chocolate bar now and again. I am grateful to the minister for confirming that everything that is interesting will not be denied to those young people. I am sure that they will be grateful too.

**Christine Grahame:** I have a feeling that Tricia Marwick likes chocolate; she has mentioned it twice now.

**Mr Jamie Stone (Caithness, Sutherland and**

**Easter Ross (LD):** I want to ask about snacks. I will roll two questions into one. Education authorities will have the power to provide free snacks, but how extensive will their use of that power be, given that it will be up to them to fund it themselves? Could the fact that the power is discretionary lead to an inconsistent and patchy approach to snacks and free breakfasts throughout Scotland?

**Hugh Henry:** It may lead to an inconsistent approach—or a patchy approach, depending on which word you prefer. We come back to the usual dilemma: when it comes to the delivery of local services, how much should be decided locally and how much should be decided here in the Parliament? We could assume all powers centrally and decide what everybody should do—in education, in health, in the police, in cleansing, and so on. Alternatively, we can allow a certain discretion at local level.

Our main objective is to ensure that meals and snacks are healthy. If a local authority wanted to use its powers and resources to respond to a particular need, that would be its decision. In some local authority areas, there might be particular social or health issues; measures might be taken there that would not be required elsewhere in the country. Local people would be best placed to make such decisions.

**Mr Stone:** I understand that argument.

The bill will give local authorities discretion either to charge or not to charge for snacks, but the regime for school meals will be different. Why?

**Hugh Henry:** Historically, we have accepted that we must ensure that a child has at least one main meal in the day. That meal should be healthy and nutritious. In a sense, snacks are an addition to that. We are not assuming all the responsibilities of the parents—or, indeed, of the child, depending on the child's age—but we think that it would be wrong for a child to go through a whole school day without a main meal. We therefore regard the provision of a meal at lunch time as very significant.

Snacks between meals are a different issue. Some would argue that the best thing to do is to ensure that the child has a healthy breakfast, thus avoiding the need for snacking through the morning. Similarly, providing a healthy and nutritious meal at lunch time would avoid the need for snacking through the afternoon. Many experts argue that snacking can contribute to a poor diet. It is not necessarily for me to engage in such arguments at this stage, but the main meal is the key objective. That is why the bill contains provisions relating to that meal, to payment for it and to entitlement to it.

If a local authority believes that a child needs,

for personal or social reasons, an additional snack at any time, and if the local authority wishes to provide that snack, we should leave it to that local authority to decide its own priorities. I do not think that we should say that every child will have a snack in the morning and a snack in the afternoon. As I have said, some would argue that it would be better to try to avoid the need for children to have snacks.

**Dave Petrie:** Given the recommendations in “Hungry for Success” that are aimed at improving the uptake of school meals, why are there still significant variations in the uptake of school meals between education authorities and between schools in the same education authority?

12:45

**Hugh Henry:** There can be local factors such as the suitability of the environment in which pupils have to eat their meals. Earlier, I gave you the example of the significant uptake in school meals in new schools. There can be social issues or issues to do with age. I remember debates with my children once they got to second and third year in secondary school. We would tell them that we expected them to stay at school to eat their meals, but there was peer group pressure to wander out of school. It would not be the first time if I was driving by and caught one of my children out of school at lunch time when I thought they were safely ensconced having their school meal.

We have to consider all sorts of issues when we examine uptake. The quality of the meal is important, as is the environment in which it has to be eaten. Extraneous factors surrounding what happens at lunch time can also be important.

**Dave Petrie:** Are there any lessons to be learned from the independent sector, which manages to keep its kids in school all lunch time?

**Hugh Henry:** To be honest, if we can learn from the independent sector, we should. I suggest that the independent sector could also learn from many of our state schools. I do not want to get into a debate about the independent sector, but it does not have to face the same challenges as many of our state schools, which cater for children from disadvantaged or impoverished backgrounds. It would be easy to score points about how well the independent sector does in several areas, but if we compared like with like by ensuring that independent schools had the same social composition as state schools, we would be better placed to say whether they are any better.

**Dave Petrie:** The point was purely on the principle of trying to engage kids and get them to take school lunches.

What impact do you think the duty on education

authorities to promote school lunches will have on the uptake of school meals, considering the range of factors that influence whether pupils take school lunches? This goes back to my earlier point. Do you think that the likes of lunch clubs and extra-curricular activities could be an enticement?

**Hugh Henry:** There are a number of possibilities. The fact that we are placing a very specific duty to promote will encourage schools. I have talked about extraneous factors. We have to think about what goes on in the school not just when the meal is being provided. Before and after lunch time can be very important. For example, I recently visited Greenfaulds high school in Cathie Craigie's constituency to make an announcement about additional funding. The head teacher told me about an initiative—I am not quite sure whether it came from the pupils or the teachers—that encourages younger pupils to come together informally to discuss the news, current affairs and so on. The agenda for those meetings is largely driven by the pupils and it is so successful that they have had to extend it into another session. That is a good example of how to make a school a welcoming and thriving environment where young people can have their meals and then go and do something else. It is about how a school is managed and the atmosphere within the school as well as about what is provided at the meal itself.

**Christine Grahame:** I am pleased that you have had happy visits to schools. In some old schools, however, kitchens have been closed and meals are imported—that started happening a few years ago. Others have a kitchen that is still functional but needs to be modernised. What provision have you made for the capital costs to such schools of adapting their facilities and dining areas? What would the capital costs be?

I have been in primary and secondary schools where the kids sit in the corridors to eat their meals, if they have them. They do not have proper eating areas, or such areas are overcrowded. In the financial memorandum, you acknowledge that capital costs may be incurred. The Finance Committee expressed concern on the issue. In the policy memorandum, you say

"It is difficult to estimate the full financial implications of the Bill for local authorities."

There is an issue there: it is all very well legislating, but what about the facilities?

**Hugh Henry:** The issue is much wider than that: it covers a local authority's general responsibility to provide adequate facilities and to consider how best it can prepare and deliver meals to the standards that we set. Food preparation might not need to be done in each and every school. For example, we would not expect very small schools of five or six pupils to have a cook and full kitchen.

Economies of scale are involved, but the matter is one for local authorities.

Of all the criticisms that can be made, a lack of investment in improving the school infrastructure is not one that can be levelled at us. There are those who would stop the extensive building programme in which we are engaged. Incidentally, the school in Cumbernauld was not a brand, spanking new school, but one where the head teacher and staff have gone to considerable lengths to improve the existing estate. One of the interesting questions that one of the teachers put to me during my visit was why the school should have to put up with those conditions when teachers in new PPP schools are working in a much improved environment.

The short answer to Christine Grahame's question is that the local authority decides how best to prepare meals in line with the standards that we set. If improvements need to be made to a school, one should ask the local authority concerned why it has not availed itself of the funding that has been made available—funding that has been used to very good effect throughout Scotland.

**Christine Grahame:** But do you accept the position that the Executive has set out in the financial memorandum: that

"It is difficult to estimate the full financial implications of the Bill for local authorities"?

We do not know what the capital cost to local authorities will be of implementing the worthy intentions of the bill. Is that the case or has the situation changed since the financial memorandum was drafted?

**Hugh Henry:** No, the point remains valid. Part of the reason why it is not possible to make an accurate estimate is because each local authority will have to decide how best to rise to the challenge. Some might decide that the best way is for food preparation to be done in school, whereas others may decide to centralise production and expertise. A range of options is available. We are not setting in tablets of stone where and how a meal will be prepared. I do not accept Christine Grahame's comment about the brand new schools that I have visited. I have visited some of them, but over the past two or three weeks I have also visited some of our old schools and marvelled at the quality of education that is provided in some of them, despite the limitations of the surroundings.

**Christine Grahame:** I am trying to be quick, but I want to pick you up on one thing. The Scottish National Party is not opposed to building new schools, it is the process—

**Hugh Henry:** I never mentioned the SNP.

**Christine Grahame:** We know where you were going—

**Hugh Henry:** I am glad that Christine Grahame put that on the record.

**Christine Grahame:** You said that there is a significant uptake of school meals in PPP/PFI schools, and that all is wonderful—the all is wonderful is my bit. That is not what the Educational Institute of Scotland said in evidence. Its representative clearly said:

“The key issue is that, because of the drive to keep down costs, areas with multipurpose functions are built, with the result that in some new PPP-build schools the dining area is also the school’s main thoroughfare for parts of the day and is the place in which events such as school gatherings and assemblies are held. Such a part of the building cannot serve the purpose of a dedicated, attractive area in which to eat one’s food.”—[*Official Report, Communities Committee*, 15 November 2006; c 4280.]

**Hugh Henry:** Two different things are involved. The EIS is entitled to its opinion. I cannot speak for the layout of every new school in Scotland, of which there are many. I am glad that we are able to put that on record. The ones that I have seen are exciting, vibrant places—pupils are responding to the new buildings. If there is anywhere where the local authority or school management are unable or unwilling to do something about that, perhaps they should be asked to look at the matter.

I did not mention the SNP; Christine Grahame did. I accept what she says at face value, but perhaps she will assist me. Peter Peacock and I have both written to Nicola Sturgeon to ask for clarification of the cost and development issues. Perhaps I could use Christine Grahame’s good offices to get a reply to that letter.

**Christine Grahame:** Of course ministers are not sharp at responding to letters; it takes months. I am sure that you will hear from Nicola Sturgeon in due course.

I ask the minister to return to PPP/PFI contracts to which many local authorities were already signed up before they knew that the bill was coming. I understand that it is extremely difficult to vary even the position of an electric socket in a PPP/PFI contract, let alone change a functional area. Have you investigated the problem that new schools will not be able to comply with the bill simply because of the contracts that they are locked into?

**Hugh Henry:** I invite Christine Grahame to write to me with specific examples of how the new schools will not be able to prepare food in the required way—I will certainly look at them. If an authority has built a new school with new kitchen facilities, the type of food that it produces should not be a major challenge.

**Christine Grahame:** I will speak to the Educational Institute of Scotland about examples.

**John Home Robertson:** Let us talk about food and drink that is available outwith schools. The minister mentioned the spectacle of young people queuing in the rain to get chips, which has probably been seen all over Scotland. I noted what he said, which I think was that in areas around schools, not many healthy choices are available. We have all seen that, too. The committee has heard evidence from the EIS and others to suggest that the Executive should actively promote the application of planning or licensing legislation to restrict mobile vending outlets and the like near schools. Is that feasible?

**Hugh Henry:** As I explained earlier, East Renfrewshire and West Dunbartonshire have already taken steps to prevent chip vans from trading near schools at lunch times. We have written to every local authority in Scotland to let them know what those two authorities are doing so that they can reflect on how such measures would apply in their areas.

Some authorities, such as Fife, are going further and are considering the introduction of their own vans to sell healthy options. That is a good example of a local initiative that is best left to local people. Other authorities are planning to work with van operators to encourage them to offer healthier options, which is worth doing if all else fails. I believe that the committee heard evidence about a petition that was raised in a school in Airdrie to have a burger van moved further away from it. A range of measures can be taken, including consumer pressure, local authority powers and good alternatives.

**John Home Robertson:** You are concentrating on vans, but you could apply similar arguments to shops that are within easy walking distance of schools.

**Hugh Henry:** Yes. I hope that local authorities will take the same approach and try to encourage shops to provide healthier options.

**John Home Robertson:** With that objective in mind, licensing legislation could be used as a tool.

**Hugh Henry:** I am not sure. If the shop owner has a license and planning authority to operate a shop, that would be difficult. I made the point earlier that it can be in the commercial interests of a food provider to offer a healthier range of options.

**John Home Robertson:** Is there anything else that the Executive, local authorities or parents can do to tackle the problem of children buying unhealthy food from shops close to school at lunch times? It is a problem, is it not?

**Hugh Henry:** It is a general problem, particularly for older children, because getting out of school is part of their social development. I gave examples earlier of what can be done in schools to engage pupils and keep them in school.

I want to think about whether we can produce material that encourages children, especially children in the early years and in early primary, to learn more, in a fun way, about healthy eating. The material should engage children in the preparation of fun foods and it should engage their parents so that parents work—and play—with their children to produce healthy food together. A range of material could suggest nutritious snacks that would be attractive to young children. I want to consider such initiatives in the short term to see whether they could make a useful contribution. I will come back to the committee on this; I have been in post only for a couple of weeks and it will take me a wee bit more time to work on it.

13:00

**John Home Robertson:** We have seen initiatives of that sort in East Ayrshire. I am sure that committee members would commend them.

**Cathie Craigie:** The bill will place a duty on education authorities to ensure that the identity of pupils who receive free school meals is protected. The expert panel on school meals suggested that stigma is not the most important factor in the uptake of free school meals and, contrary to some evidence that the committee has heard from groups representing children and young people, young people we took evidence from in Airdrie did not regard it as a problem either.

Card systems and palm-print systems have been discussed. What is the Executive's view on such systems? Are they worthwhile? There is evidence to the contrary.

**Hugh Henry:** Notwithstanding what some young people are saying about stigma, I feel that we should, when possible, avoid identifying young people who are receiving free school meals. Why should those young people be identified as being in any way different? Someone is paying for the meal—it does not matter whether it is the parent or the education authority or the state. Everyone should be treated the same.

I am old enough to remember when we paid for meals in a different way depending on the number of children in the family. In my family, we had to go out and get our tickets because of the family's income. We got used to it, but I would rather avoid that kind of thing.

In the announcement that I made recently in Cathie Craigie's constituency, I mentioned revenue and capital funding measures that will

apply in every local authority. Those measures should allow local authorities and schools to invest in cashless systems if they think there is a need. Cashless systems can also stop theft—there are examples of bullying and stealing of dinner money. With cashless systems, the central account can be topped up at the beginning of the week. That can be a help even for people who carry money to school.

You mentioned palm-print systems. The use of such systems has been criticised. However, a school in my constituency is the first—not only in the United Kingdom but probably in the world—to use that technology. The technology is fascinating. It does not have the same implications as fingerprinting, and mistakes due to degradation are less of an issue. I am told that the vein in your palm stays the same from when you are an embryo to when you die.

The children love the technology; they think it is marvellous. Moreover, wider attendant issues arise—although what I am about to say is not an Executive view but simply a description of what I have seen in the school. The technology can be used to identify children who have allergies. One primary school child actually spoke to the press about her brother. She said that he had an allergy and that, when he was paying for food at the cash point, the person there would be able to tell him whether the food he wanted contained nuts or additives that he should not eat. The technology can also help parents to keep track of what their children are eating.

If people wanted to extend the use of the technology even further, texts could be sent automatically to parents by a certain time if children were playing truant and had not registered at school. The technology is not being used for that purpose, but it could be. The technology would not necessarily be used for any other reason, but it is exciting, secure and well worth exploring.

In general, cashless systems have added advantages that we should not easily dismiss.

**Patrick Harvie:** You said that children love biometric systems, but some of us might argue that to have children growing up comfortable and happy with such systems is a problem. However, we could have that argument another time.

The First Minister has told Parliament that parental consent is an absolute prerequisite for the use of fingerprint systems in schools, but it was unclear whether he was talking about Executive policy or whether he thought that that was the law. The UK information commissioner has said that parental consent is not a legal requirement. Is the parental-consent requirement Executive policy? Is such consent needed for other biometric systems

to be used? If what the First Minister said is Executive policy, how will it be enforced so that no child will be disadvantaged by not complying with a biometric system?

**Hugh Henry:** I will reply in detail to Patrick Harvie in writing. That said, how systems operate at local level is a matter for local education authorities. The First Minister gave a specific reply on fingerprinting. However, if authorities do not take parents with them, they will struggle to have any system.

With most cashless systems, other options are available for parents who are minded to use them. However, I think that the attractions of a cashless system that does not stigmatise children who receive free school meals far outweigh any concerns that parents may have.

**Patrick Harvie:** I look forward to the minister's written reply to me because his answer has added a layer of confusion to what the First Minister said. Parental consent will be a local authority matter, Executive policy or the law. If it is a local authority matter, it will be neither Executive policy nor the law.

**Hugh Henry:** There is a distinction to be made. The Executive can have a policy on what it expects to happen, but the local authority is responsible for enforcement and service delivery.

**Patrick Harvie:** I look forward to the minister's detailed reply.

**The Convener:** We shall move on to another issue.

**Tricia Marwick:** The Executive's consultation paper did not support universal free school meals as an option because the Executive thought that

"resources can be used much more effectively by targeting the children and families most in need".

The paper stated:

"to this end Ministers are currently looking at what options exist to extend free school meal provision."

Given that 23 per cent of children in Scotland are living in poverty and only 18 per cent of school children are entitled to free school meals under the current system, would you consider extending entitlement to free school meals to families in receipt of working families tax credit or to certain primary school classes, such as primary 1 to primary 3 classes?

**Hugh Henry:** We will not consider singling out particular classes for entitlement to free school meals, but we will reflect carefully on extending eligibility. We should do anything that we can to improve uptake of free school meals. That is important because we have still not ensured that everybody who is entitled to free school meals takes them.

We will consider carefully what can be done for disadvantaged people at the margins who are seen as being in relative need. Such an approach is far better than aspiring to give free meals to the children of people such as members of the United Kingdom Parliament, members of the Scottish Parliament, doctors, lawyers and the well-to-do. I acknowledge that some people aspire to help the better-off people in society, but I would prefer to concentrate on those who are in need. We will certainly consider anything that can be done at the margins.

**Tricia Marwick:** I am glad to hear you say that you will look into the matter, because all the evidence that we have heard from children's organisations, many of which argue for free school meals, has shown that they believe that provision needs to be extended to include families who receive working families tax credit. If we are talking about families in need, those on working families tax credit surely come under that criterion, so I urge the minister to respond positively to such suggestions when we come to debate the issue further.

**Hugh Henry:** That is a separate debate from the core issue, but extending the provision and uptake of free school meals is something that we keep a close eye on.

**Cathie Craigie:** Breakfast clubs have become popular in schools, and the feedback that I have had from people who are operating them suggests that teachers and other professional staff feel that entitlement to free school meals should be extended to breakfast clubs, if pupils who qualify for free school meals are staying away because they cannot afford to pay for the breakfast club. Will the Executive consider including breakfast clubs in the bill?

**Hugh Henry:** That takes us back to a question to which I replied earlier, about the local authority's discretion to make whatever additional provision it feels is necessary. There may be some parts of the country where free breakfast provision is seen as critical, but that might not apply elsewhere, so we leave that part of it to the local authority. The bill is primarily concerned with the quality and content of what is provided, to ensure that it is nutritional.

**Mr Stone:** I will ask about green issues—I know that Patrick Harvie will share my interest. In what ways does the bill contribute to sustainable development? Has any consideration been given to how education authorities can be encouraged to source locally available food, either through measures in the bill or otherwise?

**Hugh Henry:** As I said, it is a question of encouraging good practice. Research in North Lanarkshire showed that the ecological footprint of

the school meals service was about 40 per cent smaller after the introduction of hungry for success, so the bill will give schools and local authorities an opportunity to develop a school meals service through which pupils become educated consumers who understand health, environmental and wider issues. In 2004, we issued guidance on food procurement, setting out how the public sector should take account of relevant sustainability objectives when awarding contracts for food and catering services. I hope that local authorities use that guidance when tendering for contracts. We intend to reissue the guidance when the eventual act is commenced, to remind local authorities of what we are saying to them.

The bill will present opportunities for local food producers, as I said to Patrick Harvie. We have seen good examples, such as the one at Hurlford. The procurement directorate has already issued guidance to local authorities and public bodies about the encouragement of fair trade—I see the use of locally produced food as part of that fair-trade agenda. If we need to revise the guidance, we will do so. We fully support the sustainable development of the organic farming sector in Scotland, so I hope that local authorities will use that sector when they are sourcing food.

13:15

**Mr Stone:** Once the bill is enacted, will your department co-ordinate with the Environment and Rural Affairs Department in non-legislative ways to further that aim?

**Hugh Henry:** We will reissue the guidance that we sent out in 2004 in order to remind local authorities about what they can do to take account of relevant sustainability objectives when they award contracts.

**Patrick Harvie:** That is very encouraging. I was particularly glad to hear the minister mention fair trade. I am sure that he will have seen Ken Macintosh's motion, which already has 38 signatures from all parties, including absent friends. Will the guidance be reissued as it stands or will it be updated to include further measures that could be taken in relation to fair trade, the environment, the ecological footprint and such programmes as food for life at Hurlford, which sources various proportions of organic, local and unprocessed food?

**Hugh Henry:** We need to be careful about fair trade. We encourage and support it, but there are public procurement laws that we have to take into account; other people need also to be aware of them. There is always a very delicate balance to be struck. My preference is to go for fair trade where we can, but we have to work within the law.

We are currently working with members of the fair trade working group to decide whether the guidance needs to be revised, and we will do what we can to support and encourage fair trade, while working within the legal framework.

**Patrick Harvie:** That is encouraging. Thank you.

**The Convener:** How does the Executive intend to monitor the effects of the bill's provisions when it is enacted?

**Hugh Henry:** Schools and local authorities will continue to be monitored by Her Majesty's Inspectorate of Education as part of its routine inspections that cover all aspects of school, including health promotion and school meals. HMIE will receive feedback and pass it to the Executive. As well as the very rigorous HMIE process, local authorities will be expected to monitor how they implement the legislation.

**The Convener:** Will you also consider whether it is possible to monitor the impact of the legislation on our young people, whether they are healthier as a result and whether they are making healthier eating choices?

**Hugh Henry:** We will clearly see the impact of the legislation when school meal providers detail what is purchased in schools. I hope that we will start to see them recording a shift towards healthier food and away from less healthy options, and that we will see statistics on the numbers of young people who are taking a school meal.

On how we will monitor the wider benefits for health, we hope that that will show up through health statistics such as figures for dental decay, obesity and the number of children who are admitted to hospital with certain diseases. Eventually, people should have fewer illnesses and longer lifespans. Some of what we are doing is about taking action in the short term, but some also has the longer term in mind.

**The Convener:** How does the Executive intend to ensure that the best practice that exists in some schools is widely shared? How will the Executive particularly ensure that young people are themselves involved in ensuring that the legislation is enacted around health promotion and nutritional standards? It has to be something that they have participated in. They have to be part of the process so that it is not something that is being done to them but it is something that they have helped to shape and design.

**Hugh Henry:** There are a number of things that we could look at. Certainly, where local authority directors of education identify something that has been done particularly well, I hope that they will seek to share that among all the establishments in their area and that they will encourage pupil

participation. That will allow others to learn from the experience.

We need to reflect on the ways in which to share information between local authorities. To some degree, the existing mechanism for that is the Convention of Scottish Local Authorities and the publications that it puts out. COSLA is the appropriate forum for the exchange of information among local authorities.

I am always willing to reflect on whether there is anything else the Executive can do, for example through the use of websites, the internet or publications. I think that sometimes too many publications are produced and that they are never read, although that may be because they are not designed properly. On the other hand, I find it frustrating when the Executive produces information and it is not shared. One of the things that I was at pains to do in my previous ministerial role was to produce information that showed best practice and good examples of the antisocial behaviour powers that were being used to protect communities. However, it is a real struggle to get the information out.

We need to look at what we can do to promote and share good practice. We do some of that at the moment through the health promoting schools unit, but there may be other things that we can do. I return to the point that I made earlier to John Home Robertson, that there may be something that we can do in the short term to produce information that not only helps schools to learn about each other, but helps parents to engage with their children in preparing good meals. From a young age, children need to see that as a fun thing and a normal part of family life. If I can do that, I will.

**The Convener:** That concludes the committee's questioning. Thank you for your attendance today, minister, and for the attendance of your officials.

**Hugh Henry:** Thank you.

**The Convener:** Before we move into private session for our consideration of item 3, it is important that I respond to the speech that Frances Curran made in the chamber last week, opposing business motion S2M-5238. Some members may have been in the chamber at the time. The speech concerned the decision that the Communities Committee took on its consideration of Frances Curran's member's bill, the Education (School Meals etc) (Scotland) Bill.

In listening to her speech, I was concerned to hear Frances Curran say that the Communities Committee had blocked her bill. She also said that the committee's work programme was light and that we were making excuses for not considering the bill. That concerns me greatly. No member of the Communities Committee took lightly the

decision on Frances Curran's member's bill, or on Shiona Baird's and Alex Neil's members' bills, which were referred to the Communities Committee at the same time.

I also do not accept that the Communities Committee's workload is light or insubstantial. It is appropriate that I put on record that in no way did we seek to block any member's bill. That was not our intention. However, we are realistic about our work programme. We concluded that we could not consider Ms Curran's bill and do it justice. If we had decided to take it on, it would have been unfair not only to her but to the stakeholders who are involved in the important matters that are the subject of the bill.

That is all I want to say on the subject. As the convener, I felt that I needed to place my concerns on the record. Does any other member wish to comment on the matter?

**Dave Petrie:** It was generally agreed that we could not complete the bill's process before the election and that the bill would have to be revisited in the new session of Parliament. There was logic to the decision; it was absolutely rational.

**The Convener:** Mr Petrie's comments reflect the committee's detailed discussion on how to deal with all three members' bills.

13:25

*Meeting continued in private until 13:35.*



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