EDUCATION COMMITTEE

Wednesday 21 January 2004
(*Morning*)

Session 2

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EDUCATION COMMITTEE
3rd Meeting 2004, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

*Lord James Douglas-Hamilton (Lothians) (Con)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)
*Rhona Brankin (Midlothian) (Lab)
*Ms Rosemary Byrne (South of Scotland) (SSP)
*Fiona Hyslop (Lothians) (SNP)
*Mr Adam Ingram (South of Scotland) (SNP)
*Mr Kenneth Macintosh (Eastwood) (Lab)
*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Mr Richard Baker (North East Scotland) (Lab)
Rosie Kane (Glasgow) (SSP)
Bill Aitken (Glasgow) (Con)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE

David Eaglesham (Scottish Secondary Teachers' Association)
Drew Morrice (Educational Institute of Scotland)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 4

Scottish Parliament

Education Committee

Wednesday 21 January 2004

(*Morning*)

[THE CONVENER *opened the meeting at 09:46*]

Item in Private

The Convener (Robert Brown): Good morning. I welcome members to the third meeting in 2004 of the Education Committee. I ask members—including me—to ensure that their mobile phones are switched off, so that there are no noises of that sort.

Agenda item 1 is consideration of whether to take item 4 in private. The item relates not to our report on the Education (Additional Support for Learning) (Scotland) Bill, but to the appointment of a finance adviser. Such matters are usually dealt with in private. Does the committee agree to take that item in private?

Members *indicated agreement*.

Subordinate Legislation

Local Government in Scotland Act 2003 (Principal Teachers) Order 2003 (SSI 2003/607)

09:47

The Convener: Item 2 is consideration of the Local Government in Scotland Act 2003 (Principal Teachers) Order 2003 (SSI 2003/607). I am pleased to welcome David Eaglesham, the general secretary of the Scottish Secondary Teachers' Association, and Drew Morrice, the assistant secretary of the Educational Institute of Scotland.

The paper that we have before us is relatively straightforward—it is just two paragraphs long; it explains that the statutory instrument proposes to extend the period of suspension of the requirement that is imposed on education authorities, under the Education (Scotland) Act 1980, to advertise principal teacher posts Scotland-wide. The committee was keen to ascertain whether any issues of concern to stakeholders, and to the unions in particular, arise from the proposal.

Drew Morrice (Educational Institute of Scotland): The Educational Institute of Scotland supports the objective of the statutory instrument, but does not accept the rationale that was offered in the consultative document. The EIS sees no relationship between the statutory instrument and the job-sizing exercise.

The need to suspend the requirement to advertise posts arose initially from simplification of the management structure in Scottish schools and, in particular, from the need to provide for the future of people who hold posts at assistant principal teacher level and senior teacher level and to give them the opportunity to become principal teachers. That has nothing to do with the job-sizing exercise. Indeed, job sizing would provide a degree of flexibility that would allow people to transfer to the promoted posts structure.

The management structures in Scottish schools are not a matter for the Scottish negotiating committee for teachers, which can only set out the levels of promoted posts in schools. It is for local authorities to determine the distribution of such promoted posts. The EIS believes that the paper that was provided in the consultation process created confusion about the relationship between the reduction in the number of promoted posts, which formed part of the national agreement, and the facility of local authorities to make radical changes. The EIS would go further and say that part of what has happened across Scottish local

authorities has been to the detriment of Scottish education.

I will give one example. Many assistant principal teachers in Scottish schools had the responsibility to organise departments but were not recognised as PTs. The job-sizing exercise would allow the flexibility to pay people based on the duties they undertake, rather than according to the school roll, which was the single model that obtained previously. The drafting of the consultation paper has caused confusion about the relationship between the requirements in the national agreement to simplify the career structure for teachers, and the organisation of management structures in schools. The latter is a matter solely for Scottish local authorities and has never been a matter for national discussion. Indeed, the SNCT has no locus in relation to organisation of management structures in schools. Furthermore, the national agreement contained no requirement or rationale to do what many Scottish local authorities are doing, ostensibly in the name of the national agreement.

The key to EIS support for the order is the rationalisation of provision in Scottish local authorities. However, we make the point that falling school rolls will dictate school rationalisations, closures and amalgamations, so those are not necessarily a consequence of public-private partnership schemes, as the paper suggests.

David Eaglesham (Scottish Secondary Teachers' Association): I agree with everything that Drew Morrice has said. It is important to say that the paper that we received with the statutory instrument was quite misleading. The relationship between job sizing and any changes that local authorities are making to their promoted-post structures has no bearing on the matter that we are dealing with.

There is a genuine need to deal with a situation in which, for whatever reason, more suitable candidates for a post are available than would otherwise be reasonable. For example, in a situation in which two schools close and are amalgamated into one school, there will be two principal teachers of English, but only one job will be available in the new school. To complicate the situation further, the Self-Governing Schools etc (Scotland) Act 1989 amended the Education (Scotland) Act 1980 to insert new section 87A, which requires that principal teacher posts must be advertised nationally. If the two candidates are very good, there is every probability that, for reasons of continuity, quality and fairness, one of those candidates will be appointed, but candidates from all over Scotland—and indeed, furth of Scotland—are likely to apply for that job, although they have no realistic prospects of getting it because they are unlikely to be suitable candidates. That is not a helpful situation. A genuinely open vacancy, in a case in which a post becomes vacant, would be advertised.

I direct members of the committee to section 87B of the 1980 act—as opposed to section 87A—which specifies that it is not proper for a local authority to exclude a person from consideration because they do not work for that local authority. In addition to that, existing employment legislation provides that any candidate who is of sufficient quality and who wants a job in a Scottish school can get one. However, when a local authority recognises that a particular situation will arise during an amalgamation—or, indeed, in the context of the McCrone agreement and the need to redeploy APTs and PTs within a changing structure—it is perfectly reasonable to suspend the requirement that is imposed by section 87A.

Our original position was that the suspension should not be temporary, but that the provision should be repealed altogether, so that there would no longer be a requirement to advertise nationally. Members should bear in mind the fact that the provision has no other effect. It is not reasonable to give people in Shetland or Dumfries the impression that they can reasonably aspire to a post in Dumbarton, when the post has arisen simply because of realignment between two schools or a readjustment in consequence of the McCrone agreement.

The Convener: The bottom line is that the repeal is of the requirement to advertise nationally, not of the power to do so. Is it your basic assertion that the change ought to be more permanent?

Drew Morrice: We reserve our position on that. The original consultative document talked about extending the change until August 2006, which would be in keeping with the period of implementation of the McCrone arrangements. Obviously, people who are holding posts that will disappear will have to be accommodated as part of the process. The wider point about school rationalisation raises the question of a permanent arrangement, but given that the order has a defined period, the appropriate point to consult on the underlying principle has still to be reached.

The Convener: For the avoidance of doubt, despite the background issues that you raise, do you support the order and the extension of the provision?

Drew Morrice: Yes.

Fiona Hyslop (Lothians) (SNP): I apologise because I will have to leave soon—one of my constituents is giving evidence to the Public Petitions Committee.

I have raised concerns about the order, not necessarily because of what it is trying to do—I appreciate the witnesses' comments on that—but because of the confusion that the measure is causing. The practical impact is that local authorities are setting up faculty arrangements to deal with management issues, but those arrangements vary from local authority to local authority. In come cases, the arrangements seem to be rational, but in other areas it seems that different departments that have no connection to one another are being put together, which results in stresses and strains. Is that a concern and should we take an interest in it? Should we be concerned about those background issues and their impact on teachers' morale? As a kind of by-product of the order, the committee could try to address that issue with the Government, if we chose to do so.

Drew Morrice: Management structures have always been a matter for Scottish local authorities. The difficulty arises because some local authorities have introduced radical changes in management structures as though they were an inevitable and necessary consequence of the national agreement, which they are not. As a consequence, many people say that they did not vote for such changes, which is correct because the matter was not part of the voting for the national agreement in which all the unions took part. You are correct that the consequence in some authorities has been demoralisation of people who hold promoted posts.

It is for the Education Committee and Parliament to judge whether to pursue the matter. The matter is not national, in that the SNCT has no locus in it; it has always been in the domain of Scottish local authorities.

David Eaglesham: There is a significant issue. The Executive note on the order states:

"Good progress is being made to revise management structures in schools as a result of, or flowing from, the Agreement 'A teaching Profession for the 21st century'."

The original structure that Gavin McCrone's committee came up with was not identical to that which was agreed to in subsequent negotiations, but it was close to it. Principal teachers were seen as an inherent component of the management of secondary schools and would have a similar role in primary schools. Gavin McCrone referred to the fact that there might not be quite as many in the principal teacher group as there were, but he said clearly that principal teachers were to be the middle managers in secondary schools and an inherent part of the process.

At present, many local authorities seem to be trying to remove the concept of the principal teacher by amalgamating subjects such as mathematics and home economics, technical studies and music, art and physical education or other combinations of subjects that have no curricular connection. Local authorities are trying to bring together those subjects to create what is, in effect, a replacement for the old assistant head teacher post, which was subsumed into the deputy head teacher range. Frankly, if schools and authorities need senior managers, deputy head teachers should be appointed for that purpose. If schools require middle management—I am sure that many of our head teacher colleagues would agree that they do—they should have principal teachers with reasonable areas of responsibility.

I will not trot through our unions' policies on that matter—we have clear policies—but there is an issue about the way that it is going, and it is important that the committee understand that there is no obligation under the McCrone agreement to proceed with restructuring. There were certain obligations, such as to undertake job sizing and to get APTs and senior teachers sorted out and amalgamated back into the system, but restructuring was not one of them and the myth that it was has been growing in the community at large. That matter is very much the responsibility of the committee and the Parliament, because it is an education issue in the widest sense. This is not simply about the SNCT and its powers; it is about the quality of our young people's education and the status and morale of the teaching profession, which are vital to the whole system.

10:00

Fiona Hyslop: It seems to me that, in practice, many local authorities are using the provision as a means not to replace principal teachers, but to create a new system of management. What are the educational consequences of that? The feedback that I have received from some teachers is that younger teachers in particular are finding that the tier of management above them might be somebody in a completely different department so, if they are looking for professional advice on their subjects or concerning management of day-to-day issues, that manager is not necessarily an appropriate person from whom to take advice. That is having an impact on the education that they provide, which has an impact on the pupils. Have your members raised that with you?

David Eaglesham: It is very much a problem. Experienced colleagues in school can give general advice about, for example, discipline or the approach to teaching, which would be common to many departments in a secondary school. However, younger colleagues who are looking for advice on the subject that they teach—how to impart a particular bit of mathematics, music or whatever—will be looking for very particular advice from a senior colleague, normally the principal

teacher, who might have 10 years' experience and who can therefore advise and guide them.

Absence of such advice is one problem. The second problem, which is probably worse, is that situations arise in which the unpromoted teacher is left with responsibility for all the practical subject-related work, but there is nobody to give any form of advice about the subject beyond that teacher. They are therefore, in effect, being asked to become surrogate principal teachers without that responsibility being paid for or acknowledged. That brings us back full circle to all the equal pay cases and the point that people are not paid equally for work of equal value. We want to avoid that like the plague—part of the underlying rationale of the McCrone agreement was to avoid that issue.

A management structure must be able to give teachers advice, support and, indeed, correction on their work in a subject department or departments. For that, we need someone who has expertise in the subject or subjects. In other fields, such expertise would be available in the middle-management cohort of any reasonable organisation. Senior management would have the greater overview of strategic issues, but operational issues would be the responsibility of the principal teachers—or the equivalent cohort in another organisation—in a school. It is important that we state that and that we do not leave young teachers to flounder and, in some cases, to consider giving up teaching because they do not have the appropriate support and advice.

Drew Morrice: Job sizing would allow the retention of a large number of principal teachers with their jobs sized according to the number of people whom they manage and their curricular responsibilities. As advisers disappear throughout Scotland and quality improvement officers are directed to challenge schools and deal with school development planning, the type of pastoral curricular support that previously existed has largely disappeared from Scottish education. The support, as David Eaglesham said, is not available in the school, and even outwith the school there is a lack of direct curricular support for teachers.

The Convener: We have identified an interesting issue and we need to consider what more we will do with it. However, our evidence taking is primarily to do with the order that is on our agenda and there is a limit to how far we can go today.

Lord James Douglas-Hamilton (Lothians) (Con): Is there inconsistency in practice among local authorities on structuring, job titles and career structures? If so, how should that be dealt with? Have the views of all teachers, from new teachers on probation right up to head teachers, been sought and properly taken into account in the process? Have the minister and the Administration been made aware of your views?

Drew Morrice: I am not clear whether your question on consultation is about consultation on the new management structures, which is a matter for local authorities. Local authorities consult, but they are not required to reach agreement with unions at local level.

Your first question was about job sizing and whether it is being applied in the same way in all Scottish local authorities. The job-sizing questionnaire is completed on the same basis in all Scottish local authorities. The mechanism for handling the issue locally will require identified job-sizing co-ordinators to be appointed by the local authority and the trade unions. Composition will vary slightly among authorities, but the basic answer to the question is yes. There is one job-sizing toolkit that is applied nationally.

David Eaglesham: The committee will be well aware of the recent position of the Scottish Secondary Teachers' Association on job sizing. We made that abundantly clear to everyone who would listen—and even to those who would not. We do not believe that the process has worked as was originally intended. We are beginning to see evidence of local authorities trying to adapt matters in their own way, as time goes on. It remains to be determined, but there is a hint of its happening at the moment.

There has been consultation where management structures have been put in place, but it was the old form of consultation that involves people saying, "These are the proposals. What do you think of them? If you don't like them, we still intend to go ahead with them." We have not had the new form of consultation, as set out in the McCrone agreement, which involves tripartite agreement. I am not aware of any place where there has been wholesale agreement about local management structuring, but there have been many representations that suggest that the reverse is true.

Ms Rosemary Byrne (South of Scotland) (SSP): Given that, in many ways, the job-sizing exercise for principal teachers in learning support and pupil support was confusing, do you see any local authorities and schools cutting back on principal teachers who run such departments? With the passage of the Education (Additional Support for Learning) (Scotland) Bill, do you envisage that there may be a problem at that level in implementing the bill and in running departments if they have been joined up in other ways, or are schools moving forward in the broader way that the document "Better Behaviour, Better Learning" proposes, so that guidance is being built into pupil support departments? Is that

a problem, given the reduction in the number of principal teachers?

Drew Morrice: It is not a consequence of job sizing, which would allow schools to retain a number of principal teachers, to size the job and to have people paid at different levels. The member reflects the desire that exists to cut the number of principal teachers in secondary schools. That would bring people under a single heading and create support for learning departments, which may try to deliver both learning support as traditionally understood and behaviour support. That may create confusion in delivery. The issue is management structures rather than job sizing.

David Eaglesham: The member has identified one of the most problematic issues in this process. I cited the examples of mathematics and home economics. In the areas of guidance and pastoral, learning and behaviour support, there has been even more confusion about who is doing what, what posts will be available and what is expected of individuals. There is a strong trend towards devolving that to the individual unpromoted classroom teacher and adding it to the existing list of things that they do, in the time-honoured fashion that is beloved of many authorities. We need to avoid that.

I return to the question that Fiona Hyslop asked earlier. If people do not have the necessary expertise, they should not be expected to do a job until they have gained that expertise and have the responsibility and accountability to deliver vital services.

Ms Byrne: There is concern about reductions in the size of the advisory service and about the lack of clearly identified people in schools who would play a major role in the implementation of the new Education (Additional Support for Learning) (Scotland) Bill. Has that concern been raised by teachers with whom you are in contact or by schools? Is it likely to become an issue?

The Convener: I do not want to cut you short, but we must move on to other items.

Ms Byrne: This is a very important issue.

The Convener: Yes, but it does not have much to do with the subject that is before us. We are straying too far from the instrument. The point has been made and we take it on board. We will consider shortly what we will do about it.

Mr Kenneth Macintosh (Eastwood) (Lab): You said that you are against the requirement to advertise nationally. I see all the other difficulties that you have because of the temporary nature of the suspension. Are you against the policy of advertising posts nationally?

Drew Morrice: That question takes us back to whether there should be a permanent suspension of the requirement or whether it should be limited to the timeframe that is set out in the statutory instrument. If the Executive indicated that it was its intention to suspend the requirement permanently, we would respond to the relevant consultation then. At the moment, the suspension is needed because of the requirement to place assistant principal teachers and senior teachers in principal teacher posts, and because of the position in relation to school closures and amalgamations. However, the EIS's view is that there is a further debate to be had about a permanent suspension of the legislation.

David Eaglesham: The view of the Scottish Secondary Teachers' Association is that the requirement should be abandoned permanently, because there is no benefit in it. It is simply a technical requirement that was introduced many years ago for other purposes—largely, to give more power to school boards and to enhance their role. We have long since outgrown the rationale and the need for the provision, so it is not required.

There is provision in section 87B of the Education (Scotland) Act 1980 to ensure that local authorities do not practise nepotism or work only within their catchment areas for narrow reasons. Employment law generally has moved on so much since 1989 that the kind of practices that are alleged to have gone on at some point would not now happen. The provision is redundant. Given the fact that it has been suspended, its permanent removal would cause no practical problems.

The Convener: We have moved a little way beyond the legislation, but you have raised a number of issues that it is helpful for the committee to know about. We need to decide whether we want to do anything further on the issue in due course. Next week we will take evidence from Executive officials on the statutory instrument. There does not appear to be opposition to extending the suspension, which is the immediate issue that we are considering. We are grateful for your input this morning.

I suspend the meeting for 10 minutes, to enable us to examine the new papers and suggestions that are before us, before we consider our stage 1 report on the Education (Additional Support for Learning) (Scotland) Bill.

10:11

Meeting suspended.

10:26

On resuming—

Education (Additional Support for Learning) (Scotland) Bill: Stage 1

The Convener: With members' permission, we restart this meeting of the Education Committee.

For the avoidance of doubt, I will explain how I propose to proceed. Members should have before them certain papers. Among those is the bill itself and an orange paper, which is the draft report. The report contains one or two suggestions—that is all that they currently are—for amendments, particularly on the area of the report that we did not reach last week. I propose that we start at the paragraphs on transitions, which is where we finished at the previous meeting, and move forward on those first.

Secondly, there is a blue paper that was given out to members this morning. It contains a number of other suggested amendments to the draft report, which came in primarily in response to the clerk's later request for textual amendments. I do not propose to reopen the principled issues with which we dealt in the first part of the discussion last week. There may be issues on the borderline, but I do not want to be too heavy on that as this is the first bill that the committee has dealt with and we can perhaps learn from experience about the difficulties and ins and outs of the process.

Members also have before them Rosemary Byrne's suggested amendments to certain sections of the report. Finally, there is the minister's letter and the letter from the Convention of Scottish Local Authorities, which have been circulated before.

I will start with the principled issues in the remaining part of the report from transitions onwards. I will then move back to the beginning of the report to address any textual changes that need to be considered at that point. I will leave the general principles of the bill until we have done all that, because what we do on the detail affects the proposals on the general principles, which is where the main area of controversy is.

I suggest that the committee tries to reach a consensual view on the bill if it can. I do not want to hold anyone back from expressing their principled views, but a committee's consensual view on a bill has power that a report containing dissenting information and so on does not. I ask members to bear that in mind as an objective.

I suggest that we start with transitions. I will refer to paragraph numbers and I ask members to do so, too—obviously the page numbers have been altered in the new paper but, as I understand it, the paragraph numbers have not. Is that okay?

Members *indicated agreement*.

The Convener: We will start with the paragraphs on transitions. Paragraph 163 of the report is where we finished at the previous meeting. Paragraphs 163 to 171 are on transitions. There are two suggestions for amendments to the draft report from Elaine Murray and myself. There is also a small suggestion from Fiona Hyslop in the new paper. Those are the changes from the previous draft. Are there any observations on those suggestions?

Mr Macintosh: I have no problem with the amendments suggested by you and Elaine Murray. They both capture what we were discussing last week.

The Convener: Do members agree to those amendments?

Members *indicated agreement*.

The Convener: Fiona Hyslop's amendment would come in at the end of Elaine Murray's amendment—it is a sort of addendum. What are members' views on that?

Ms Byrne: The amendment strengthens our concern.

Rhona Brankin (Midlothian) (Lab): I seek clarification. When we discussed the age at which planning should begin for transitions post-school, did we not discuss the possibility of the secondary 2 to secondary 3 transition point?

The Convener: I thought that that had been dealt with, although perhaps not the specific point about the change between S2 and S3.

10:30

Rhona Brankin: Our report should state that the transition between S2 and S3 is critical for children who have additional support needs and that consideration of post-school transition should take place before the move to S3.

The Convener: Consideration should specifically take place at that point—it is a trigger point.

Dr Elaine Murray (Dumfries) (Lab): My amendment states that consideration could begin at that point.

Rhona Brankin: Yes. The difficulty is that some children at that age are not as mature as others are. I would be reluctant to say that the process must begin at that stage, but I am trying to capture the point that a decision should be taken at that

stage about when to start the process. In complex cases, the process might start at that point.

The Convener: That is a helpful suggestion. Where should we put that?

Mr Macintosh: Perhaps it should go in the middle of Elaine Murray's amendment in paragraph 170.

The Convener: No; it is really an observation rather than a recommendation. What is it?

Rhona Brankin: We should say that it is essential to have in the code of practice the fact that the transition between S2 and S3 is critical for all youngsters with additional support needs and that, for some of them, it might be appropriate for that point to be the start of the process.

The Convener: Right. I suggest that we put that after Elaine Murray's amendment, which is the logical place for it. The more I think about it, the more I think that it is really a recommendation. The initial wording that you gave seemed to me to pretty much encapsulate the idea, subject to tidying up.

Mr Macintosh: I thought that the point should go in the middle of paragraph 170, before the last sentence. The paragraph should state: "The committee therefore notes that, under the legislation, planning for transitions could begin at the age of 14 and, in particular, notes the importance of the transitional stage from S2 to S3. It therefore suggests that this information should be included in the Code of Practice."

The Convener: We could go with that. Are members happy with that addition?

Members *indicated agreement*.

The Convener: What about Fiona Hyslop's amendment about moving things on to the face of the bill?

Fiona Hyslop: Elaine Murray's suggestion will help to clarify matters. However, given that everybody who gave evidence during the process was confused by the measure, we have a duty to try to ensure that the bill is as clear as possible. Ministers have an opportunity to try to find a form of words that would make clear what Elaine Murray is saying.

Dr Murray: I accept that there has been confusion because the duty is actually that an education authority must comply with the duty in section 10(6) no later than 12 months before a child leaves school. I am not sure whether that needs to be clarified in the bill, but perhaps it needs to be clearer in the accompanying policy documents, which are intended to clarify the bill's intention.

Ms Byrne: The issue was raised by many individuals and organisations. Putting the point in the bill may help to clarify the situation.

Lord James Douglas-Hamilton: I would prefer it to be in the bill.

Mr Macintosh: I am trying to work out how we would put that point in the bill, because we are talking about interpreting what is in the bill. In other words, the point is already in the bill but it has not been interpreted properly.

The Convener: Fiona Hyslop's amendment uses the word "clarify". There is a sense in the committee that the issue is important and that it should be clarified in the bill. Would it be acceptable to make a slight alteration and suggest that the minister should consider clarifying the wording in the bill?

Members *indicated agreement*.

The Convener: Do members have any more comments about the section on transitions? It is a very important section and I think that we have reached unanimity on it.

We move on to consider paragraphs 172 to 177, on the code of practice and directions. I have suggested three amendments and Fiona Hyslop and Lord James Douglas-Hamilton have suggested a small change to paragraph 175, to recommend that the statutory instrument on the duty to issue the code of practice should be subject to the affirmative procedure.

Does the committee agree to make that change to paragraph 175?

Members *indicated agreement*.

The Convener: My amendments relate to consultation with the civic community and my first suggestion is that the requirement to consult should be in the bill. I make the suggestion for the committee's consideration and I would not want to go to the wall on the issue, but it seems so important and so many issues are arising about the code of practice that I do not think that we should ignore the matter.

Mr Macintosh: I do not think that the committee would disagree that consultation will be needed. In his letter—I think in the letter that we received the week before last—the minister gave a specific assurance that he was committed to consulting on the code of practice. Indeed, I think that the minister said this week that he had started to set up an advisory committee. Are there any examples from legislation in the past that might lead us to expect that consultation would not take place?

The Convener: Obviously I accept the minister's assurances, but the difficulty is that ministers can change, Governments can change

and all sorts of issues can arise. Because of the importance and the extent of the code of practice, consultation will be important.

Fiona Hyslop: I support Robert Brown's proposed amendments. To answer Kenneth Macintosh's question, the Mental Health (Care and Treatment) (Scotland) Act 2003 provides a good example of legislation in relation to which there was an issue about consultation on a code of practice that was an integral part of the legislation.

Mr Macintosh: Was the requirement to consult included in the legislation?

Fiona Hyslop: I understand that it was. Our report should certainly mention the minister's commitment to consultation and I think that it would be helpful if the requirement to consult were in the bill. Members might want to check the 2003 act to establish what it says, as I cannot say whether consultation on the code of practice was an integral part of the bill, but I know that the question of consultation was essential to the passing of that legislation, so in that context the 2003 act is probably the piece of legislation that is the most similar to the one that we are considering.

The Convener: I suppose that our report could recommend that the minister consider including the matter in the bill—or words to that effect.

Dr Murray: I am not convinced that the bill is the appropriate place for that. The bill should direct the statutory process after the legislation is passed.

The Convener: You might argue about that both ways—

Dr Murray: I am not sure that the question of whether there is consultation on the code of practice should be dealt with in that part of the legislative process.

Lord James Douglas-Hamilton: I support the convener's amendments. Would it please everyone to change the wording, so that we recommend that the commitment to consult on the code of practice should be "considered for inclusion in the bill"?

Fiona Hyslop: We are recommending that the code of practice should be subject to the affirmative procedure. Does that mean that consultation would automatically take place?

The Convener: I am not sure. That is a good point. Can we have advice on that?

Martin Verity (Clerk): If the power is exercised under a statutory instrument, consultation would inevitably form part of the process.

The Convener: Consultation with the public?

Martin Verity: Yes—consultation with interested parties.

The Convener: In that case, I withdraw my amendment, as the question of consultation would be covered by the recommendation to use the affirmative procedure. Do members agree?

Members *indicated agreement*.

The Convener: Apparently someone's mobile phone is switched on and is interfering with the equipment. Could everyone check their phones and ensure that they are switched off?

The second amendment that I suggest is in paragraph 176 and relates to the slightly different issue of the involvement of other agencies. The point was made in evidence—I cannot remember by whom—that if co-ordination is to be effective, other agencies need to know exactly what they should be doing. I am not sure whether there should be a separate code of practice, or whether it could be included in the code of practice for which the bill currently provides, but it is an important point and I wonder what the committee thinks.

Mr Macintosh: I agreed with the idea in the previous draft that the Executive should clarify how it expects other authorities to abide by tribunal decisions and work with education authorities. The code of practice is probably a good place to do that.

The Convener: Perhaps that should be our suggestion.

Mr Macintosh: However, I am slightly worried that the code of practice might become an unwieldy document. Perhaps the considerations that we are discussing could be dealt with in Executive health circulars instead of in education circulars. I do not have a firm view that the Executive's clarification should be in the code of practice.

The Convener: Perhaps we should suggest the wording "Code of Practice or other guidance."

Rhona Brankin: I do not think that that would be strong enough. We need something more than the code of practice for other bodies. We should ask the minister to consider how other bodies can be tied in. I do not know whether that is the best way to describe it.

The Convener: Do you mean in terms of tribunal orders? Or do you mean in some other way?

Rhona Brankin: Tribunal orders might be a possibility, but I am not sure how that would be done. Perhaps using the code of practice to clarify the situation for other bodies is okay. However, I am not sure whether using the code of practice for other aspects is a sufficiently strong approach.

The Convener: My problem is slightly different. There is an issue about tribunal orders that are made in relation to other agencies, but there is also an issue about the procedure in terms of identification, assessments and, indeed, the whole ball game in so far as it involves outside agencies. That is not a matter of instructions but of procedures, guidance, orders or an arrangement that ensures that other agencies know how they fit into the set-up. That is the kind of thing that I have been trying to get at.

Fiona Hyslop: I appreciate Rhona Brankin's concerns, but suggesting using the code of practice for clarification in this instance does not preclude us from suggesting other steps elsewhere in the document.

Lord James Douglas-Hamilton: I support the convener's suggested amendment. Including the clarification in the code of practice rather than having endless, different pieces of paper would make it simpler for practitioners. The convener's amendment does not prevent Rhona Brankin from suggesting a strengthening amendment.

The Convener: Is that all right?

Rhona Brankin: It would be stronger to say that there should be one code of practice that would include advice to other agencies.

The Convener: Yes, there should be a paragraph in the code of practice that is headed "Health service" or whatever.

Rhona Brankin: Keeping everything in the one document is a stronger suggestion.

The Convener: Is that all right? Does Rhona Brankin have a further suggestion?

Rhona Brankin: No. We discussed the wording with regard to outside agencies at last week's meeting. When I initially considered the convener's suggested amendment, I could not remember what we had said on the matter at our previous meeting, so I felt that we must ensure that we had more than a code of practice. However, having remembered last week's discussion, I think that we probably have an adequate form of words to ensure that the minister considers ways in which the health service, colleges of education and higher education can be tied in. We dealt with that issue adequately in our previous discussion.

Mr Macintosh: We certainly dealt with paragraph 68.

The Convener: Fiona Hyslop has suggested a slight amendment to that that might resolve the problem.

Do we agree paragraph 176, with the slight change that Lord James suggested?

Members *indicated agreement*.

The Convener: A further, relatively minor amendment is suggested in paragraph 177. I do not think that we got a full explanation of the timescales for the code of practice and I think that we should have that. Is that fair?

Members *indicated agreement*.

The Convener: We move on to implementation issues, which are dealt with in paragraphs 178 to 183. I am sorry to take up members' time with this, but I have suggested three amendments towards the end of the section. I do not think that anyone else has suggested amendments. I also suggest an amendment to my own amendment—if I can put it that way—in paragraph 184, where it says:

"to make the necessary resources available".

The words "to ensure that the necessary resources are available" might be slightly better.

Mr Macintosh: I have no concerns about the amendment, except about the wording of paragraph 184. I do not remember the Executive saying that it was making resources available only for "best practice schools". I am not quite sure why you have—

The Convener: No, the Executive did not say that; however, we visited lots of best-practice situations. My concern—which I have expressed once or twice—is whether that reflects the position in all schools, the majority of schools, or what have you. I cannot remember whether it was a comment that was made to me personally or evidence that the committee received, but somebody certainly said that in about 50 per cent of schools there were issues about the adequacy of the resources going into the proposals, although obviously that would improve over time.

Rhona Brankin: Did we get that in evidence to the committee?

10:45

The Convener: I think that it was something that we picked up in discussion, rather than in formal evidence.

Fiona Hyslop: We got it from the unions. My point is that the training is not just for all schools, but for all teachers. We heard that training is required not just for traditional special needs teachers, but for all teachers, so that they will have an awareness of personal learning plans and individualised educational programmes and be able to help. My concern is about the breadth of coverage rather than the specifics. We heard about that from the unions and on our visits. We heard from the directors of education about initial teacher training, which is an obvious issue; however, my concern is the continuous training of

existing teachers and how they will relate to the new system.

The Convener: Would it help if we left out the phrase

"not just 'best practice schools'"?

Fiona Hyslop: Yes, we should take that out.

Rhona Brankin: I did not understand. I was trying to clarify what you meant by that.

A couple of points that I have made in the past have not been included in the draft report. It is vital that there is training for senior management in schools. Managing the new system is going to be important. There are more youngsters coming under the umbrella of additional support needs and a significant number of changes are being made. There will be more youngsters with IEPs, and CSPs will be a new type of documentation. There are significant management challenges in schools and it is vital that a senior member of staff manages the system adequately.

The Convener: Do you have a phraseology to suggest? It would probably come after the first sentence of my amendment.

Rhona Brankin: We could add, "This should include senior management training and training for all staff." It is not just a question of support staff.

The Convener: We could say, "The committee also noted the particular importance of training and support for management staff within schools."

Fiona Hyslop: "And all teachers."

The Convener: We have got that already.

Fiona Hyslop: We have not.

Rhona Brankin: Managing the new system adequately also has a resource implication and we need to recognise that it will take time to manage the system properly. That was one of the problems with the previous system.

The Convener: Right. So is the point that you are making that there should be additional wording after

"to provide the necessary training and staffing",

to say "including the management resource"—

Rhona Brankin: Or, "the management resource required to adequately manage the system."

Ms Byrne: It is the management time that is the issue, is it not? It is about managers having the time aside from their other remits.

The Convener: I do not think that we have a clear view on that, have we?

Ms Byrne: It is about how we word that to protect their position.

The Convener: I suggest that, for the avoidance of doubt, when we are finished with this, the clerks e-mail round to members the final versions of the amendments—not so much the detail of the paragraphs but the recommendations—for agreement within 24 hours or whatever? Would that be doable?

Martin Verity: It would have to be done today.

Dr Murray: Given the fact that the financial memorandum seems to concentrate only on the costs of the production of CSPs and so on, we might also ask the Executive how that resource is to be provided. The supporting resource is not really clear in the financial memorandum.

The Convener: Yes, okay. There seems to be agreement to that.

Mr Macintosh: Let me clarify this, so that I understand what is happening. We are saying that, as well as the training of specialist staff, there should be a requirement for all staff to be given training in the importance of identifying and assessing additional support needs.

The Convener: That is covered by the current wording. I do not want to over-complicate matters.

Mr Macintosh: If that is what we have agreed, that is fine.

The Convener: We are talking specifically about management staff and about their having time for that training. We are saying that the financial memorandum—

Dr Murray: It does not necessarily have to be in the financial memorandum. The argument could be that the financial memorandum is about only the administrative costs of the bill. Although the resources that will be made available for the training of staff have to be identified, the financial memorandum might not be the appropriate place to do that.

The Convener: So we are asking for clarification from ministers.

Dr Murray: It is about people knowing where the money to do some of these things is coming from.

Rhona Brankin: I do not want to make any assumption about the management of the support system in schools. The system will be managed by a senior member of staff but, more important, it will be managed at principal teacher level as well. Quite often, that is where the time is needed for managing—

The Convener: I think that "management" can cover both those areas, if the recommendation is phrased correctly. I am slightly doubtful whether the clerks have a clear view of what we have agreed.

Martin Verity: I think that we understand what is meant. We will circulate the agreed wording to members and get comments back before the end of the day, if that is okay.

The Convener: Is that all right?

Members *indicated agreement*.

The Convener: My next point is on paragraph 185 and is linked to the previous issue. I propose that new paragraph 185 should read: "The Committee calls on the Executive to undertake a survey of councils on the adequacy of staff resources." I do not know whether that is appropriate, but it seems reasonable to think about it. Members will remember that we took evidence on child therapy reports. I think that it is important that we get an update on where we are at with that.

Ms Wendy Alexander (Paisley North) (Lab): I do not think that we should prescribe that the way in which the adequacy of staff resources should be assessed is necessarily a survey. We could ask the Executive to assess the adequacy of staff resources and leave the method to the Executive.

The Convener: Yes, that is fair enough. We will call on the Executive to assess the adequacy of staff resources. I think that we have reached agreement on that. Are there any other implementation issues?

Members: No.

The Convener: Okay. The next section is on transitional arrangements and includes paragraphs 187 to 189. An amendment has been suggested by Lord James Douglas-Hamilton, which is a reference back to an earlier part of the report.

Lord James Douglas-Hamilton: Yes. It is just factual.

The Convener: Is the amendment agreed?

Members *indicated agreement*.

The Convener: Does anyone have any other comments on that section?

Members: No.

The Convener: Okay. The next section is on "Provisions within the Disability Discrimination Act 1995" and includes paragraphs 191 to 196. There are one or two suggested amendments, which we will address in the order in which they come. The first has been suggested by Fiona Hyslop and is a textual amendment rather than an amendment to the recommendation.

Fiona Hyslop: Yes, it is just technical and designed to leave more options open to the ministers regarding how they execute the bill's provisions. There are different ways in which services can be provided; for example, we have had orders in council on about 40 previous occasions. I am suggesting a more general wording that would allow the Executive more options.

The Convener: Is there any disagreement to that?

Mr Macintosh: Are we talking about paragraph 192 or paragraph 195?

The Convener: Paragraph 192—the textual bit. It is additional text to give a bit of context, perhaps.

Fiona Hyslop: Is that the one that I just said? Paragraph 192 seemed to imply that only one witness said that, but it was said by lots of witnesses. I wanted to strengthen the point that it was a central point that was made by a number of witnesses. My amendment is just background.

The Convener: Okay?

Members *indicated agreement*.

The Convener: There is a joint suggestion on paragraph 195, although I do not think that Fiona Hyslop's amendment totally echoes my amendment. Let me just read it.

Mr Macintosh: You have suggested that Westminster should legislate and Fiona Hyslop has suggested that it does not have to be Westminster legislation.

The Convener: That is the point, yes. I have some wording that I would like to add to that, which I can give to the clerks: "Alternatively, the Minister might consider whether this objective could be achieved by parallel provisions within the current Bill." I do not know whether it can, but if it can, that is probably simpler.

Fiona Hyslop: Yes, I think that we can do that. Euan Robson talked about reverse Sewel motions.

The Convener: The central point is that we want to have the matter dealt with. The question of how it is dealt with is for the minister. Is that fair?

Mr Macintosh: Yes.

Fiona Hyslop: If you could widen the wording of your amendment, I would be happy with that.

The Convener: I hear mutterings from the sidelines.

Rhona Brankin: What are you suggesting?

The Convener: I am suggesting that my amendment should be agreed to but that we should add the sentence, "Alternatively, the Minister might consider whether this objective could be achieved by parallel provisions within the current Bill." That is all about the aids and adaptations and things of that sort.

Lord James Douglas-Hamilton: I am happy with what you suggest. The Disability Rights Commission was emphatic in its written submissions that a change would be required at Westminster. It may be right or wrong, but if all these paragraphs could be included, that would help.

The Convener: It may be one of the things on which we asked for legal guidelines, along with anything that we asked of the minister—was it?

Fiona Hyslop: All that I am saying is that the report should not be prescriptive, but should leave it open for the minister to decide.

Lord James Douglas-Hamilton: It is also a matter for the Presiding Officer, as he is not entitled to submit a bill for royal assent on a reserved matter.

Rhona Brankin: What was the minister's view when we discussed the issue with him? Did he say that it was covered?

The Convener: I think that he was sympathetic.

Fiona Hyslop: He was sympathetic. Euan Robson said that there might be the opportunity of using a reverse Sewel motion, for example. There is the order in council idea. I am simply saying that we should not be prescriptive. I am happy. We can move on. If we agree to Robert Brown's amendment and add what he suggests, the scope will be widened.

The Convener: Are members happy with that suggestion?

Lord James Douglas-Hamilton: Yes. That was what the Disability Rights Commission requested.

The Convener: Fiona Hyslop suggested another amendment.

Fiona Hyslop: I withdraw the amendment to paragraph 195.

The Convener: Has the amendment to paragraph 196 been included? That should not have been highlighted. Lord James Douglas-Hamilton has suggested an addition to paragraph 196, which is fairly straightforward. Do members agree to it?

Members *indicated agreement*.

The Convener: As members have nothing further to add about that section, we will consider paragraphs 197 to 212, which concern financial issues. There do not seem to be any suggested changes until paragraph 206. The amendment to paragraph 206, which Fiona Hyslop proposed, relates to the NHS Confederation. We will take a moment to consider it.

Fiona Hyslop: There is a central issue about whether we should acknowledge that the only financial implications of the bill are administrative and will concern CSPs and tribunals. I have read the *Official Report*, which showed that the minister's assurances relate to the number of CSPs and tribunals. If members agree to my proposals, paragraph 208 will be moved up to refer to CSPs and tribunals only. Witnesses have said that there might be greater demands on services. If we accept that, it should be reflected in the financial memorandum.

The Convener: I suggest that we deal with the matter in two parts. First, there might be general agreement in the committee for including paragraph 206 as a statement of a problem.

Fiona Hyslop: We have received such a statement in evidence.

The Convener: So we agree to that.

Paragraph 207 suggests that there should be an amendment to the financial memorandum—there might or might not be broad agreement in the committee about that. There is a difficulty relating to background trends and what is done by the bill.

Mr Macintosh: We have discussed the matter at various stages and there is no doubt that the bill could create additional demands. It is not simply that there is unmet demand out there—therapists, the NHS Confederation, Argyll and Bute Council, COSLA and various bodies have made that point. I do not think that limiting what is said to therapists implies that there will not be consideration across the range.

Wendy Alexander has continually raised the issue of spurious accuracy. I think that the minister said that the bill does not pretend to assess demand and cost it. The minister has made it clear that the bill should be considered in the context of increasing resources throughout Scotland for additional support for learning, which is welcome. Whether those are sufficient is an on-going matter for the Executive and the Parliament to decide. The matter is really part of our budget discussions and other discussions. I am not saying that that issue is not important—indeed, it is crucial. Parents who make known their views on the bill always start with the argument about resources before they deal with the bill, so the matter is crucial. We will not do anybody any favours by including such things in the bill, as I do not think that doing so would be possible. We would end up in the same situation that we ended up in with the Standards in Scotland's Schools etc Act 2000 and we would get things wrong.

Dr Murray: There are two problems. One is that although this is an education bill, it is making provision for health services, and I do not know whether that is competent. Secondly, although we noted that there would be increased demand for a whole range of services, there is no evidence on

the extent of that demand, so even if it is competent to put the relevant figures in the financial memorandum, what figures should be attached to that need? It is more an issue of recognising that significant additional resources will be required to meet the intention of the bill in a number of areas, but they cannot be categorised numerically at the moment.

Rhona Brankin: I agree. We should find a form of words that recognises that there may be greater demand on health services. That cannot be put in the financial memorandum to an education bill, but maybe we should recommend that ministers consult other ministerial colleagues on the financial implications for their budgets. I do not know how that should be stated. Somebody on the Finance Committee might be able to give us advice on that.

11:00

Ms Alexander: I will suggest an amendment that I hope meets our objective. We know that it is difficult to say, "You must put in the financial memorandum how much extra this is going to cost," because local authorities and health services have told us that they do not want us to hypothecate tiny sums of money for them and tell them what they should spend it on. That is a dilemma that we will struggle with for the next four years, because if we demand that the figures go in the financial memorandum, the implication is that that sum is hypothecated but, as we have heard, that is not how local authorities and health services want to proceed on the ground. Nevertheless, I take the point that we cannot make legislation that has financial implications without acknowledging them.

In that context, I suggest the following amendment to paragraph 207. It should state, "The Committee believes that education authorities and the health service in their planning need to ensure that they make provision, through the additional resources available to them, for the increased service demand, and the Executive needs to consider whether the scoping of the Financial Memorandum meets all the requirements upon it."

That amendment covers the fact that local authorities and the health service will get the extra money that they need. There is an issue—which we will not resolve with this bill, but we are right to flag it up—about how to address the need for a financial memorandum to acknowledge all the costs without tying the hands of local authorities and health authorities. I am happy to write out that amendment, which I propose in the spirit of getting everybody on board.

The Convener: That is helpful. Have you written it out?

Ms Alexander: Yes, but it is unintelligible. I will rewrite it.

Fiona Hyslop: I am happy with that amendment in that context. Similar points about the financial memorandum arise on the following page.

The Convener: Does that have the agreement of the committee?

Members *indicated agreement.*

The Convener: There may be a slight ordering issue, to do with paragraph 208 coming before paragraph 205, which Fiona Hyslop touched on. It is fair to say that the minister regarded the financial memorandum as being narrow in scope and related to the administrative costs of the bill rather than to the service demands. We need to ensure that the ordering is correct. Paragraph 208 logically should go back in the ordering. Is that agreed?

Members *indicated agreement.*

The Convener: Let us move on to Fiona Hyslop's proposed amendment to paragraph 209. Fiona, given the agreement on the other amendment, is your amendment needed?

Fiona Hyslop: It emphasises the point that the long title of the bill refers to widening support and improving support services. It emphasises why it is relevant.

The Convener: It is a good debating point, but I do not think that it adds anything to the sense of what we are saying, does it?

Fiona Hyslop: I am not saying that it does; I am saying that it reinforces our point of concern about the bill's wider implications, whether or not it is needed to describe that concern.

The Convener: I might be wrong, but I detect that there is not agreement on that amendment. Can we leave it out?

Members *indicated agreement*.

The Convener: Should the monitoring of financial demands as the bill is implemented be reflected in this section? I do not know whether Wendy Alexander's amendment covered that. The committee should obviously consider it in its budget scrutiny.

Mr Macintosh: Perhaps the amendments that we have just agreed—the amendment to paragraph 206 plus Wendy Alexander's amendment to paragraph 207—should follow paragraphs 208 and 209. Paragraph 209 strikes me as being the transitional paragraph.

The Convener: Yes. I agree with that. Let me be clear that we have recorded that correctly: we have paragraphs 205, 208, 209 and then the changes.

Mr Macintosh: Yes, paragraphs 206 and 207.

The Convener: That makes logical sense.

I raised the issue of monitoring. Do we need to make an observation that we will take it up in our budget scrutiny or that the Executive should monitor the expenditure demands?

Lord James Douglas-Hamilton: Wendy Alexander's amendment covered that, but she was going faster than some of us could write, as not all of us can do shorthand.

Fiona Hyslop: Her amendment focuses on local authorities and the Executive. It does not give the Parliament, this committee or the Finance Committee responsibility to monitor.

The Convener: It is fair to say that it does not deal with monitoring.

Fiona Hyslop: It is more about scrutiny.

Ms Alexander: It might be possible to add that the committee might want to write to the Finance Committee highlighting the difficult issue of the scoping of financial memoranda when we want to avoid hypothecating all the resources that go to other bodies, such as health services and local government. We will not resolve it, because it is a wider issue. I could write an amendment saying that the committee will write to the Finance Committee asking it to consider the issue.

The Convener: That is a different point, but it is also relevant. Do we agree Wendy Alexander's additional point?

Members *indicated agreement*.

The Convener: Secondly, should there be some reference in the report to the issue needing to be monitored further and the committee returning to it in its budget scrutiny?

Members *indicated agreement*.

The Convener: I am sorry that I am going back slightly, but there is a slight phraseology issue in paragraph 209, where it says in the second sentence—

Rhona Brankin: Can I make an additional point? I do not know whether it is necessary to add something about monitoring. It takes us back to the point about how we scrutinise the resourcing that will go into the bill's successful implementation. We can return to it in our budget scrutiny, but the Health Committee would have to consider it as part of its budget scrutiny as well. Perhaps we should make that point in the report.

The Convener: We could draw it to the attention of other appropriate committees.

Rhona Brankin: Yes, I suppose that is right, because what we said about post-school transitions concerns the Enterprise and Culture Committee. That committee and the Health Committee would be the other two committees with responsibility.

The Convener: Okay. I think that that is agreed.

I suggest that the second sentence of paragraph 209 might read, "However, the Committee is concerned that the provision of services for children with additional support needs stimulated by the bill is not quantified by the Financial Memorandum." That is slightly more sensible.

Members *indicated agreement*.

The Convener: We move on to paragraph 211. Bear in mind that we have not agreed the original wording of that, so it is all up for grabs.

Fiona Hyslop: When we considered the original draft, we had not had COSLA's letter or the minister's latest letter. There are two issues. One is the general point about recognising that cost implications will come with the general duty, even if those are sourced from mainstream budgets. The question is whether those costs ought to be in the financial memorandum or otherwise included, noted or appended. The second issue is that of the narrower administrative costs on which the minister is focusing, and which have been the subject of discussion with COSLA. Are we satisfied that we have sufficient information on those costs?

The Convener: Let us return to the COSLA issues in a moment. We need to ensure that the report's wording reflects our new position, but let us put that to one side for the moment and examine Fiona Hyslop's suggested amendments to paragraph 211. I suggest that her first amendment has been dealt with by Wendy Alexander's earlier amendment.

Fiona Hyslop: I still feel strongly that a revised financial memorandum would be helpful in progressing the bill. Wendy was considering the bill's longer-term implementation; my amendment is about the progress of the legal provisions over the next few weeks. It would be extremely helpful if the Executive could make that revision. We know that the Executive has the information, which we have seen.

Having reflected on COSLA's evidence, but in any case on both counts that we have mentioned, I think that there should be a revised financial memorandum. Bearing in mind the criticism from the Auditor General about an amendment on mainstreaming that was made at the last minute on a previous occasion and which caused financial

concerns on which he reported, we have a duty and responsibility to allow sufficient time and space for all the information to be available to Parliament before it makes its decision.

Dr Murray: We need to think about the need for more debate by the Finance Committee on the purpose of the financial memorandum and on what should and should not be included in it. That touches on Wendy Alexander's point. There are two particular issues to do with the financial memorandum before us. One is whether the number of CSPs is correctly identified. Should the financial memorandum reflect the fact that the minister has stated that additional moneys will be made available if more CSPs are required than are currently detailed in the memorandum? That would be an appropriate revision.

The additional information that the minister has given with regard to the resources that are available for additional support needs more generally is not necessarily included in the financial memorandum in an appropriate way. If that information is included, that runs the risk of double counting. If figures turn up in lots of pieces of legislation, the Executive could be strongly criticised for making several announcements of the same thing. The information should perhaps be produced somewhere in the policy documents or explanatory notes other than in the financial memorandum. The Executive should be making clear the totality of resources that are being made available for additional support needs, while noting that those relate not just to the bill but to a number of measures.

The Convener: The minister said that he was going to announce additional resources for that general area. We could ask him to clarify what those are in the context of the bill.

Fiona Hyslop: If the minister said that in a letter, then those additional resources should be included.

Ms Alexander: I suggest an amendment to Fiona Hyslop's amendment to paragraph 211 to capture that point. We could stop Fiona Hyslop's amendment after "general duty" and then add: "the itemisation of these additional resources should be available to the Parliament in advance of Stage 2 consideration and, if it is appropriate, a revised Financial Memorandum should be made available." That would cover both points, and it does not lock the Executive into making the financial memorandum the appropriate vehicle for that, although it requires information on the totality of the global resources to be made available before stage 2.

The Convener: That is helpful. I see Fiona Hyslop nodding; are other members in agreement with that?

Members *indicated agreement.*

Rhona Brankin: I do not think that it is appropriate for those resources to be included in a revised financial memorandum.

Fiona Hyslop: Perhaps Wendy Alexander could go through her amendment again.

Ms Alexander: I agree with Rhona Brankin's point. There are two issues here. We are trying to get the Executive to make known the total, global amount of resources. I do not think that that should be included in the financial memorandum to the bill, although it should be available to Parliament. Within the totality of our consideration, other, more administrative areas at the margins might require the financial memorandum to be re-examined. We should consider that on a narrower definition. That leaves open the option of reconsidering the financial memorandum, but it is not about including figures for the global resources. As Elaine Murray rightly points out, those figures could get double counted. It is the narrower areas that we need to consider.

11:15

The Convener: Will you read out your amendment again, Wendy?

Ms Alexander: Yes. I suggest that, after "general duty", we insert "these additional resources should be itemised to Parliament in advance of Stage 2 consideration and also, if appropriate, a revised Financial Memorandum prepared." I am trying to say that we need to know the total global resources and that there might be a need for a wider financial memorandum. However, the implication is that the memorandum is more of an administrative matter than something that is tied into the global resource issue.

Fiona Hyslop: I feel very strongly about this point, but in the spirit of consensus I am prepared to go with the suggestion.

The Convener: I sense that Wendy Alexander has put the committee's main view into words. Does anyone disagree?

Lord James Douglas-Hamilton: The suggestion is absolutely acceptable and I strongly support it. I should point out that paragraph 209 says:

> "the Committee is concerned that the … provision of services with additional support needs is not quantified by the Financial Memorandum."

This paragraph, which I understand has been approved by the committee, already contains an implied criticism in this respect. As a result, it is perfectly legitimate for the amendment to be approved.

The Convener: Are members agreed?

Members *indicated agreement*.

The Convener: We move on to the next paragraph of Fiona Hyslop's amendment to paragraph 211, which begins,

"The Minister and his evidence".

Fiona Hyslop: I am quite happy to withdraw that, because it was meant to justify my preceding point.

Rhona Brankin: I am sorry. I am trying to work out which paper Lord James Douglas-Hamilton referred to.

Lord James Douglas-Hamilton: I quoted from paragraph 209 in the revised document.

Rhona Brankin: In the blue document?

Lord James Douglas-Hamilton: Yes, it was the last sentence of that paragraph.

The Convener: I think that Lord James was simply making the point that the committee had already dealt with the issue of resources for services and so on.

We have agreed paragraph 211. I have suggested a minor amendment to paragraph 212, because—

Rhona Brankin: I am sorry; I am getting completely confused. I have put a line through amendment 209. Is it the amendment to paragraph 209 that we have not agreed?

The Convener: That is right. Paragraph 209 is still in the report; Fiona Hyslop has simply withdrawn her amendment to it.

Fiona Hyslop: We are not doing the amendment about the long title. [*Interruption.*]

The Convener: I ask members not to speak all at once, because the official report will not be able to get everything down.

Is everything clear? The text of paragraph 209 has been agreed, and Fiona Hyslop's suggested amendments have been withdrawn. Is that okay? Are we moving on to paragraph 212?

Members *indicated agreement*.

The Convener: My amendment to paragraph 212 is a factual note more than anything else. I think that it is important to add it to the paragraph. Are members happy with it?

Members *indicated agreement*.

The Convener: Do members have any other comments before we return to the issue of COSLA and the minister?

Members *indicated disagreement.*

The Convener: Do we need to make changes to reflect the new position with regard to the issue of COSLA and the minister? COSLA's revised representation very cleverly omits any comment on this matter, which I think means that it has withdrawn its position. However, that might or might not be the case.

Although the debate on this issue was helpful, it seems that the minister's letter probably represents the current position. Obviously, uncertainties remain in this area. Do members have any concerns about COSLA's evidence on numbers and other matters that should be reflected in the report?

Fiona Hyslop: We asked for the position to be clarified. Although I appreciate the responses that we have received, we are still in the dark about who means what. It is quite clear that the minister holds the same view, but given that we do not know—

Dr Murray: Which paragraph are we talking about?

The Convener: Well, the question is where we fit all this in.

Mr Macintosh: Probably paragraph 211.

The Convener: I think that it has more to do with paragraphs 204 and 205.

Fiona Hyslop: Yes, it follows on from the administration of the system and the number of CSPs and tribunals.

I must say that I am still concerned about this matter and am uncomfortable about going on to the financial memorandum with a cloud of mystery hanging over things.

The Convener: We have already made a general observation on the matter with the amendments that we have agreed to. Indeed, I wonder whether we need to say any more about it, other than to refer to the fact that the minister and COSLA have had exchanges and appear to have resolved their differences. I think that that is the current position.

Fiona Hyslop: The committee is still not clear about the numbers.

Mr Macintosh: Careers Scotland also submitted evidence in which it totally changed its position. It revised the special educational needs figure from 20 per cent of pupils down to 10 per cent; it also accepts that only 2 per cent will have a CSP, based on the current record of needs level. Careers Scotland has accepted the minister's reassurances.

Rhona Brankin: In paragraph 3 of its letter, COSLA said:

"Our discussions with the Scottish Executive and ministerial correspondence … have helped to clarify the

policy intent … and have provided assurances that the financial implications will be monitored and addressed".

It has not raised again the issue that it raised originally, so I am satisfied that COSLA has been reassured on that score.

Dr Murray: The important point is that, if the estimate that the number of CSPs would be 50 per cent of the number of records of needs—a figure that was obtained through consultation with a number of local authorities—is incorrect, the minister has reassured us that the finances are available to support the number of CSPs that will be demanded.

The Convener: The clerk reminds me that the issue was dealt with way back in paragraph 82 and that we said that we would come back to it; we may want to do that shortly. I not convinced that we need to do anything more at this point, because we have made observations about the uncertainty of the evidence and the variation of the figures and about the need to tighten up the information in the financial memorandum. I wonder whether we need to do anything more than consider whether paragraph 82 reflects what we want it to when we come back to it.

Fiona Hyslop: That is reasonable.

The Convener: We will do that, then.

We move on to the section on subordinate legislation. A very minor change has been made to paragraph 213, which I think reflects what we have already agreed. Is that all right?

Members *indicated agreement*.

The Convener: That concludes consideration of that section. As I have already indicated, I would like to avoid consideration of the general principles and to come back to them in conclusion. Let us go back to the beginning of the paper, where Fiona Hyslop has suggested a minor amendment at the end of paragraph 7.

Fiona Hyslop: I was being nice to the Executive by pointing out that Jack McConnell volunteered the information that the Executive had been due to publish the bill in May 2003 but had delayed it to consult parents.

The Convener: If there is no difficulty with that, we will add it.

Paragraphs 1 to 9 reflect changes that were made as a result of our last meeting, which I think are fine. We are all right until the end of paragraph 17, unless there is anything to raise on that section. We will leave the section comprising paragraphs 18 to 35 for the time being—we will come back to it.

We have been through the section entitled "Definition of additional support needs" already and there are no issues of principle that we want to return to. I do not think that there are any changes to paragraphs 36 onwards, although Fiona Hyslop has suggested an amendment at the end of paragraph 42, which I did not think would add all that much.

Fiona Hyslop: I raised the point in the summary of evidence, because it is important to the groups concerned. I thought that there was a strong articulation of concerns in the written evidence from Shawlands Academy. It felt strongly that pupils with second languages should not be included in the bill. When we discussed the matter, we realised that Shawlands Academy's concern about the bill related to the deficit model, which we appreciate that the bill is trying to move away from. I am not desperate to have my amendment included, but I think that it reflects witnesses' concerns. What I am recommending is straightforward, but I am happy for the committee to decide whether to include it. I must leave temporarily.

The Convener: Are there any objections to Fiona Hyslop's bid?

Dr Murray: I think that including that point in the report would give credibility to Shawlands Academy's view that the bill represents a deficit model and that people with second languages or gifted children should therefore not be included in it. I would be against putting that point in the report, even though we received it in evidence, because it introduces confusion about the bill's intention.

The Convener: I think that the same point came from the Scottish Association for the Teaching of English as an Additional Language. I suggest that the committee's view is that it could be left out, as we have included enough in that area.

Lord James Douglas-Hamilton: Did the point not relate to pupils whose first language was not English?

The Convener: Yes. I think that the point has been reflected in paragraph 43. We will agree that Fiona Hyslop's amendment is not accepted, especially as she indicated that she would not press it to the wire.

Paragraph 43 reflects what we have agreed already. Paragraphs 44 and 45 also reflect what we have agreed already, but there is an addition at the end that was made at the suggestion of Lord James Douglas-Hamilton.

Lord James Douglas-Hamilton: This is a drafting amendment. The background is the disruption caused by frequent movement from one education system to another, such as those in different countries.

The Convener: That seems a reasonable point. I am not quite sure what the implication would be.

Lord James Douglas-Hamilton: It means that the children of members of the armed forces should be regarded as having similar needs to those of travelling people.

Mr Macintosh: Are we talking about the sentence in paragraph 45 that contains the words

"the needs of children of armed forces personnel"?

The Convener: We are talking about the principle that applies to paragraph 45. That seems to me to be okay.

Dr Murray: I have no problem with the inclusion of the sentiment, but I am not terribly happy with our saying, "the principle is", as that is open to misinterpretation. The second sentence of paragraph 45 could be amended to read: "RONA highlighted the needs of children of armed forces personnel, who might be adversely affected by disruption caused by frequent movement and should be regarded as having potentially an additional need or needs." If we did that, we would take out the words

"indicating that such families may be in certain locations for short periods, and recommended a fast track system for such children."

The Convener: The difficulty is that it reflects on Gypsy/Travellers as well. That is why we phrased it in a more general way.

Ms Alexander: I suggest that, after the first sentence in paragraph 45, we insert, "Since children can be adversely affected by disruption caused by frequent movement, they should be regarded as potentially having an additional need or additional needs."

The Convener: That is a good decision, which looks as if it has the committee's agreement.

Rhona Brankin: The important words are "may have". We do not want to label groups of children.

The Convener: I think that that point is agreed.

Paragraph 46 seems fine.

Lord James Douglas-Hamilton: The word "require" needs an "s" on the end of it. That is a minor detail, though.

Dr Murray: No, it says, "will still require". It does not need an "s".

Mr Macintosh: There is a missing "s" somewhere else, but it is not that one.

The Convener: Let us not get too hung up on that. I suggest that anyone who has technical amendments of that sort give them to the clerks after the meeting. We should not hold up the official report staff or ourselves with such matters.

The next part of the report deals with CSPs and integrated working. Fiona Hyslop has suggested an addition to paragraph 54. I am not sure that I would be as definite as those words suggest we are.

Mr Macintosh: We discussed this last week. When I first saw the addition, I was sympathetic to it, but, when we discussed it, I realised that it was not that helpful.

The Convener: I think that that is correct. I do not think that we agreed Fiona Hyslop's amendment. Is that agreed?

Members *indicated agreement.*

Rhona Brankin: Can you clarify what has happened with paragraph 55?

The Convener: We have agreed to follow the view that we took last week, which was not to include the amendment. The suggested words are a statement of fact, not a committee decision.

Mr Macintosh: They are a reflection of the views of Capability Scotland.

The Convener: We thought that it might be a useful addition to the areas that we are dealing with rather than a recommendation.

Mr Macintosh: I am not quite sure what we are saying in paragraph 59 or how we agreed the wording. To be honest, I should probably have checked in the *Official Report* of last week's meeting. I did not do so, however; I just made a wee note. We seem to be saying—

Dr Murray: I can remember what we were saying, as it was I who made the point. The concern is not whether someone gets a CSP, because that is only a document. The concern is that people who do not have a CSP might not have their needs met. That is what the wording is supposed to reflect.

Ms Alexander: We are at risk of confusing people with paragraph 59 and I am not sure that it adds a huge amount to the report. As it risks confusion and undermining the report, I propose that we delete paragraph 59.

Dr Murray: My point was that we should not highlight eligibility for a CSP because we do not want to reinforce the idea that a document needs resources. Removing it altogether is another option.

11:30

The Convener: Do members agree to remove paragraph 59?

Members *indicated agreement*.

The Convener: We move over the page to paragraph 61, which we considered last week. Fiona Hyslop suggested an amendment.

Mr Adam Ingram (South of Scotland) (SNP): Fiona Hyslop feels that the quote is misplaced in that paragraph. It does not address the three concerns that we had in the area, which were that eligibility is dependent on the supply of local services, that there are potential differences in how the definitions are applied locally and that legal rights will flow from a definition that could vary throughout the country.

The Convener: I am not sure that the amendment adds much.

Rhona Brankin: Paragraph 61 states that eligibility for a CSP

"may depend on local services".

I do not know what that means. We did not discuss that.

Ms Byrne: We have been given some information about how the local authority, the education authority and outside agencies are constituted in relation to the bill. We have examples of where speech and language therapists could be employed by the local authority, but there are other cases in which therapists would be employed by the health board. That point is raised in the paragraph.

The Convener: That is correct, I think.

Dr Murray: We return to the problem of definition. I do not accept that what Rosemary Byrne says is an issue. The bill states:

"those needs require significant additional support to be provided … by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education".

The structure of the local authorities, therefore, should make no difference. The question is whether a service is required to be provided externally to the functions of the local authority with regard to education.

The Convener: I am not convinced that that is right with regard to CSPs. You seem to be talking about co-ordination within the local authority but outwith the education department. It depends on where the service comes from.

Dr Murray: It depends on the purpose of the service.

Ms Alexander: I suggest an amendment to which I hope everybody will agree. The paragraph should say: "Eligibility for a CSP will depend on how the definitions are applied to individual cases." That is a statement of fact and it takes out the stuff about—

The Convener: Would that replace all of paragraph 61?

Ms Alexander: I propose that the first sentence of paragraph 61 should start: "Eligibility for a CSP will depend on how the definitions are applied to individual cases." I propose to leave the second sentence unchanged. I have some sympathy with Fiona Hyslop's position. I would take out the last sentence and then carry on: "In order to ensure uniformity of application across the country, the Committee recommends that the Executive carefully monitors the application and reports regularly to Parliament and that the Code of Practice clearly sets out what is expected in practice." In that way, we would not give credence to the notion that legal rights will flow from the applications in practice, because we contradict that elsewhere in the report. Moreover, we would not suggest that the issue is about local authorities. I hope that everybody can unite to support that suggestion. Eligibility will depend on how the definitions are applied to individual cases. We accept that the minister's intention is child centred, but we need to monitor that. That captures what we are all trying to do.

The Convener: I want to be clear that the clerks have got that.

Ms Alexander: I have written it down. I will pass it up to the clerks.

Rhona Brankin: I would like to go over the paragraph once more.

Martin Verity: Shall I read out what I think it is?

The Convener: Yes.

Martin Verity: I have: "The Committee is concerned that eligibility for a CSP will depend on how the definitions are applied to individual cases. It accepts the Minister's point in his letter to the committee that the system for CSPs being established by the Bill is child-centred and is concerned with individual needs and circumstances of the individual child. In order to ensure uniformity of application of the definition across the country, the Committee recommends that the Executive carefully monitors application and reports regularly to the Parliament and that the Code of Practice clearly sets out what is expected in practice."

The Convener: Is that agreed?

Members *indicated agreement*.

The Convener: Thank you, Wendy. That was helpful.

We move on to the next paragraph, which is not numbered. I have it marked as paragraph 51, but I understand that it is paragraph 62. Some slight changes are proposed; in the main they come from Lord James Douglas-Hamilton. I think that

the first suggestion would change the meaning of the paragraph. The suggestion is that "will" should be replaced by "must". The initial wording suggests what we think the bill does. Lord James's suggestion is about what the bill ought to do, which is a different thing.

Lord James Douglas-Hamilton: I think that the jury is out. We do not know how many children who have records of needs will not have CSPs. We think that it might be several thousand. If we used the word "must", we would make a clear expression of intent.

Rhona Brankin: Many of the most vulnerable children do not have records of needs at the moment.

Lord James Douglas-Hamilton: The present system is ripe for reform—nobody disputes that.

The Convener: Is "must" agreed?

Ms Alexander: No. We should use the word "could". I thought that the whole issue is that we agree with the intent of the bill and that we accept that whether that intent is realised depends on others. I think that "could" or "can" would meet the desire of the committee to say that the bill could potentially meet the aspirations that it is intended to meet. It is obvious that that depends on how the system operates in practice. We cannot guarantee that it "will" or "must" do that.

Lord James Douglas-Hamilton: Wendy Alexander is right. I would be content with that.

The Convener: You are content with "could".

Lord James Douglas-Hamilton: Yes. Can I go on to the next sentence?

The Convener: Yes.

Lord James Douglas-Hamilton: The point that I want to make is that, as you made clear, convener, there are additional rights. Those who want a CSP have the right to appeal to a tribunal. Additional rights are associated with CSPs. The sentence is not absolutely necessary and, as stated at present, it is untrue.

Dr Murray: Which sentence?

Lord James Douglas-Hamilton: The second sentence.

Mr Macintosh: I agree with Lord James. I thought that last week we agreed to delete the sentence entirely.

The Convener: I have a vague feeling that we did so. Is that agreed?

Members *indicated agreement*.

The Convener: The next amendment, which is to be found further down the page, is just textual.

We move on to Fiona Hyslop's additional amendment, which is to be found at the bottom of the page. I think that it probably goes a bit further than the wording to which we agreed last week.

Mr Macintosh: The difficulty is that it implies that all parents are in a position to insist on having a CSP. There may be many cases in which a CSP is the right thing. We are trying to improve equity and fairness in the application of the system. The trouble is that the suggestion could lead to a replication of what we have at the moment—one local authority will use the measures for 1 per cent of children and another will use them for 4 per cent.

The Convener: Is the general view that we will not include Fiona Hyslop's amendment?

Members *indicated agreement*.

The Convener: We will knock that one out.

The section headed "Integrated working and joint responsibility" begins with paragraph 62 as numbered—we have to watch the numbering here. I think that the one minor change is okay.

Paragraph 68 includes changes to reflect last week's discussion. I think that members are happy with those changes. Fiona Hyslop's point, which I think we touched on earlier, is to do with orders against other authorities.

Mr Macintosh: Are we at paragraph 68?

The Convener: Yes, paragraph 68—with Fiona Hyslop's suggested amendment.

Mr Macintosh: So the suggestion is to leave out "and whether" and say "bring forward … to strengthen the Bill". Is that right? She wants to strengthen—

Ms Alexander: She wants to compel the Executive to bring forward an amendment. I do not think that we should do that.

Mr Macintosh: So, rather than "seeks … clarification … on … whether the Bill could be strengthened"—

Ms Alexander: She wants to put, "demands that the Executive brings forward further measures."

Mr Macintosh: Exactly. I do not know—

The Convener: I am not convinced of that.

Ms Alexander: It is contradictory later on, with the code of practice perhaps being the mechanism for that, or another code of practice being the mechanism for it.

The Convener: Yes. I suggest that the wording as it stands reflects what we agreed last week and that we should not agree to Fiona Hyslop's amendment.

Ms Byrne: I am slightly concerned about that, because I think that we need to strengthen this area, which was mentioned by a lot of witnesses. If we do not feel that Fiona Hyslop's wording is appropriate, we should address—

The Convener: Well, there is wording in there, Rosemary, if you look back. At the moment, the paragraph says the committee seeks clarification from

"the Minister on how he will ensure that this will be delivered and whether the Bill could be strengthened in this regard."

The point is taken, but it is perhaps taken in a slightly more consensual way than Fiona's amendment wants.

Ms Byrne: The wording is quite loose though, saying

"and whether the Bill could be strengthened in this regard."

I would like the point to be made more strongly. This is a very important area.

Lord James Douglas-Hamilton: May I suggest a compromise? We could have the words "to consider bringing forward measures to strengthen the Bill in this regard." That does not bind anyone.

The Convener: Will we go with that?

Members *indicated agreement*.

The Convener: Right. Okay. Thank you very much.

Paragraphs 69 and 70 are just slightly changed versions from last week again. That brings us on, unless there is anything else in that section, to the section on the abolition of the record of needs, which is covered in paragraphs 71 to 78. There are one or two points in that. There are some textual changes from last week, but nothing new until we come to Lord James's wish to leave out paragraph 73.

Lord James Douglas-Hamilton: May I explain what lies behind this? The paragraph is all a quote from the minister and I would prefer the committee to note it rather than to endorse it. The quote says:

"I have written to the chief executive of every local authority in Scotland to make it clear that nothing in the Government's intentions would remove any of those services from those children."

It goes on to mention

"The extent to which the services for those children change over time".—[*Official Report, Education Committee,* 17 December 2003; c 554.]

As to how all that will work in practice, I think that the jury is out. I do not want to endorse the quote. There is no doubt that the minister is absolutely sincere in his view, but we would be safer if we just noted the minister's view and put in the quote, rather than implying that we endorsed it.

Dr Murray: I do not think that we are implying that we endorse it; we are just saying that that is what the minister said. We are quoting from him and it is important that that quote be included in the report, because that message needs to go through to local authorities.

The Convener: I wonder whether the point comes more at the end, when we look at the recommendations rather than the factual statement, James.

Lord James Douglas-Hamilton: I would be content if we added the words, "The Committee notes that the Minister", at the beginning of paragraph 73. I think that that meets the point.

Mr Macintosh: "The Committee notes that the Minister gave assurances"?

Lord James Douglas-Hamilton: Yes.

The Convener: I do not feel very strongly about it, but is that agreed?

Members *indicated agreement*.

The Convener: All right. Let us do that then.

We move down to paragraph 75. I am not entirely sure that we have got things quite right in paragraph 75. I wonder whether it ought simply to say, "The Committee notes the concerns of parents that children currently with a Record of Needs will be disadvantaged"—or rather, "might be disadvantaged"—"by the legislation."

Ms Alexander: Yes.

Rhona Brankin: I think that the point was mine. What I was trying to get over is that, with children who currently have a record of needs, and where there is concern from the parents—I mean that the parents need some reassurance—the children's needs will be looked at as a matter of urgency.

Mr Macintosh: As I remember, the point was more specific. It was about the parents of those pupils with a record of needs who will not get a CSP.

The Convener: Yes, it was. That is right.

Mr Macintosh: Those who have a record of needs and a CSP are—or rather, we have not heard from them that they are—concerned that they are somehow going to lose out. Those who feel that they may have rights—although I do not think that we accept that they do have rights, but we certainly recognise that they are extremely anxious—

The Convener: Would the phraseology that I suggested, with the slight amendment to the point about the record of needs, cover the committee's view? We will expand on it later, depending on what we agree.

Ms Alexander: I accept that "may" should be substituted for "will". We should run paragraphs 75 and 76 together so that we acknowledge the piece of evidence and go on to say in the same paragraph, "However, the Committee welcomes the Minister's reassurance." We should change the next "however" to "nevertheless". That gives a slightly difference nuance.

11:45

The Convener: That is helpful. Is that change agreed?

Members *indicated agreement*.

Mr Macintosh: I just want to clarify that. We are just adding to paragraph 75. We are talking about those with a record of needs who do not qualify for a CSP. Is that right?

The Convener: The wording is, "The Committee notes the concerns of parents of children currently with a Record of Needs who do not qualify for a CSP. These children may be disadvantaged by the legislation." Then we are amalgamating that with paragraph 76 with the slight additions of the helpful conjunctions that Wendy Alexander suggested. That is okay so far.

Paragraph 77 reflects our desire to get agreement on the need to have some sort of mechanism that goes a bit beyond the minister's assurance. That is what we arrived at last week. We have asked that the Executive consider that. I think that paragraph 77 is a little prescriptive as it stands.

Mr Macintosh: I have nothing against the two suggestions, but the implication is that they are the only two suggestions and that one or the other has to be followed.

The Convener: We could say, "The Committee calls on the Executive to consider options to achieve this, such as".

Ms Alexander: No. This is stage 1. It is not our job to solve everything for the Executive. The only thing on which we can reach agreement is to flag up the concern and ask the Executive to come back to us. We can revisit the issue at stage 2 after we have heard the Executive's response, but, by offering only two options, we close down what the Executive could say.

The Convener: Does that bring us to saying, "The Committee calls on the Executive to consider whether any further reassurance in the legislation or otherwise can be given to the parents"?

Ms Alexander: No. The wording should be, "The Committee calls on the Executive to consider how these anxieties can be addressed and report back."

Ms Byrne: I am quite happy to go along with that as long as we are emphasising the fact that those concerns have been expressed and we are asking the minister to respond to them. We can then revisit the issue if we need to.

The Convener: We are using that phraseology.

Lord James Douglas-Hamilton: The point is that there is great concern about transitional provisions for those with a record of needs who will not have CSPs or are likely not to have CSPs. There needs to be some recognition of that problem. I do not really mind how it is written in, but it needs to be considered.

The Convener: It is up to you whether you agree with Wendy Alexander, but her suggestion covers that point, particularly given the comments that we make at the beginning of the paragraph.

Lord James Douglas-Hamilton: The point needs to be made clearly. We have not heard from the Executive how many thousands of children will be affected, because it is not able to give an answer.

Ms Alexander: My other concern is that I do not think that the answer will necessarily be the same throughout Scotland. Some smaller local authorities are providing an excellent special needs service, for which full transition might be possible right away. In other areas, there might be less good will and less trust and the transitional arrangements will need to be more complex. We need to tell the Executive that it has to address the issue, but I do not want to lock it into an all-Scotland answer.

Lord James Douglas-Hamilton: I suggest that Wendy Alexander formulates wording and we go through it afterwards with the clerks.

The Convener: She has done that. Perhaps we can reread the wording after we have had the debate.

Dr Murray: I agree with the proposition that we should not make the suggestions, partly because there are problems with some of them in relation to setting precedents for the future on who is eligible for a CSP. It is possible for any member to lodge amendments at stage 2, which could address such issues, and for the Executive to respond, but we should not make the suggestions in a stage 1 report.

The Convener: Wendy Alexander's amendment has hit the nail on the head. I ask Martin Verity to reread it.

Martin Verity: I have: "The Committee seeks reassurance for parents that appropriate service will continue to be provided. It therefore calls on the Executive to consider how these anxieties can be addressed and to report back."

Ms Alexander: That is right.

The Convener: Is that agreeable?

Mr Macintosh: Towards the original last page of the report, we have added a chapter to emphasise the concern.

The Convener: That is right. Is that acceptable to Lord James?

Lord James Douglas-Hamilton: I think that it was especially for those with records of needs—

The Convener: No. That is what the new paragraph is about. We have agreed what we will mention that issue at the beginning of paragraph 75. The new paragraph is about children with records of needs who will not have CSPs. Is that okay?

Lord James Douglas-Hamilton: I would like to see the wording before endorsing it.

The Convener: That is reasonable. We agreed that we would circulate bits and pieces for clarity.

We have reached the end of that section. To avoid doubt, I confirm that paragraph 78 will be included in that section. That paragraph concerns ensuring

"that local authorities continue to operate the Records of Needs system"

until any changes are made. Is that agreed?

Members *indicated agreement*.

The Convener: We return to the section comprising paragraphs 79 to 82 on the number of co-ordinated support plans, which we have discussed before. Fiona Hyslop has suggested an amendment at the end of the section.

Mr Macintosh: She does not suggest wording; she flags up issues.

The Convener: Does Adam Ingram know what Fiona Hyslop is getting at?

Mr Ingram: The reference is to the concerns that were expressed about how we will deal with the financial memorandum.

The Convener: We have dealt with that.

Dr Murray: I have a question about paragraph 80. As COSLA appears to have retreated from its original position, should we say that, initially, COSLA

"had serious concerns over the number of predicted CSPs"

and indicated that

"as many as 15% of the school population"

might need a CSP? We should not say that that is COSLA's present position.

The Convener: That would provide clarification. Something else is needed.

Mr Macintosh: Paragraph 82 needs to be changed.

The Convener: We will change paragraph 82. Do we need an addition to say that the Minister for Education and Young People and COSLA have had further exchanges and have reported the outcomes of those discussions in letters that appear to show that they agree about the basis of calculation?

Mr Ingram: That might be a bit strong. COSLA's letter says:

"we have a continuing concern that the Bill could generate expectations and pressures from parents at levels which well exceed such resourcing provision."

The Convener: That is a slightly different point, which is about the continuing pressures of a greater number of people, rather than the procedures in the bill, which was what the numbers argument concerned.

Mr Ingram: Nowhere in the letter does COSLA address directly the numbers question. Are we assuming that because COSLA did not mention it, it is no longer an issue?

The Convener: That is why I suggested using the word "appear"; I was describing my understanding of the position. We need an additional paragraph to say that the situation has moved on. Will the clerks do something about that? The issue is factual. A paragraph can be circulated to members.

Paragraph 82 clearly needs to be changed. The first sentence can be removed. Do we need the paragraph at all? We have had other evidence about the variance in views. Perhaps the business about the minister's reassurance about scope in his budget—whether the figure was 70 per cent rather than 50 per cent—might sensibly conclude the paragraph.

Rhona Brankin: That is mentioned somewhere else in the report.

The Convener: It might be sensible to repeat that. Could that be done?

Rhona Brankin: That would be helpful.

The Convener: Would that be an acceptable way to conclude the paragraph?

Members *indicated agreement*.

The Convener: We will move on to IEPs and PLPs. They are dealt with in paragraphs 83 to 91, which concern one or two emerging issues.

There is nothing else to note until we come to paragraph 89 and the initial part of paragraph 90, which reflect last week's discussion. There is also

an amendment from Fiona Hyslop. Do members have any concerns about the wording of paragraphs 89 and 90 as they stand, forgetting about Fiona's amendment for the moment?

Rhona Brankin: I am not clear what the wording is.

The Convener: It is all in draft, because it reflects last week's discussion. It is the clerks' rendering of what they think we agreed. I think that that it is okay.

Ms Byrne: I would like somewhere to clarify the situation with PLPs and IEPs. Given that IEPs have been piloted and are under way in a lot of schools and that PLPs are just coming on stream now—

The Convener: Is that not dealt with by the last sentence?

Ms Byrne: The point that I want to make is about the work load for teachers. We want to say somewhere in the report that eventually it must be established which of the two plans all children will be working from. If all children are to have a PLP, will some need to have an IEP as well? That needs to be clarified. Yes, there will be a crossover time and a transitional time, but it may well be that the planning process that is currently in an IEP ought to cross over into a PLP rather than doubling up the paperwork or having another tier of different planning mechanisms. It is important to clarify that.

The Convener: Have we not already dealt with that? That moves on from what we had agreed before, and I think that it is reflected in the last bold sentence of paragraph 90.

Ms Alexander: I agree whole-heartedly, and I think that that section should end at paragraph 90, because paragraph 91 actually contradicts paragraph 90. If we do not want a plethora of plans, we cannot sit here and try to legislate for a system that has not even been trialled yet. We would attract criticism for trying to—

The Convener: Let us deal with that point just now.

Ms Alexander: What I am saying is that we should leave that section at paragraph 90 and take paragraph 91 out, because it contradicts paragraph 90. For the same reasons, I do not support the amendment. Paragraph 90 captures last week's discussion.

Dr Murray: I thought that we had had an explanation from the minister about how the Executive envisaged IEPs and CSPs operating. He gave that explanation in his letter, so I do not know that we need to seek further explanation. He has given us that clarification. I do not support Fiona Hyslop's amendment at all, I am afraid. I also agree that paragraph 91 should be taken out.

The Convener: Let us take those various points and see if we can narrow down the area of agreement. Wendy Alexander's suggestion is that paragraph 91 be cut out. Is that agreed?

Ms Byrne: I would be happier if we could add at the end of paragraph 90 some form of words that asks for a clarification or explanation of which of the plans will be the format in the future. If we leave it the way it is, it seems to me—maybe this is just my interpretation, but I do not think so—that we will be running with IEPs and PLPs as well as CSPs.

Dr Murray: Yes, that is what the minister said.

Ms Byrne: That leaves us with three layers of unnecessary paperwork and management. However, if we are not agreeing to that just now, I shall just sum up by saying that that is an area that I have concerns about.

The Convener: You will come back to that general point anyway, I think.

Rhona Brankin: I know exactly what Rosemary Byrne's concerns are and I think that we have encapsulated them. The minister said that the proposed plans were not intended to be bureaucratic but a light-touch working tool. He also said that development should be done in an integrated way. What we are trying to capture is the fact that it is not a question of having mounds of separate forms. It will be an integrated system, but at some point in that system there will be results, assessments and targets in addition to the working targets that might have been used in a PLP. Something more is required by virtue of having an IEP and something more is required by virtue of having a CSP. What we are trying to say is that it is an integrated system, not that every child should have only a PLP.

The Convener: Let us not go too far on this point; we have debated the matter before.

Does Adam Ingram want to add any comments?

Mr Ingram: Yes. I think that Fiona Hyslop's suggested amendment to the text of the report would add to our understanding of the situation by including the minister's views on where PLPs fit into all this. I think that it is a helpful amendment that would flesh out what we are saying in paragraph 90. We are concerned about two aspects. One aspect is bureaucratisation, if you like, and the burdens that IEPs and PLPs will place on teachers. The other aspect, which is more important in the context of the bill, is about trying to create what Fiona Hyslop calls an integrated system, which, elsewhere, we call a universal system. The matter is, as the quote from

the minister acknowledges, at the heart of the legislation. We must get it right.

12:00

Dr Murray: I do not agree. The reason why PLPs and IEPs are not in the bill is because the bill does not introduce them as statutory duties on local authorities. The bill introduces a statutory duty on authorities in respect of the co-ordinated support plan and provision for people with additional needs. That is the intention of the bill. To be honest, if members believe that the suggestion that has been made is what should be in the bill, they should vote against the bill altogether.

The Convener: Okay. Let me try to bring the debate to a conclusion. The first point is whether we knock out paragraph 91. I think that there is probably broad agreement on that, subject to the reservations that Rosemary Byrne expressed. Is that agreed?

Members *indicated agreement*.

The Convener: The second point is whether we agree to Fiona Hyslop's amendment, to bits of it or to none of it at all. Members' views are probably divided on that, but I get the sense that the majority of committee members do not support her amendment.

Lord James Douglas-Hamilton: It would help if there was an additional sentence at the end of paragraph 90, along the lines of Rhona Brankin's suggestion. We should add that the committee wants development in an integrated way. It would be helpful if Rhona could give a form of words for that to the clerk.

The Convener: We have said that already in paragraph 89 and to some extent in the early part of paragraph 90. Those points are reflected in the report because we have raised them before.

Rhona Brankin: Perhaps, to strengthen the point, we should put the additional comments in a separate sentence, rather than add them on to the end of a sentence about good practice on IEPs.

The Convener: Do you want the additional sentence about development being done in an integrated way to be made into a recommendation?

Ms Alexander: If we reverse paragraphs 89 and 90, that would give a clearer sense of the anxiety that people feel, followed by the minister's assurance and then what we think should happen. The recommendation is at the end of paragraph 89. We should reverse the order of the paragraphs.

The Convener: That is very helpful and may take some of the sting out of the discussion.

Do we agree to reverse paragraphs 89 and 90?

Ms Alexander: And to change paragraph 90 slightly.

Rhona Brankin: I am sorry. I have just realised something about paragraph 89, which states:

"The Committee is sympathetic to the views of some witnesses that a universal system where every child received a PLP or an IEP would be desirable."

That is not right.

The Convener: No, it is not—but a universal system would be desirable. We should miss out the qualifying clause in the middle.

With that, can we agree to reverse paragraphs 89 and 90? Wendy Alexander also said something about making a slight change to paragraph 90.

Mr Macintosh: It is a slight change to paragraph 89.

Ms Alexander: It is the bit about "seeks a clear explanation". I do not think that this is the place to seek a clear explanation of how IEPs and PLPs will be used; we state that they need to be developed "in an integrated way." The final sentence of paragraph of 90 should read, "However, the Executive should ensure that adequate and appropriate support is provided for children who are not eligible for a CSP." We cannot ask for a clear explanation of something that is under development. We have had as much explanation as can and should be given at this stage, and the legislation is dealing with something else.

The Convener: I have to say that I am not convinced about that. This is a very important point. I know that we have been given examples of different documents and so on, but I would prefer to keep the sentence as it stands. I accept that the minister has gone some distance towards satisfying our needs.

Mr Macintosh: I think that asking for "a clear explanation" might be a bit tricky, but it certainly would be appropriate to ask for "further information".

The Convener: Yes. We will use the phrase "further information".

If we forget for a moment about Fiona Hyslop's suggested amendment to the report, is that an acceptable rejigging of those paragraphs?

Members *indicated agreement*.

The Convener: We now come to Fiona Hyslop's amendment. I got the sense that the amendment was not supported, although I do not think that anyone disagreed with the longer-term issues that it raises. Are we content to leave out the amendment?

Members *indicated agreement*.

The Convener: I thank members for their reasonable consideration of that matter; it is a tricky area.

We move on to paragraphs 92 to 99 on reasonable cost. I think that those paragraphs reflect our agreement at the previous meeting; there is nothing terribly controversial. Are members happy with it?

Mr Macintosh: Do you mean the clarification of Sense Scotland's point?

The Convener: Yes.

Rhona Brankin: Did we clarify whether it was Sense Scotland or the DRC that suggested the term? I asked for that to be clarified.

Mr Macintosh: Sense Scotland e-mailed to say that it had suggested the term, but with certain reservations.

The Convener: Did not the suggestion come from both organisations?

Dr Murray: Sense Scotland e-mailed us to say that there had been confusion.

The Convener: Does the issue matter much? We are concerned with the quotes.

Mr Macintosh: The quote is in there now. Sense Scotland was slightly worried that its remarks had been taken out of context, but we have put that right.

The Convener: I agree. Do members agree to the paragraph?

Rhona Brankin: Was the wording suggested by the DRC?

The Convener: Yes.

Rhona Brankin: Fine. That is all I wanted to clarify.

The Convener: We move on to assessment, which is another complicated matter. It is covered in paragraphs 100 to 114, if I remember rightly. We have one or two points to consider. The first part is all right, so we come to paragraph 110. At the beginning of paragraph 110, I suggest that we add in: "The Committee supports the ending of compulsory assessments and welcomes the Minister's assurance". It seems to me that we should say that we support the measure.

Fiona Hyslop: I am not sure that I would go as far as expressing support. I note the reasons for the ending of compulsory assessments, but the jury is out on the issue. I am prepared to show good will as to what the Executive is trying to achieve.

The Convener: Almost all the evidence that we received supported the measure, although issues arose about ensuring that integrated assessment in suitable places still takes place.

Ms Byrne: I still have concerns about that issue. The National Autistic Society did not welcome the measure.

Lord James Douglas-Hamilton: I would be happy for that comment to be left out because parents expressed grave reservations about the measure.

The Convener: It is not unimportant that we say what our view of the ending of compulsory assessments is, because the measure is a central point of the bill.

Mr Ingram: The important point is that there must be a programme of assessment for the majority of the kids. The existing approach is almost a bureaucratic approach, with a compulsory assessment. We should be careful that we do not say that, in supporting the ending of compulsory assessment, we do not support having some assessment regime. We must be careful with the wording.

The Convener: It might be better if we said that we support the ending of compulsion in assessments. We go on to mention the minister's assurance on the issue, which puts the matter in context.

Ms Byrne: Is it necessary to add that other bit in? Can we not just leave the paragraph as it stands?

The Convener: I am in the committee's hands. I just thought that the issue was quite important.

Mr Macintosh: The reason why the convener is making the point is that some of the organisations will look to us to say exactly what our views are. The NAS has suggested an opt-out provision rather than an opt-in one. We should be clear about our view, which is that we recognise that argument, but that we do not agree with it.

Lord James Douglas-Hamilton: All we can do is note the evidence, which is that although the professional organisations supported the ending of compulsory assessments, many of the parents had great reservations about it.

Ms Byrne: I agree.

Rhona Brankin: We need to check the evidence. The organisation that represents parents of children with social, emotional and behavioural difficulties welcomed the measure—not all parents organisations were against it.

Mr Macintosh: All parents welcomed the end of statutory or compulsory assessments, but they

were concerned that, in the process, they might lose rights to assessment.

Lord James Douglas-Hamilton: They were worried that some children would fall through the net. That was the basis of their reservation. It would be safer simply to note that.

The Convener: But the point is that we are saying:

"The Committee welcomes the Minister's assurances that it is not the intention for the Bill to allow gaps in assessments for children."

There is all the stuff about the right to request assessment and all that. I would push the point. I appreciate what people are saying, but it is our job to make a judgment.

Lord James Douglas-Hamilton: I am sorry, but I dissent from that. Parents have strong concerns about that issue. I would not be prepared to put my name to that.

Ms Byrne: Nor would I.

The Convener: Two members are against it.

Rhona Brankin: I support what the convener said. It is not the case that all parents are opposed. Yes, concerns were raised, notably by parents of children with autistic spectrum disorder. What we are saying recognises that there needs to be adequate assessment, but we certainly welcome the abolition of compulsory assessments.

The Convener: We need to take a vote although, to an extent, a vote is unnecessary, because we are not that far apart, but—

Lord James Douglas-Hamilton: On a point of order. My understanding is that if several members of this committee wish to dissent from the committee's position, they should have the right to do so. It is not a question of a majority vote. If the report is to be unanimous, members of this committee have the right to dissent from—

The Convener: I do not disagree. We need to ascertain the view of the committee first, before we arrive at that point. You may attract support. I do not know.

Fiona Hyslop: Adam Ingram's reflection on that—

The Convener: —helps.

Fiona Hyslop: There is a difference between supporting the abolition of compulsory assessment with nothing in its place, and therefore being concerned about what will replace it, and recognising concerns about compulsion—

The Convener: That is helpful.

Fiona Hyslop: Adam Ingram phrased it particularly well. I hope that that addresses members' points without having to push it to a vote.

The Convener: Let us see if we can get a phraseology out of that. We could say, "The Committee supports the ending of compulsory assessments, but notes the concerns of some parents that this might lead to difficulties or gaps in the assessment procedure." How is that? The report would continue with:

"The Committee welcomes the Minister's assurances".

Is that all right?

Lord James Douglas-Hamilton: I am prepared to accept that.

Mr Macintosh: I am glad that you agree, because there is no need to disagree on this issue: we are of one mind.

On a separate point, I want to expand paragraph 110, the second part of which states:

"it seeks clarification from the Executive on the rights of an education authority to refuse to conduct an assessment and … calls for the right for parents to appeal this decision".

The National Autistic Society, among others, made the point that the local education authority may also choose the professional involved in making the assessment. That requires clarification. It is not in the bill, but it may or may not be in the code of practice.

A parent may want an assessment to agree a diagnosis of Asperger's syndrome. We have to get right whether a parent can choose the professional, and on what terms the local authority can choose the professional. To take the local authority's point of view, parents could shop around the country to find a sympathetic professional to give them the diagnosis that they want. Alternatively, to take the parents' point of view, the local authority could use a hostile professional who will not give a diagnosis. That is a source of contention. I am aware of cases in which the local authority recommendation has not been agreed by the parents. The situation needs to be clarified.

The Convener: Have we got a phraseology on that? The committee would probably accept the point.

Mr Macintosh: Paragraph 110 states:

"it seeks clarification from the Executive on the rights of an education authority to refuse to conduct an assessment".

It could continue, "We also seek clarification on the right of an education authority to appoint the"—what is the word I am looking for?

The Convener: I suggest, "on how disputes between education authorities and parents as to the appropriate professional be resolved." Is that the point?

Mr Macintosh: Yes. We could state, "on the right of the education authority to decide how that assessment is conducted." The issue is not just about refusing to conduct an assessment; it is about how that assessment is conducted.

The Convener: Is there support for that suggestion?

Rhona Brankin: I just think that we have to tread a little bit warily on that issue. If a parent thinks that their child should go to the USA—

The Convener: Ken Macintosh is only seeking clarification at the moment.

12:15

Mr Macintosh: I can imagine a situation arising that is similar to that which relates to experts who are used in courts but whose professional expertise is subsequently called into question. Some people become professional experts because they always give the same diagnosis. There should be clarification for both sides. The parents and the local authorities would benefit from knowing who has the right to decide whether one person's opinion is accepted.

The Convener: This is an important point. I have experience of this from my legal practice, in which I dealt with insurance company witnesses and the pursuers' witnesses. The situation is similar.

Is Kenneth Macintosh's terminology acceptable to the committee? I think that the clerks wrote down the wording.

Martin Verity: We are not clear on it.

Mr Macintosh: It was, "on the right of an education authority to refuse to conduct an assessment and also to establish how that assessment is conducted."

The Convener: I think that, because of the code of practice stuff, we will have to have a new sentence. I suggest that we say, "The committee also sought clarification" on whatever.

Mr Macintosh: Yes, it should read: "The committee also sought clarification on the right of an education authority to decide how an assessment is conducted".

The Convener: Are we agreed?

Rhona Brankin: Can I get a review of what we have agreed to now and how it would look when it was all together?

The Convener: That is all that we have agreed to, bar my addition near the beginning, on the ending of compulsory assessment and worries relating to the rights of parents to be recognised. Again, we will circulate the suggested text, but I think that we have arrived at agreement on that point.

Rhona Brankin: I am not sure that we have captured the concern in paragraph 111. Have we moved on to that paragraph yet?

The Convener: We are about to. What I have to say by way of introduction might reflect the point that you are about to make, Rhona. I am not sure that the wording that is underlined is quite right. I suggest that we change it to, "The Committee is concerned about how the process of the identification of a child's need for assessment would operate in practice and urges that the need for early identification and assessment of certain specific conditions and for timely investigation of more complex needs be recognised either in the bill or in the code."

Does that meet your point, Rhona?

Rhona Brankin: Yes. I was going to make a point about the code. I wondered whether we should specify that some of the concerns about the abolition of the statutory medical bit of the assessment relate to youngsters who might have dyslexia-type difficulties or who present with behavioural problems that turn out to be related to underlying medical conditions. Perhaps we ought to be specific about that. Perhaps we should say that advice on those potential issues should be included in the code of practice.

The Convener: I am not unsympathetic to that idea, but it would be helpful if you could suggest some wording. I sense that we all agree that that point should be included. I suggest that, after the meeting, you should give the clerks some text that could be circulated to members. Is that all right?

Members *indicated agreement.*

The Convener: Rosemary Byrne has a suggested amendment to paragraph 114.

Ms Byrne: The amendment asks for further scrutiny of and discussion on assessment—by the way, I have just noticed that, in the second line, the words "this will" should be "this should". The area is a complex one and I have been concerned from the start about whether the bill improves current practice. I am concerned that we are not making identification through assessment any easier for parents; I do not see anything in the bill that will help a parent who has been struggling for many years to have their child's problem identified. I have given examples of that before, including children with autistic spectrum disorders or dyspraxia, who might be identified and labelled as badly behaved in the early stages of their education.

For years I have been speaking in school settings to parents who can give an account of the number of times that they have requested

appropriate assessments only to be told by school staff and educational psychologists that their child has social and emotional behavioural difficulties of some type. Five years on, the child is identified as having dyspraxia. I do not see anything in the bill that will help to deal with that situation. There are so many children out there whose needs have not been identified and are therefore not being met.

The Convener: Is there support for that point? I think that there might be, but what are members' views? For the avoidance of doubt, we are considering the second of Rosemary Byrne's suggested amendments, which reflects an issue that is of concern to the committee.

Mr Macintosh: I am certainly sympathetic to Rosemary Byrne's comments. I agree that there is a problem with diagnosis, but I am not sure that the amendment deals with it. We are talking about trying to improve professional practice; we talked about the need to train not just specialist staff but all staff throughout the system, so that they are more sympathetic, aware and expert in the area. I am not sure how the bill can help to solve the difficulty, which will continue until the process of diagnosis becomes easier. I do not think that diagnosis is prevented deliberately, although there might be professional obstinacy or different ways of thinking.

The Convener: Is there not an important issue here about the code? I am not unsympathetic to Rosemary Byrne's comments.

Rhona Brankin: I was talking about this issue when I said that we should strengthen paragraph 111.

The Convener: It is the same point.

Rhona Brankin: Assessment is vital and I welcome the new rights in that area that are included in the bill. However, we must ensure that the code of practice gives guidance on the need for appropriate assessment.

The Convener: Does the wording that Rosemary Byrne suggests meet your needs? With the possible exception of the last sentence, which we would need to change if we want to refer to the code of practice, it is not far from the point that you are trying to make.

Ms Byrne: My amendment would get the appropriate people to do the assessments. There will be times when assessment has to be done through a multidisciplinary or multi-agency approach.

The Convener: If the last sentence said something like, "This matter must be carefully dealt with in the Code of Practice," would it reflect the consensual view of the committee? I rather think that it would.

Rhona Brankin: That is what I was trying to capture in paragraph 111.

The Convener: Is that change agreed?

Members *indicated agreement*.

Rhona Brankin: Does that mean that I do not have to produce amended wording?

The Convener: Yes.

I am not sure how Rosemary Byrne's suggested amendment to section 3(1) of the bill fits in.

Ms Byrne: I did not know where to hang it—

Mr Macintosh: I point out that, in paragraph 113, the word "exists" is not right. The paragraph says:

"The Committee further notes that … the right for parents to request an assessment exists".

However, the right does not exist; the bill introduces it.

The Convener: It should say "will exist" or "is introduced by the bill".

Ms Byrne: I did not know where to hang my amendment in the report, so I referred to the bill itself. It is a matter of general tone: I feel that the bill should be child centred and that we should add the words "take into account the best interests of the child" to section 3(1).

The Convener: We might be getting into detailed amendments, which are for stage 2, but, in so far as we are not, the proper place for that amendment is under our consideration of the general principles, to which we will come back. Let us defer that amendment; the point is not invalid, but it is dealt with elsewhere.

That concludes the section on assessment.

Fiona Hyslop: What about paragraph 112?

The Convener: I beg your pardon.

Fiona Hyslop: I presume that it refers to all children with additional support needs, not only those with co-ordinated support plans, but it would be helpful to make that explicit.

Rhona Brankin: Will you say that again, please, Fiona?

Fiona Hyslop: I think that paragraph 112 refers to all children with additional support needs, but we should make it explicit in case it is interpreted in future as referring only to children with CSPs.

The Convener: We are not only talking about CSPs, in other words.

Fiona Hyslop: Yes.

Mr Ingram: That was the nature of the discussion that we had last week.

The Convener: That seems reasonable. Can we agree on that?

Rhona Brankin: Yes, because there is provision in the bill for CSPs to be reviewed annually. The point was that all children with additional support needs should have their provision reviewed.

The Convener: Is that agreed?

Members *indicated agreement*.

The Convener: Paragraphs 115 to 118 concern pupils outwith the education system. I think that that section of the report is okay; no issues have been raised on it. Likewise, there is no cause for concern in paragraphs 119 to 127, which are headed "Children"; our comments on children under three are included in that, and there is nothing new on it.

Paragraphs 128 to 135 deal with parents' rights. If members are happy with that section, we will move on to paragraphs 136 to 143, which deal with mediation, dispute resolution and tribunals. We have general alterations in the light of our discussions at our previous meeting and Fiona Hyslop's suggested amendment to paragraph 142. Leaving aside her amendment, are we happy with the rest of it?

Members *indicated agreement*.

The Convener: Fiona Hyslop's amendment to the end of paragraph 142 suggests a national framework of mediation.

Fiona Hyslop: After reading COSLA's recent letter, I thought that the convention's recognition of the need for a national framework was a positive step. I presume that that framework would also be for standards. It might be helpful to reflect that in the report.

Rhona Brankin: I thought that we had agreed that last week.

The Convener: Is it not already mentioned in paragraph 143 in a slightly different form? The paragraph does not call it a national framework, but it is the same thing.

Fiona Hyslop: The difference is that, since last week, we have had the letter from COSLA that makes reference to its support for a national framework. That is helpful, because it shows that local authorities are willing to embrace a national framework.

The Convener: Do we agree to the amendment?

Members *indicated agreement*.

The Convener: Paragraphs 144 to 148 concern advocacy. That is quite a strong section, but we have an amendment from Lord James to consider.

Lord James Douglas-Hamilton: Do you want me to speak to it?

The Convener: The point is relatively straightforward and you have made it previously, although it was not taken up. You are saying that we should reorder the sections in the bill to ensure that advocacy and mediation appear first and dispute resolution appears later. We have already agreed to that.

Lord James Douglas-Hamilton: I do not think that anybody disagreed.

The Convener: No, they did not.

Paragraphs 149 to 162 deal with tribunals. I think that the first two pages are fairly straightforward, but a couple of issues have been raised on page 31 of the blue paper from paragraph 160 onwards.

Before I come to paragraph 160, I want to look at paragraph 159, which relates to dispute resolution. I wonder whether it should say at the end that further information about the proposed arrangements should be provided at this stage. I think that until now things have been fairly vague in that respect.

12:30

Mr Macintosh: I am sorry. Where would that go?

The Convener: At the end of paragraph 159. The paragraph says:

"The Committee notes that the Bill makes provision for dispute resolution but it feels that the provisions should be clarified within the Code of Practice and ensure that parents are fully aware of the provisions."

I wonder whether we should have more information about that matter during our consideration of the bill. After all, it might affect what one might think about tribunals and so on. Do members feel that we should ask ministers for more information on the dispute resolution procedure so that we can consider it during the passage of the bill?

Rhona Brankin: I want to suggest a different wording for paragraph 159. The paragraph could say, "The Committee notes that some children with additional support needs will be excluded from the type of legal recourse that is available to those children who also have CSPs."

The Convener: What have you changed?

Rhona Brankin: The paragraph says:

"The Committee is concerned that children with additional support needs will be excluded".

Although we acknowledge that there are concerns in that respect, we do not necessarily share them

or take the view that that means that those children will have any less provision.

Fiona Hyslop: But the issue is legal recourse, not support.

The Convener: That is absolutely right.

Fiona Hyslop: As far as legal recourse is concerned, the bill recognises only people who have CSPs.

Ms Byrne: I do not know whether it would help if I spoke to my amendment now.

The Convener: Let us get rid of this matter first, Rosemary. We will come to that in a second.

Ms Byrne: I think that my amendment is related.

The Convener: Is it?

Fiona Hyslop: Perhaps Rhona Brankin can explain which children will have legal recourse.

Rhona Brankin: I take your point. However, my point is that the paragraph mentions the committee's concern about the matter. Surely it is a simple fact.

Fiona Hyslop: I think that the paragraph reflects the fact that under the bill some children will have legal recourse.

Rhona Brankin: I am not arguing that, Fiona. Indeed, I absolutely accept that some children will have legal recourse and some will not. However, I want to change the start of paragraph 159, which says that "The Committee is concerned" about the issue. The issue is not a matter of concern for me; it is a simple fact and I accept that it is part of the bill. I do not know whether that reflects the committee's views.

Mr Macintosh: The point is that we are concerned about the anxiety that some parents might feel about being disadvantaged by the provision. I agree that the wording implies that the committee does not accept that the division is fair.

Ms Byrne: That certainly reflects my views.

The Convener: I suggest that changing the phrase "is concerned" to "notes" would be fine, because the issue of reassuring parents is referred to in paragraph 160. That might change if Rosemary Byrne's amendment is not agreed to.

Fiona Hyslop: I agree with the suggestion. After all, it is a fact.

The Convener: Is that all right, Rhona?

Rhona Brankin: Yes. That was my only comment.

The Convener: I ask Rosemary Byrne to speak briefly to her amendment to paragraph 160.

Ms Byrne: My amendment reflects my concern that not all young people will have access to the tribunal system that the bill seeks to introduce. I want a single Scottish educational tribunal system that encompasses all young people and covers all areas of concern to parents as they plan their child's education from establishing the personal learning plan to nominating someone to co-ordinate support and placing requests and to deal with school exclusions and so on. We are in danger of creating an adversarial system under the bill, especially given that some people will be left out. It would be nice and neat if we could tidy up the wording in the way that I suggest.

The Convener: I have some sympathy with part of that. It would deal with the point about legal aid and placement requests. However, the bill is not about education in general; it is about additional support needs, so I am not sure that to suggest an amendment of that width would come within the scope of the bill. I am not sure whether members agree. I know exactly where Rosemary Byrne is coming from, but I do not think that such an amendment would be competent under the bill. Do you follow my point?

Ms Byrne: Yes.

Fiona Hyslop: I, too, have sympathy with what Rosemary Byrne is suggesting and my amendments try to address the matter. In my view, the duties of the tribunal should be as wide as possible. How they fit in with the duties and responsibilities of the various education authorities is something that we will have to sort out—

The Convener: So that is an issue for later—

Fiona Hyslop: We will have to sort it out in the bill and other legislative provisions. That is the nub of what is a key argument on a key issue. I am not sure that we will get agreement round the table on it, but we should reflect it as a key issue.

The Convener: I suggest that the point goes too wide for the scope of the bill.

Ms Byrne: On consideration, I am prepared to withdraw my amendment in favour of Fiona Hyslop's.

The Convener: That is helpful, Rosemary, thank you. Let us move on to paragraph 160 and another amendment from Fiona Hyslop.

Fiona Hyslop: We clearly want to ensure that the system works on the basis of good will, so that recourse to dispute resolution, mediation or a tribunal will not necessarily be required. We should, however, recognise that those situations may arise and we should give comfort to those who currently think that they will lose out by not having access to a tribunal. I think that we should call for an extension of the jurisdiction of the tribunal. I suggest just one change to paragraph 160. I think that it was Robert Brown who came up

with the wording and I am very comfortable with the contents of the paragraph, which captures our previous discussions, but I suggest that we omit the words

"over a period of time"

and that the tribunal's jurisdiction be widened from the start. I do not think that we received any evidence to suggest that the system would be overly burdened if that were done up front.

One of the strengths of the English system is that, unlike in Scotland, all children with additional support needs have access to a tribunal. Whether or not the powers are exercised, such an immediate widening of jurisdiction—not one carried out over a period of time—would give people a great deal of comfort.

The Convener: Would the wording "perhaps over a period of time" achieve that effect? This was a difficult matter on which to get agreement last time. I do not particularly want to unpick it.

Fiona Hyslop: If we put "perhaps", that would enable us to decide one way or the other at stage 2. I think that the matter will be subject to an amendment at stage 2. If we say "perhaps" now, we could get unanimous agreement.

The Convener: We did not finalise agreement on paragraph 160 last time; we agreed to return to it today. If we can get agreement on it, so much the better.

Rhona Brankin: I fundamentally disagree with the notion of widening access to legal rights under the tribunal system. Parents have expressed their concerns to me about the matter. They think that their children have profound, complex needs and should have statutory rights; in their view, widening those rights to everyone would in fact reduce their children's rights. I would be very much opposed to that. It would result in the system being absolutely unmanageable. The system would break down; it would be overly bureaucratic. It would become based far too much on confrontation. Ideally, we would wish to arrive at the best solution in order to meet the needs of the child, through mediation and, in some situations, conflict resolution. I am fundamentally opposed to the proposal to widen access.

Mr Macintosh: As I said last week, I am sympathetic to the idea of extending access. I have two concerns. My first concern relates to the group of parents who have had experience of the record of needs and of conflict with local authorities. They are looking for a way of enforcing their rights against the local authorities, if I can put it that way. They are looking for the succour or comfort that a right of appeal to the tribunal system would give them.

Whether or not one wishes them to be able to use the tribunal system, we are going to give that group of parents a dispute resolution process. We are going to give them some means of trying to resolve confrontations in a way that balances their needs, the need for fairness and the needs of the local authorities to distribute resources correctly.

I am also concerned that we would be setting up an overly complicated system with a local dispute resolution process and an appeals system. That said, I am sympathetic to the idea.

We keep saying that a universal system would be ideal. However, we do not live in an ideal world; we live in a pragmatic world in which difficult decisions have to be made. We need to decide whether there is a pragmatic solution.

I think that it would be worth exploring the idea, which is why I agreed to the suggestion. My difficulty, however, is in the way the paragraph is worded. It gives the idea slightly more endorsement than I would prefer. The first sentence opens with the words "The Committee believes". Although we go on to say,

"the tribunal system might go some way",

the use of the word "believes" suggests that we think that that is the way forward.

I would like us to explore the idea as a possibility. However, I do not want to get to the point where the tribunal system is swamped by appeals so that the whole system is clogged up or becomes overly bureaucratic; I do not want IEPs to be made unworkable because they have been changed from a working document—a light-touch document—into a statutory document that is of less benefit to pupils and teachers. Those are reasons for not going down the line that has been suggested. That said, we should explore the idea.

I have another stand-alone issue. I am still not sure whether all parents who wish their child to have a CSP have the right of appeal. We have discussed the issue before. Do they have the right of appeal to the tribunal because they are not getting a CSP?

The Convener: I think that they do. Yes, they have that right.

Fiona Hyslop: In which case, everybody has access.

Mr Macintosh: By itself, that goes some way towards reassuring me. It means that every child with additional support needs has access to the tribunal. If that is the case, there is no need for us to make the suggested change. As I said, I am sympathetic to what has been said. I do not think that the issue is black and white but—

The Convener: Let us keep that thought in mind and see whether we can move forward on the issue.

Lord James Douglas-Hamilton: I remember that you made the original suggestion, convener. I agree with Ken Macintosh. The point can be met if we change the wording of the second sentence, so that it reads: "It therefore suggests that the possibility of widening the jurisdiction should not be ruled out." All legislation is reviewed in the light of experience. The bill is bound to be reviewed. There is no doubt that that is the time to decide how best to deal with the issue.

Ms Alexander: I have listened to the conversation and I suggest an amendment that might capture the essence of it. I suggest that we delete the first sentence and insert the following: "There is a self-evident need for the new legislative framework and tribunal system to bed down. However, in the subsequent operational reviews and monitoring of this legislation in practice, consideration should be given to widening the jurisdiction of the tribunals over a period of time." That puts the issue on the agenda but at the same time acknowledges that the matter should be looked at five years down the line and not when there is a brand-new legislative framework that introduces a tribunal system into the area for the first time. We would be making an error if we tried to solve the issue before the system is in place. We would meet our obligation by putting the issue on the agenda and asking our successors to return to it.

The Convener: What the wording misses, however, is the possibility of giving additional reassurance to those who lose the record of needs and do not gain a CSP.

Ms Alexander: With respect, convener, they have no reassurance. For the moment, there is only one tribunal system. That deception is one that we should not be party to. We are not saying that, for the first two years in which the system is in operation, we want a tribunal system for everyone; we are directing future policy makers. Our recommendations do not give further comfort to the parental desire to access a tribunal in the short term. We will not be able to do that because the bill does not provide for it. However, our report seeks to ensure that the bill represents an advance in a variety of other ways.

12:45

Fiona Hyslop: I deeply disagree with that. I think that the tribunal provisions are a fundamental part of the bill. Currently, those with a record of needs have legal recourse to an appeals committee in an education authority. However, that will no longer be the case if the bill is enacted as it stands. The nub of the issue is whether the tribunal system's scope is extended immediately or later. Members have different, genuinely held views on that point. I think that my perspective reflects Rosemary Byrne's suggested amendment. It is crucial that, from the outset, the tribunal issue is right, because that would allay parents' concerns that a legal right is being taken away from them.

The Convener: I am not unsympathetic to trying to build on the good points that Ken Macintosh has made. Perhaps we cannot get consensus on the issue. I accept that there are question marks about the pressures that might be put on the tribunal system and its bureaucracy. I tried to reflect that in my suggested wording, which is—rightly—full of "mights", "woulds", "ifs" and so on. It is arguable that we have not got the wording right in paragraph 160. I must accept to some extent the criticism of the first sentence.

Fiona Hyslop: I would accept the convener's suggested wording for paragraph 160, except for the words

"over a period of time".

The Convener: That is not totally the issue.

Dr Murray: I hoped that we might get clarification from ministers about the recourse open to parents who, because their children do not have a CSP, feel that their children's additional support needs are not being met. I am not convinced that that problem could be resolved by extending the tribunal system. Perhaps ministers could be asked to comment on that suggestion. However, I want to know what ministers believe parents can do if they think that their children's additional support needs are not being met.

The Convener: That is the central point and I think that we should focus on it. The problem is getting wording that will satisfy all members, but I do not think that we are that far apart at this stage.

Rhona Brankin: Wendy Alexander's suggested amendment is helpful and I propose that we consider it.

The Convener: I do not think that her suggested amendment is fully satisfactory. The first part of it is helpful, but I am not sure about the rest of it. Can you read it to us again, Wendy?

Ms Alexander: I suggest leaving the first sentence as it stands and adding: "There is need for the new legislative framework and tribunal system to bed in. Hence, in the subsequent operational reviews and monitoring of the legislation in practice, consideration should be given to widening the jurisdiction of the tribunal system over a period of time. The committee seeks the minister's response to this suggestion."

The Convener: I do not think that that quite does it.

Ms Alexander: There are two issues. First, my suggested amendment expresses my view that we

cannot prescribe extending the tribunal system just now. Secondly, I agree with Elaine Murray's view that we should ask ministers what can be done for parents whom the tribunal system will not cover.

Fiona Hyslop: On procedure, we have a right to comment on whether we think the tribunal system should be changed now or subsequently. The fact that we might believe that the system should bed in does not preclude us from making such comments. We are perfectly entitled to make a judgment on the tribunal system now.

Ms Alexander: Do you believe, Fiona, that a tribunal system for parents whose children were not covered by a CSP would be better than a system of appeals to education committees?

The Convener: With respect, I do not think that that is the issue. I do not think that we should go down that road. The issue is whether it is appropriate for us to do anything in connection with the tribunal system. I am not trying to make our comments prescriptive. There is an issue about the tribunal system. I am not entirely satisfied with the proposals. I think that ministers should certainly consider—among other ways of dealing with the issue of the record of needs and, more broadly, with children with additional support needs—whether there should be a strengthened legal provision. That is what I am after.

Mr Macintosh: I have difficulty in endorsing the view that we should extend access to the tribunal. We should explore the issue further, but stating on the record that the tribunal is the solution is not something on which I have totally made up my mind. By extending access to the tribunal, we might undermine the whole point of the bill, which is not to regard CSPs or access to the tribunal as a vehicle for asserting parents' rights to resources. Many disputes are not just about the complexity of the service, but about the level of service that is provided. I therefore have a slight difficulty with extending access to the tribunal, although I am sympathetic to doing something. I am particularly sympathetic to not having two systems.

I wonder whether we can change the first sentence of paragraph 160 to, "Many parents would be reassured or have their fears alleviated if they had access to the legal rights available to those with CSPs under a tribunal system." We could then go on to say, "The Committee is—"

The Convener: Interested.

Mr Macintosh: Yes, exactly. "The Committee would be interested in exploring this issue further. It is sympathetic to their concern but is aware of the difficulty of introducing a tribunal that is endorsing—" That is where we would get into the matter of intervention.

The Convener: I do not think that we should go into any of that.

Mr Macintosh: No. We should just say, "but is aware that there are many difficulties in endorsing this and would welcome further explanation from the Minister."

The Convener: I think that that is the nub of it.

Fiona Hyslop: For the purpose of unanimity, I would be willing to go with that as long as we did not rule out the requirement for the widening of access to take place over a period of time. Your compromise perhaps leaves it open. We will take different positions later on, but I think—

The Convener: Sorry. Let us just try to build on the agreement that we have got.

Rhona Brankin: I would not agree with that. Extending access would undermine the bill fundamentally. The bill is intended to meet the needs of children with additional support needs. For some of those children, a CSP will be required; for some of those children, there are additional legal requirements. That is absolutely as it should be. As a parent of a child who had a record of needs, I would not want all the other children in her school who had additional support needs to have the same access to legal rights because the system would be in danger of becoming over-bureaucratised and over-legalised. The whole system would be in danger of grinding to a halt. The children who should have access to these legal rights should be the most vulnerable children in our system, and we should fight to protect those children.

The Convener: I do not disagree with that entirely. Unfortunately, the CSPs concentrate on the co-ordination issue rather than on the most vulnerable children. That is one of the difficulties with the system.

Rhona Brankin: With respect, that is the whole point. Some children have complex needs but do not have a CSP. The CSP was introduced because the record of needs failed in the co-ordination of the system. That is one of the main reasons why the bill has been introduced.

The Convener: Yes. I am not sure whether that is the whole picture, but that is the argument.

Ms Byrne: I would be in favour of the wording that has been proposed as long as we keep in—

The Convener: Do you mean the wording that has been proposed by Ken Macintosh?

Ms Byrne: Yes. As long as we keep in

"a unified tribunal system with a built-in sifting process".

We must be careful that the bill offers equal access to everyone. Many young people who did not have a record of needs had as much need as

those who did. I think that the same thing will happen with the CSPs, as they are developed. Where there is good practice, many schools will not need to go that far. Some people say that widening access will open the way for an overwhelming number of people going to the tribunal; however, the system that we have is very adversarial and I think that that could help. If people know that they have the same legal rights, that could minimise the problematic areas that we have gone into. People who feel that they have those rights do not always feel that they have to use them, although those rights are there to be used if necessary.

The Convener: Okay. Let us have one final comment from Lord James Douglas-Hamilton before I try to bring this discussion to a conclusion.

Lord James Douglas-Hamilton: I support Ken Macintosh's recommendation. We need to cater for the many people who are on the borderline.

The Convener: That is a valid point. I think that Ken Macintosh's suggestion reaches the nub of the committee's viewpoint. I accept that some will disagree with his suggestion one way or the other. Some people have already compromised a bit to reach agreement on the matter. I accept that Ken's suggestion does not represent everybody's view, but I suggest that we run with it, provided that the committee finds that acceptable. We can circulate the precise wording afterwards so that we can be sure about it.

If Ken's suggestion does not represent the view of the committee, we clearly need an alternative proposal. Perhaps we just need to delete the paragraph. I hope that we do not need to go to a vote on the matter because we have gone a fair distance to reach a central view. However, I accept that there is unhappiness with the suggestion. What do people think?

Fiona Hyslop: I think that the majority would accept Ken Macintosh's suggestion, although I would like to see the wording that he suggested. However, if Rhona Brankin has a fundamental difference, there should be room for that to be expressed in some way in the committee's report. The report could state that the view was held by the majority of committee members.

Rhona Brankin: I disagree with Ken Macintosh's suggestion. The concern of parents should be recognised in our report, but widening access to the legal right to go to the tribunal will not necessarily meet the needs of the children concerned.

The Convener: I want to ascertain whether Rhona Brankin is entirely on her own in taking that view. I accept that there will be wider issues when we come to stage 2 but, for the purposes of our stage 1 report, does anyone else share Rhona Brankin's view?

Dr Murray: I have some sympathies with Rhona Brankin's view. Personally, I am not convinced that widening access to the tribunal will necessarily address the concerns of parents whose children have additional needs but do not have a CSP. It is important that we acknowledge those concerns. Ministers must make clear how those parents would exercise their children's rights, but I am not convinced that widening the tribunal system would address those concerns.

Ms Alexander: I think that we are agreed that the minister must come back to us, but we are split after that point. When the minister comes back to us, he could say that such parents may make no further appeal; that they may appeal to a local authority committee in the way that they do just now; that they may appeal to a tribunal in the future; or that they may appeal to a tribunal right away. The only way in which the committee will hold together is by agreeing to seek the minister's view on how the issue will evolve and be dealt with.

The Convener: That is what Ken Macintosh has suggested. His amendment may have been designed precisely to get at that point. I judge that the majority of members are heading in the direction of accepting his suggestion—although there may possibly be one or more dissentients. Do we need to take it to a vote?

Rhona Brankin: Can I hear Ken Macintosh's suggestion again?

The Convener: That is the trouble. We do not have a precise wording for it.

Mr Macintosh: Let me reassure Rhona Brankin that, like her, I am not convinced that widening access to the tribunal is the solution. I want us to ask that the matter be explored further. In particular, I want to hear from the minister whether he would seek to move to a unified system in the long term, provided that that is a practical proposition that would not undermine the whole system.

The Convener: If it is helpful, let me clarify that I am prepared not to insist that our report should contain something that commits the committee to a view on whether the tribunal should be widened or extended. We should say simply that such an idea, which enjoys considerable support, is not out of the frame and has some advantages, but we also consider that there are problems with it and we want the minister's view on it. That is essentially what we are trying to say. Can we encapsulate that in a way that does not go against any member's concerns? I doubt that we can do that today, as we would just go round in ever-

diminishing circles, but I think that Ken Macintosh's phraseology got the beginnings of it.

Mr Macintosh: I will need to try a new phraseology, but my suggestion was something along the lines of—

The Convener: Just a minute. Martin Verity may be able to tell us what you said.

Martin Verity: We got the basic points, although we perhaps did not get the precise wording. The suggestion was, "The Committee notes that many parents would be reassured if they had the same access to the tribunal system as children with CSPs. The committee would be interested in exploring the issue further. However, it is aware that there are difficulties in endorsing the proposal and it seeks the minister's views on this issue."

That is not quite the precise wording, but we think that those were the four points that Ken Macintosh made.

The Convener: If I am not interpreting people wrongly, I think that that is the essence of what the committee is trying to get at, although there may be the odd view off to one side or the other. Can we live with that broad approach and find the phraseology to nail the matter afterwards?

Ms Alexander: I suggest that the first sentence should be the one that Elaine Murray suggested, which was about the fact that there is a group of parents who are concerned about what to do. I do not think that the starting point should be tribunals; it should be parents' concerns about what to do.

13:00

The Convener: I agree. Have we arrived at agreement on that? Rhona Brankin is probably the member who is most unhappy with that.

Rhona Brankin: I am happy, as long as there is no suggestion that the committee is endorsing the view that there should be a widening of access to legal rights at this stage. Although we recognise that there is a concern about that, we also recognise that there are major issues around it.

Fiona Hyslop: I endorse the suggestion, on the basis of ensuring that the committee has a collective view. It is a reasonable compromise to say that we are interested in the widening of access and want to explore it. We will split at a later date, but the point is that we are putting the issue on the agenda.

The Convener: Will Wendy Alexander clarify her suggestion for the first sentence of paragraph 160?

Ms Alexander: My suggestion is that we should say: "The Committee recognises that there are parents whose children will not be eligible for a CSP who are concerned about what legal recourse they will have in circumstances in which they feel that the local authority is not responding to their needs." That is the statement of the problem.

The Convener: It is a statement of part of the problem but not the whole problem. I think that we can work something up on that. It would be helpful if the clerks, Ken Macintosh and I could try to agree on some form of words to put to the committee, based on that suggestion. We could take matters forward in that way. It is not the intention to commit anyone to a widening of access to tribunals at this stage; we simply want to keep the issue open and to ask for the minister's comments on it. We will make the phraseology as neutral as possible; I think that the clerks have got the gist of what we want to say. Is that okay? Does anyone want to dissent from the suggestion that we go that far?

Members: No.

The Convener: Thank you very much. That was a tricky subject. What we have agreed is useful.

I move on to paragraphs 161 and 162. As usual, I declare my interest in legal aid issues: I have a consultancy with Ross Harper solicitors and am a member of the Law Society of Scotland. I invite members' views on the point that I make in paragraph 162 about not having a highly legalised system. The choice was between having legal aid for everyone in sight and keeping the lawyers out of matters to an extent, by having non-legal provision through the tribunals. That was what I was trying to get at, but I do not know whether my suggestion was helpful.

Lord James Douglas-Hamilton: As a non-practising Queen's counsel, I believe that the guidance not to use lawyers routinely is extremely wise counsel.

The Convener: Is that suggestion agreed to?

Members *indicated agreement*.

The Convener: That takes us to the end of the detailed section and we must now flick back to "General views on the Bill", which covers paragraphs 18 to 35. We are left with what is in the draft report, as well as Rosemary Byrne's amendment to paragraph 35.

Fiona Hyslop: And my amendment.

The Convener: I think that yours is already in the document.

I have a minor grammatical point on paragraph 19, which should say, "The Committee notes the Executive's intention that the Bill should strengthen parents' involvement". Is that helpful?

Members *indicated agreement*.

The Convener: Are there any other points on the first two or three pages of the report before paragraph 34? I have a minor point on the middle of paragraph 34, which should say something like, "The Committee notes this Bill represents a significant move towards an inclusive approach"; I think that a bit has been missed out. Is that all right?

Members *indicated agreement*.

Mr Macintosh: I have a point about the expression

"the quality of relationships on the ground",

which is in the next sentence in paragraph 34. As the phrase "on the ground" is a bit of jargon, perhaps we could use the phrase "in practice", although I am sure that one of us suggested the phrase "on the ground" last week.

Ms Alexander: It was me, but I agree with using the phrase "in practice".

The Convener: In paragraph 35, we have the original changed text and an amendment by Lord James that we should insert

"that there should be no diminution of existing rights".

Lord James Douglas-Hamilton: The point is about the several thousand people who have a record of needs but who are unlikely to get co-ordinated support plans. Depending on how that issue is dealt with, I reserve my position on whether I support the principles of the bill.

The Convener: It seems to me that Lord James's amendment relates primarily to the issue of appeals about records of needs.

Dr Murray: There is no doubt that, in legal terms, there will be a diminution of the existing rights of parents of children who currently have a record of needs but who will not get a CSP. However, the concern should surely be that there should be no diminution of existing services, not rights.

Mr Macintosh: I am not sure that there will be a diminution of existing rights. The bill extends rights to children who did not have them before. I agree that people who have a record of needs have a certain right, but—

The Convener: They have a bit of paper that they will not have any longer.

Mr Macintosh: The record of needs has been used in a way of which we should disapprove. I do not think that the ability of parents who currently have a record of needs to appeal the record of needs gives them many more rights than they will have under the system that the bill will introduce.

The Convener: What is your suggestion?

Mr Macintosh: I am not sure that the amendment is necessary.

The Convener: Would you be happy with Elaine Murray's suggestion about using the word "services"?

Mr Macintosh: Yes.

The Convener: Does Elaine Murray's suggestion meet your point, Lord James?

Lord James Douglas-Hamilton: No, it does not. I will have to reserve my position on the bill on this issue. There is no doubt that the record of needs can be founded upon effectively in court. Without that document, parents believe that they would not have the same rights if there were a dispute. Depending on how that issue will be dealt with—which is still not absolutely clear—I wish to reserve my position.

The Convener: Lord James's suggestion is that the committee should set that objective for the minister. I suppose that the minister could say that adding the alternative dispute resolution procedure—strengthened or otherwise—might meet the point because it is an equivalent procedure. That might deal with the issue for the moment and leave it until stage 2. However, if it is the committee's view that people should not lose rights, we should set that down.

Lord James Douglas-Hamilton: I dissent from the word "approves" because I want to reserve my position.

The Convener: We will come to that amendment in a second.

Fiona Hyslop: Notwithstanding the fact that I want to replace paragraph 35, I support Lord James because so much rests on what happens at stages 2 and 3. If what we want comes to pass, many members will be far more comforted. However, we do not know whether it will come to pass. Lord James has correctly identified the nub of the issue.

Mr Macintosh: To clarify, I agree that there should be no diminution of existing rights, but I do not think that the bill will do that. Therefore, I am concerned that by putting such a statement in our discussion of the general principles we are implying that the bill somehow undermines existing rights. I agree entirely that we should not diminish the rights of parents whose children have additional support needs, but I do not believe that the bill will do that.

The Convener: The final shape of the bill will perhaps determine whether it diminishes existing rights. If the committee stated that the bill should not do so, that would be a steer to the minister about what we expect the end result to be. That is

Lord James's central point, although I do not know whether members agree with it.

Rhona Brankin: I do not agree with it. The important point is that the right of the child to be educated, to meet their full potential and to have their needs met adequately is central to the bill. I agree with Ken Macintosh. I do not think that there is a diminution of the rights of the child in the bill. The bill ensures that children's needs are met more adequately. I disagree with the inclusion of the phrase "diminution of existing rights".

Ms Byrne: I agree with Lord James that we should keep the phrase in. We are not discussing the suggested amendments at the moment. The phrase is important, because children who do not get a CSP but who had a record of needs will lose rights.

The Convener: I do not want the discussion to go round too much.

Rhona Brankin: Many children will gain rights under the bill. The system should work better and more children will be brought into it. To say that there will be a diminution of existing rights is simply inaccurate.

The Convener: I take a slightly different view. I do not think that there should be a diminution of existing rights; it should be the objective of the bill to ensure that there is not. From that point of view, I am inclined to go with Lord James Douglas-Hamilton's suggestion on paragraph 35. We might have a disagreement on that, but I do not know whether we have reached that point. It is a slightly academic discussion, because we are not at the point of making the decisions on all this. I suppose that the alternative to Lord James's suggestion is Elaine Murray's suggested wording in relation to services, which is a different concept; that is equally valid.

Mr Ingram: I agree totally with Lord James's take on this. It is unfortunate that the system to date has put the onus very much on the parent to enforce the law. Given the level of sensitivity that exists about the potential reduction in or loss of rights of parents of children who have a record of needs but who will not get a CSP, we are not doing our job properly if we do not address the issue. I agree that there should be no diminution of rights, but we have to express that.

The Convener: Would it meet anybody's desires to say "rights and services"? Perhaps that is the worst of all worlds from some members' point of view. Would that cover members' views?

Rhona Brankin: I would be happy with the wording "the right to have their children's needs met".

Lord James Douglas-Hamilton: There could be vulnerable children in that category. I want there to be no diminution of their legal rights, or of their services. I wish to take a stand on that. I accept that four of us take one view and other committee members might take another view. If I were to agree to drop my suggestion altogether, it might be assumed that I supported or would vote in favour of the bill in the chamber. I am not necessarily prepared to do that while this matter is not dealt with satisfactorily. I am sorry, but I wish to insist on that.

The Convener: You are perfectly within your rights to do so.

Mr Macintosh: I am hoping that Wendy Alexander, who has rescued us so far with suggestions, will come up with another one. There is no need to disagree on this point. Nobody on the committee wants to see a diminution of rights, although there might be disagreement about how we are proceeding or whether we are moving in the right direction. The point is whether by including Lord James's suggested wording we are guaranteeing that or implying the opposite—that there will be a diminution of rights. I suggest that rather than deciding that right now, we discuss a couple of other points and come back to it. If we see our approach to the principles of the bill in its totality we might be clearer about—

The Convener: I am not in favour of that, Ken. We have dealt with all the detail. We are now dealing with the generalities. We have got to kill this now, one way or the other, and move forward. It is not helpful to leave Lord James's suggestion to one side. Whether the phrase he suggests is included or not is an open question. We have an element of disagreement. Lord James made the clear point that he will not go with the bill altogether if that is not in the report, which he is perfectly entitled to do. That is not helped one way or the other by what happens with the other two or three bits that we have yet to look at.

Mr Macintosh: It matters to me that Lord James—

The Convener: Is on board.

Mr Macintosh: Yes. It matters to me very much that Lord James—and not just Lord James, but everybody—agrees. That is why I want to see the issue in the round.

13:15

Ms Alexander: Can I suggest wording that might work? "The matter of whether there is a risk of some parents experiencing a possible diminution of existing legal rights depends upon the minister's response to matters we are raising with him in the course of this report. The committee, therefore, is unable to take a final view

on this matter until his response is received." That would simply park the issue.

The Convener: What do you think about that, Lord James?

Lord James Douglas-Hamilton: If that was written in, the word "approves" would have to be left out, because I am not prepared to approve the general principles of the bill until I know how the minister is going to deal with the issue. It goes to the heart of the bill.

Ms Alexander: We could add, "However, a majority of the committee feels able to endorse the general principles, although this matter remains outstanding." You could then dissent from that sentence.

Lord James Douglas-Hamilton: First, I am not sure that it is a majority of the committee, although it may be.

The Convener: At the end of the day, that was helpful, but I am not sure that it resolves the issue. We might have to agree to disagree. Does anyone have a positive suggestion?

Rhona Brankin: The bill must not in any way reduce the rights of children to have their additional support needs met. The bill extends the rights of children to have their needs met. That fundamentally underpins the bill. To talk in a bald way about the "diminution of existing rights" concerns me, because under the existing—

The Convener: Lord James was clearly talking about legal rights.

Rhona Brankin: But one of the problems with the existing record of needs system is that it is overly bureaucratic, and some children's needs are recorded unnecessarily while others' needs are not recorded at all, so some children do not have the rights under the present system that they should have.

The Convener: Is it helpful to state, "The Committee, noting, however, that the majority of the Committee did not believe that the bill as they understand it diminished existing rights, nevertheless agreed with the objective"—this is a bit convoluted, but you see what I am getting at—"that there should be no diminution of existing rights"? In other words, we could qualify the statement about the objective being that there should be no diminution of existing rights with the majority view—which I think exists—that the bill in fact does not diminish existing rights. Does that have potential?

Rhona Brankin: That has potential. We could state, "Seeks reassurance that the needs of all children are fundamental and the needs of all children will be met."

The Convener: The trouble is that I have not phrased it right. The mind is getting blown by the events of the morning.

Mr Macintosh: We are not agreed on the direction in which we are heading. There are existing rights. For example, there is a statutory right to assessment. Would you call that a legal right? We are getting rid of that statutory right, so are we, in theory, diminishing a right? I do not think that we are diminishing anybody's chances of accessing services. Currently, any child with a record of needs has a statutory right to a multidisciplinary assessment. That will change because, in future, all children will have a right to assessment, but it will no longer be compulsory. There will be no diminution, because the right will be extended to everybody. The bill will change rights in that way, but I do not think that there will be a diminution—I think that there will only be a change.

Dr Murray: If a child had a record of needs, they would have certain statutory legal rights as a result. If they do not get a CSP, how would their rights change? I do not know whether that is the issue that Lord James Douglas-Hamilton is concerned about.

The Convener: That is exactly the issue.

Rhona Brankin: The issue is also about whether the child still has the fundamental right to have their needs met, whether or not they have a CSP.

The Convener: There is a clear distinction between services and rights, which was the original point. There are services that a person should receive under the bill and there are legal rights to take matters forward in some way if there is bureaucratic awkwardness or whatever. I think that those rights are changed by the bill. There is a difference, but not necessarily a diminution.

Lord James Douglas-Hamilton: The convener said earlier that the objective should be that there should be no diminution of rights and services. Certainly, the majority believe that there will be no diminution and I would not dissent from that view.

Rhona Brankin: I thought that the convener made a subsequent suggestion that was more helpful.

The Convener: I do not think that I did—I think that that was the suggestion that I made.

Lord James Douglas-Hamilton: Approving the general principles of the bill is a bit premature at this stage, as we do not know how matters will be dealt with.

The Convener: We are discussing our stage 1 report, however, and we must tell the Parliament whether members ought to vote for or against the bill.

Lord James Douglas-Hamilton: It could be argued that the majority would agree, but I would

not be prepared to put my name to that at the moment.

Dr Murray: Are we not obliged to make a recommendation at this stage?

The Convener: I think that we are.

Dr Murray: It would be possible for any member or political group to vote against the bill at stage 3 if they did not think that they could support the final shape of the bill. We should recommend whether the bill should be rejected now or taken forward to stage 2 and be subject to line-by-line amendment.

Fiona Hyslop: My understanding is that Lord James Douglas-Hamilton is saying that, until he knows that the bill will be amended to ensure that legal rights are supported, he reserves the right not to support the bill at stage 3. He is not saying that the bill should not progress further than stage 1. Is that correct?

Lord James Douglas-Hamilton: Everybody knows that the bill will go to the next stage and it is our duty to put it there, especially after taking all the evidence that we have taken.

Fiona Hyslop: Exactly. We must take a view and ask whether the committee thinks that the bill should progress beyond stage 1—I think that that is where the convener is coming from. I am sure that members will say that the bill should progress. I agree with the convener that we must take a view, and, like Lord James Douglas-Hamilton, I support his suggestion about wording that will allow us to progress.

The Convener: Can we take out the part about existing rights and insert words that are not a subordinate clause, if you like, to the main business of approving the bill? We all agree that the bill will perhaps have to go a wee bit—or a significant bit—further to protect people and to ensure the rights of people who have records of needs but who will not have them under the new system. Can we reflect that earlier in paragraph 35 and then say that we approve the general principles of the bill?

Mr Macintosh: We could say something along the lines that Lord James Douglas-Hamilton suggested. We could say, "The Committee believes that the Bill will not diminish existing rights for children with additional support needs. However, it is looking for further reassurance to this effect as the Bill progresses."

The Convener: That is not quite right.

Fiona Hyslop: I prefer Robert Brown's suggestion.

The Convener: I think that I referred to a majority of the committee—that was the point. We do not need to define what the majority is. We could remove the bit about approval of the bill and say, "The Committee, by a majority, took the view that there should be no diminution of existing rights in terms of the proposals in the Bill." The point that we are trying to capture is that there should be no diminution of rights, is it not? People should not lose rights as a result of bills such as this one.

Mr Macintosh: I suggest, "The majority of the Committee believe that there will not and should not be any diminution of rights."

The Convener: That is quite good.

Mr Macintosh: As an alternative, I suggest, "The majority of the Committee believe that the Bill will not and should not diminish the existing rights of parents."

Dr Murray: The problem is that, for some children, certain rights will be removed and others will come in. The issue is whether their existing rights will change.

The Convener: That is a judgment, and it is part of the reason why I do not think that there is a diminution of rights.

Rhona Brankin: May I suggest a way forward? There is a recognition that rights will change and parents are concerned about a diminution of rights. The right of the child to have their needs met is fundamental and underpins everything.

The Convener: That is not the central point. The central point is the legal rights issue, which Lord James has raised. Your point is important, but the point that Lord James makes is different.

Rhona Brankin: I suggest that we use the word "change". We should say, "We recognise that rights are changing under the Bill and we seek reassurance that the fundamental right of every child to have their needs met should be recognised."

The Convener: Their rights should not be diminished.

Rhona Brankin: Yes.

The Convener: I think that that would get us most of the way there. Shall we go with that wording? We are still left with Lord James's point about the legal rights.

Lord James Douglas-Hamilton: I thought that the convener had the right wording.

The Convener: The problem is that I cannot remember what it was. The sentence that Martin Verity has written down is, "The majority of the Committee took the view that there should be no diminution of legal rights or services under the Bill." The word "should" is ambiguous in that sentence—helpfully so, if I may dare to suggest that. It could mean "should" as an objective or

"should" as a likely result. Most of us could live with that, could we not?

Mr Macintosh: I do not want to include any implication that the bill diminishes rights, because I do not accept that it does. Parents are looking for reassurance that they are not losing rights and I am anxious to give them that reassurance.

The Convener: I suggest, "There should be no diminution of substantial legal rights or services under the Bill." Does that help?

Mr Macintosh: I think that we are there, but I am trying to balance the fact that I agree that parents should not lose rights with the need to reassure them.

The Convener: Could we add, "Some members, however, were of the view that further reassurance was required in this direction"?

Rhona Brankin: No.

The Convener: What is your objection to that?

Rhona Brankin: I would like to propose an amendment and take it to a vote. I would like the report to say, "The Committee recognises that the legislation makes certain changes to existing rights but the Committee is of the view that any changes to existing rights must not in any way lessen the right that every child has to have their additional support needs met."

The Convener: I do not think that there will be any disagreement about that. We can probably agree that wording, but it does not meet Lord James's point, which is about legal rights, not about the provision of services.

Lord James Douglas-Hamilton: That is right.

The Convener: Can we begin by agreeing to Rhona Brankin's formulation? It is not the whole story, but it gets us halfway.

Dr Murray: We need a formulation of words that reflects the fact that although rights will change, that does not weaken parents' rights.

The Convener: I suggest, "As indicated in detail later in the report, the Committee seeks reassurances from the Minister that the framework of legal rights, albeit changed, will not be diminished in practice."

Rhona Brankin: Yes, that is it.

The Convener: Is that suitable, James?

Lord James Douglas-Hamilton: It comes back to the point about legal rights. It is a question of interpretation, and we cannot say that until we have seen how the bill's provisions will operate in reality.

The Executive does not know how many thousands of people who have records of needs will not have CSPs. Until we know the types of medical condition, special learning difficulties and so on that there will be, I will not be prepared to form a final judgment. This is a question of legal rights. I think that the convener had the wording as near to being correct as possible a few minutes ago.

13:30

The Convener: We will read back over what we have got. The combination of Rhona Brankin's phrase and my addition will include the reference to legal rights, although it might not be in quite the form that Lord James Douglas-Hamilton wants.

Martin Verity: So far, we have, "The Committee recognises that this legislation makes certain changes to existing rights but the Committee is of the view that any changes to legal rights must not represent any lessening of the need for adequate provision for the additional support needs of children to be met."

The Convener: That is half of it. What is the other bit?

Martin Verity: "The Committee seeks reassurances from the Minister that the framework of legal rights, albeit changed, will not be diminished in practice."

The Convener: It should then say, "Subject to this, the Committee recommends approval of the general principles of the Bill."

Rhona Brankin: I am not happy with the second sentence that you read out. That does not encapsulate what we encapsulated in the first part of it.

The Convener: I know. That is because it is a different point. The first bit relates to services and the second bit relates to rights. I think that that is reasonably clear.

Rhona Brankin: The point is that some young people will have new legal rights.

The Convener: That is why I have said, "the framework of legal rights, albeit changed, will not be diminished in practice." That is the bottom line. At the moment, people cannot appeal decisions relating to their services under their record of needs. However, the bill will enable them to have at least an ADR. That might not be good enough, of course. That is the area on which we are seeking reassurance. We have said that later in the report.

I think that the wording that Martin Verity read out encapsulates what the committee is trying to say.

Lord James Douglas-Hamilton: What you have said is that the framework of legal rights will

not cause the legal rights concerned to be diminished in practice. I am happy with that, but I would like to see the wording, just in case Rhona Brankin puts in a few more words.

The Convener: The form of words that we have suggested seems to meet what we are after and it brings Lord James on board, which is not unhelpful. I accept that there is a vote to be had on whether we approve the general principles of the bill and we will have that in a minute.

Rhona Brankin: We need to do more work on this point. I would be happy if we came back to this later, perhaps by e-mail.

The Convener: I do not think that we can do that. We are either—

Rhona Brankin: We are doing it with other wording.

The Convener: We are agreeing either the general approach, subject to fine tuning of the wording, or some sort of generalised amendment to the wording. I do not think that we can come back to the principles that are involved. We have to get agreement on that today.

I think that we should use the text that was just read out. It incorporates Rhona Brankin's words and my words in a way that will bring Lord James on board without doing damage to anyone's principles.

Mr Macintosh: If Lord James is happy with that wording, which does not make the implication that I was worried about, I think that everyone will be happy with it.

The Convener: I accept that we will have to see the final wording, but we should be clear that we are not coming back to the general principle.

Rhona Brankin: Could the wording be repeated, please?

Martin Verity: The wording that I have before me is, "The Committee recognises that this legislation makes certain changes to existing rights but the Committee is of the view that any changes to legal rights must not represent any lessening of the need for—"

Rhona Brankin: —children's additional support needs to be met.

Martin Verity: Yes, or "provision for children with additional support needs to be made", or "for the needs of children with additional support needs to be met."

It then continues, "The Committee seeks reassurances from the Minister that the framework of legal rights, albeit changed, will not be diminished in practice." Following that, it will say, "Subject to this," followed by whatever the committee decides in relation to the general principles of the bill.

Rhona Brankin: But rights are changing—new rights are coming in.

The Convener: It says that.

Rhona Brankin: But what you are saying in the second sentence is that existing legal rights should continue to exist.

The Convener: No, we are not saying that. We recognise that there is a new system and different rights, but the question is whether they are equivalent, and whether they are adequate to the need. That is the bottom line, and we want assurances from the ministers on that and on the other things that we are saying in the report. If we get those reassurances, we will be happy with the general principles. That involves a definition of alternative dispute resolution and what happens about tribunals, and in particular about transition.

Does the committee agree to that, or does any member have an amendment to it?

Rhona Brankin: I would move that the first sentence is adequate.

The Convener: That is fairly straightforward. Let us take a vote on that. Do we need formal proposers and seconders?

Martin Verity: You do not need a seconder.

Lord James Douglas-Hamilton: On a point of order, convener. If four of us take the view that the wording that you have put in the second sentence is appropriate, do we have the right to dissent?

The Convener: Yes.

Rhona Brankin: What I do not understand is what you see as different about the second sentence.

Lord James Douglas-Hamilton: With respect, the convener has explained it.

The Convener: We have been round in circles on this. The essential difference is between "services" and "rights"—that is reasonably clear. We need to go to a division or we will be discussing the point all afternoon. I have proposed the text, and Rhona Brankin has suggested an amendment, which involves deletion of the second sentence. The question is, that the second sentence should be deleted. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Brankin, Rhona (Midlothian) (Lab)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Brown, Robert (Glasgow) (LD)

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0. The amendment is disagreed to.

The second question is, that the paragraph as proposed should be included in the report. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
Brown, Robert (Glasgow) (LD)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

AGAINST

Brankin, Rhona (Midlothian) (Lab)

The Convener: That was tricky—I am grateful for members' forbearance. We will come back in a minute to whether we approve the general principles.

Martin Verity: You have to read out the result of the second division.

The Convener: The result was eight for and one against.

Fiona Hyslop: It cannot be 8:4.

The Convener: There are nine of us. Eight for and one against—that is nine. Eight in favour, and one against. I am just an apprentice convener.

The result of the division is: For 8, Against 1, Abstentions 0. The proposal is agreed to.

Let us move on to Fiona Hyslop's amendments.

Ms Byrne: I can make it easier and say that I am quite happy to withdraw my amendment and to support Fiona's.

The Convener: That is helpful. It is amazing what the prospect of lunch does.

Fiona Hyslop: The clerks have done a sterling job in getting all the amendments together. However, I do not want to leave out paragraph 35 but insert a new paragraph. In our discussions, the concept of a single universal system is core. Although there is some reference to that on a practical basis later in the report, it should be at the nub of the general principles at the outset.

Our report should reflect the fact that a number of witnesses thought that universal provision was desirable. We agreed as a committee that it was desirable. The issue, which is pragmatic and practical, is whether we are satisfied that the minister has taken the option to do that. The minister acknowledges in the quotation that is included in the paragraph that we want, ultimately, to move to the universal principle. Obviously, we are not there now. However, we should register our support of the most desirable system being the universal system. We have reflected the fact that the minister has chosen to take a more pragmatic, short-term approach.

The Convener: I suggest three ways in which we could tackle the matter. The first is to approve the amendment, as Fiona Hyslop suggests; the second is to leave it out altogether; and the third is to give a nod in the direction of the longer-term desirability of a universal system.

Ms Alexander: I hope that I can expedite the debate. I can live with the first paragraph, but I am fundamentally opposed to the second. It says that the committee is

"disappointed that the Executive has not taken the opportunity to move to a universal single system."

We have been round the issue several times and we might need to go to a division. Some of us are of the view that exactly the right thing to do in the short term is to focus on the kids whose needs are greatest and who have hitherto been neglected. I am agnostic on the first paragraph. It is an acknowledgement of what some people said. Frankly, however, none of them made a suggestion about how to deal with the most needy children.

I propose that we take a vote on the second paragraph. We have been around the issue a hundred times. Let us deal with the second paragraph; we can then return to whether we agree on the first one.

The Convener: Let us take some other views.

Dr Murray: I do not want any of it in this section at all. Perhaps it is appropriate to note the views of some of the witnesses that we should have moved to a single universal system, but that does not form part of the discussion on the general principles of the bill. I reject all of it.

Rhona Brankin: As I said, I am fed up with the fact that we have come back to the issue. I thought that we had discussed it and got an agreement last week.

The Convener: No, we did not get an agreement last week. I left the matter open.

Rhona Brankin: Well, let us discuss it again. The fundamental intention of the bill is to make provision for the children who are most vulnerable. I believe absolutely that additional support has to

be made available for those children. Fiona Hyslop's amendment would fundamentally undermine the basic principles of the bill.

Ms Byrne: I disagree with Rhona Brankin. It is a great pity that courage was not taken when the bill was drafted initially to look at a universal system, which would be fairer and more equal. If members look at the good practice that is going on in schools, that is what is happening in many establishments. It does not matter whether the child has a record of needs; all that matters is that the child is planned for, the review process takes place and that families are involved in such things as the setting of targets for the young person. Co-ordination and good practice is happening through IEPs at the moment.

As I said, a universal system would have reflected a lot of the good practice that is going on in schools. It would have been an equal system for everyone. It would have removed all the concerns that have cropped up as we have worked through the bill on areas such as who will get a CSP and who will be entitled to this or that provision. We should reflect what witnesses said and what members of the committee feel on the issue. That has to be embedded in the report. I am not in favour of supporting the report unless a flavour of that view is included. I have promoted universal provision throughout stage 1—that is no secret—and I will continue to do so.

The Convener: Can I make a suggestion? The minister's quote is not unhelpful and it should be included round about paragraph 26 or 27.

The rest of the amendment adds nothing. This is an issue of principle and I think that we should move to the vote, but I am still open to other members' thoughts.

13:45

Mr Macintosh: I was going to make the same suggestion. Rosemary Byrne has taken a stance throughout the discussion and several organisations made similar suggestions. However, we have debated the issue at length and, unfortunately, I do not think that the committee will take the view that is expressed in the amendment. Can Adam Ingram or Fiona Hyslop outline a basis for some unanimity or do they wish to stand or fall on the totality of this position? If so, I agree with the convener that we should vote now to reject it and be done with the matter.

Fiona Hyslop: The alternative is to reject the bill because it does not provide a universal system. The compromise is that we say that we recognise that the minister is being pragmatic and doing something in the short term. After all, even the minister acknowledges that we might end up with a universal system. My amendment simply recognises what the minister is trying to do in good faith but points out that the committee's discussion of the summary of evidence very much centred on our recognition of the desirability of a universal system. The question is whether that system can be established now. I want to take a longer-term view of the matter. As Wendy Alexander said, we have different views on the issue.

The Convener: I do not think that we are in a position to form a long-term view in the context of this bill. We will have to see how the system works in practice.

Dr Murray: The bill's long title is:

"An Act of the Scottish Parliament to make provision for additional support in connection with the school education of children and young persons having additional support needs; and for connected purposes."

As a result, the bill's general principles do not cover the introduction of a universal system. If Fiona Hyslop takes that position, she will have to vote against the bill's general principles.

Fiona Hyslop: I disagree. After all, even the minister said that the bill should be seen in the context of the Standards in Scotland's Schools etc Act 2000, which is about mainstreaming. We see this matter either through the prism of universality or through the prism of special educational needs for the few. If it is the latter, there have been a few deceptions along the way as far as some of the evidence is concerned.

Rhona Brankin: Parents groups have expressed grave concern about such suggestions. The bottom line is that children are different. Some children need a greater level of support than other children, and the bill is all about ensuring that those children have their right to additional support needs met. More complex and enduring cases will have CSPs. Fundamental to the bill is the recognition that differences exist and that additional provision has to be made for those children.

The Convener: I think that the committee has a divided view on the matter. I do not really want to go round the table—

Ms Alexander: You proposed a vote, convener. You should have taken it. We have been sitting here for more than four hours.

Lord James Douglas-Hamilton: I want to make a brief comment. Different parties will obviously take a policy view on the practicability of the proposals. However, the first paragraph of the amendment is factual and simply notes some of the evidence that we received. I do not think that there is any harm in that.

The Convener: But we mention most of the evidence, apart from the minister's statement, from paragraph 26 onwards. That is why if we reject Fiona Hyslop's amendment to paragraph

35—as I believe we should—I would still be happy to include that statement earlier as a nod towards and a reflection of Fiona's views. However, we have reached the point of division and should bring the matter to a head by taking a vote.

Fiona Hyslop: I move, that the following words be included in the report, "The Committee is of the view that a universal single system would be the most desirable method to improve the administration and support provided for children with additional support needs. It recognises that the Minister has taken a pragmatic short term approach but is disappointed that the Executive has not taken the opportunity to move to a universal single system."

The Convener: Are members agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Douglas-Hamilton, Lord James (Lothians) (Con)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0. The proposal is disagreed to.

We have agreed to include the minister's statement earlier in this particular section.

The final question is, that, subject to the foregoing, the committee approves the general principles of the bill. Are members agreed?

Lord James Douglas-Hamilton: Do you mean, subject to the foregoing receipt of assurances?

The Convener: Yes. Are members agreed?

Members *indicated agreement.*

The Convener: Thank you. The meeting has been very long, but I think that our report is quite effective. [Interruption.] Oh, goodness. We still have to take item 4. We will have to do that at our next meeting.

Meeting closed at 13:50.

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