EDUCATION COMMITTEE

Wednesday 11 February 2004
(*Morning*)

Session 2

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EDUCATION COMMITTEE
5th 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)
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 ALSO ATTENDED:

Scott Barrie (Dunfermline West) (Lab)
The Deputy Minister for Education and Young People (Euan Robson)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education Committee

Wednesday 11 February 2004

(*Morning*)

[THE CONVENER *opened the meeting at 09:47*]

Child Protection Inquiry

The Convener (Robert Brown): Good morning. I welcome everyone to this meeting of the Education Committee. We are in public session and I ask people to ensure that mobile phones and buzzers and things are turned off.

We welcome three representatives of the clerking department of the Assembly of the States of Jersey. I think that they are here to learn from us. I am not sure how much they will learn this morning, but never mind—we are very glad to have them.

Agenda item 1 is the committee's child protection inquiry. Members have received a paper—ED/S2/05/5/1—the purpose of which is to seek agreement on the terms of reference for the inquiry. Paragraph 3 of the paper refers specifically to a central point on which we agreed last time—that we should concentrate on the accountability of the Executive report, "It's everyone's job to make sure I'm alright". Paragraph 4 identifies one or two areas that we touched on in discussion. I am inclined to think that those areas should not go into our remit; they are either covered incidentally or would sit alongside the remit. However, we might want to consider the final bullet point in paragraph 4, on interagency working and early intervention. We will want to keep an eye on that.

Do members have any comments?

Rhona Brankin (Midlothian) (Lab): Integrated children's services will be covered by reports, but it would be interesting for the committee to consider them. We should also consider the role of the social work services inspectorate.

The Convener: Yes, we touched on that. I think that that issue will be incorporated.

Fiona Hyslop (Lothians) (SNP): Can I suggest that the top line topic and scope is the right one? From that, we will want to consider all the different people and organisations that are involved in delivery.

The Convener: I am sorry—what did you say was the right one?

Fiona Hyslop: The headline about looking at the recommendations. From that will follow the way in which we consider the social work services inspectorate, local authorities and other organisations, and the way in which we consider the comments that we heard from Children 1st and the wider public. We should take that headline as our broad remit. Part of what we look into will be the way in which all the agencies help to deliver the recommendations, to see whether there are any concerns. We should keep the headline on accountability and scrutiny of the Executive at the top.

The Convener: I think that that is probably right.

Dr Elaine Murray (Dumfries) (Lab): I agree that that should be the focus of our inquiry. I have already had representations from constituents about this inquiry and I would like some clarification on how people can submit particular issues that they feel are relevant.

The Convener: Assuming that the committee agrees the remit today, there will be a call for written evidence, as you can see from paragraph 6. In that regard, the inquiry would take the usual form.

Ms Rosemary Byrne (South of Scotland) (SSP): I agree with everything that is in the paper, but we must ensure that we consider resources. I mean not only staff resources, but the resources that are needed to work with children and families. When I talk to people who work in that field, one of the things that they are concerned about is the fact that, at times, there are not enough back-up resources to do the job. That does not only mean staff resources, which we are already considering.

The Convener: That should come out of the headline remit.

Ms Byrne: I hope so. We should also consider how risk assessment and management are carried out.

Lord James Douglas-Hamilton (Lothians) (Con): I support Rhona Brankin's call for the social work services inspectorate to be included.

The Convener: Let me sum up: we propose to agree the remit as it is, but on certain understandings about the sort of issues that we will cover. If that is acceptable, the clerks will issue a call for written evidence after today's meeting. As you will see from paragraph 7, the Executive has been asked to provide a progress report in time for our meeting on 10 March—the Deputy Minister for Education and Young People is here to hear us make that request, so notice has been taken. Paragraph 8 suggests witnesses with whom we will begin the inquiry to get a flavour of some of the issues. That seems to be a reasonably sensible suggestion. Are members happy to kick

off with those suggested witnesses? We will consider other witnesses after written submissions have been received and we have found out who has an interest in the matter. Is that agreed?

Members *indicated agreement*.

Education (Additional Support for Learning) (Scotland) Bill: Stage 2

09:51

The Convener: Our main item of business is stage 2 consideration of the Education (Additional Support for Learning) (Scotland) Bill. I am pleased to welcome Euan Robson, who is the Deputy Minister for Education and Young People, and from the Scottish Executive Wendy Wilkinson, Willie Ferrie and—I cannot quite read the name; I will have to get my glasses strengthened—Louyse McConnell-Trevillion.

Stage 2 procedure is quite complex, and I will start by reading out a fairly lengthy statement on what happens. I ask members to bear with me, as I am an apprentice convener on such matters, and to give me a little bit of leeway on how we proceed. I am conscious that at least one member of the committee is new to stage 2 procedure. We will take it as it comes.

We will consider amendments up to section 9 today, as members are aware, but we might not get as far as that; that is the maximum distance that we will go. I propose to finish between 12.30 and 1 pm for various reasons and because of various commitments, although I think that we will have had enough by that time in any event.

Members should have before them several documents to assist with consideration of the amendments. The first such document is the bill itself; the other important documents are the marshalled list of amendments and the groupings of amendments. If any member does not have those documents, they should tell the clerks, who will give them copies.

The amendments have been grouped to help the debate to proceed logically and to ensure that amendments that address similar areas are considered at the same time. The amendments will be called in turn in the order in which they are found in the marshalled list, and we will debate together all the amendments in one group. When we move on, that will be the end of the debate on those amendments; in other words, we cannot go back and reconsider amendments that have already been considered. There will be only one debate on each group of amendments. Members may speak to their own amendment if it is in that group; some groups contain several amendments, so members will need to speak to all of them if they are called for such a group.

During the debate on a group of amendments, I will call first the member who lodged the first amendment in the group, who should speak to and

move that amendment. I will then call other members who wish to speak, including members who lodged the other amendments in the group, but those other members should not move their amendments at that stage; they should only speak to them. I will call members to move their amendments at the appropriate time. Members other than those who have lodged amendments should indicate in the usual way that they wish to speak. I will also call the minister to speak to each group of amendments. I hope that that is entirely clear to everyone.

Following the debate, I will clarify whether the member who moved the first amendment in the group wants to press it to a decision. If the member does not wish to do so, he or she may seek the committee's agreement to withdraw the amendment, but that is a matter for the committee. In other words, the fact that a member does not wish to press an amendment is not necessarily the end of the matter. If the amendment is not withdrawn, I will put the question on it, and if any member disagrees we will proceed to a division by a show of hands. Everybody should keep their hands up until the clerk has recorded the vote.

Only members of the committee may vote. I know that one or two members who are not committee members will be coming to move amendments. They can speak, but they cannot vote. If a member does not wish to move their amendment, they should simply say, "Not moved," when the amendment is called.

The committee has to decide whether to agree to each section and schedule. Members are not permitted to oppose agreement to a section unless an amendment to delete the entire section has been lodged. If a member wishes to oppose an entire section, it would be competent to lodge a manuscript amendment, but it will be up to me to decide whether to accept it. I must state that I do not encourage the use of that procedure.

It is not necessary for everyone to speak on every amendment. I ask members to keep their comments reasonably brief. Equally, I want to give members as much leeway as they need until we get a feel for the procedure and they are used to what we are doing.

Before section 1

The Convener: Amendment 154, in the name of Adam Ingram, is in a group on its own.

Mr Adam Ingram (South of Scotland) (SNP): I lodged amendment 154 at the suggestion of the All for One/One for All group. During stage 1 and our evidence-taking sessions, it became clear that there was a great deal of uncertainty about the bill's potential impact on those who will be affected by it when it is enacted, whether they be parents, voluntary organisations, education authorities or other agencies.

The bill's provisions are mainly about setting up a new administrative system to deal with meeting the needs of children who face out-of-the-ordinary barriers to learning. What is more, at the core of the bill we have a new concept or construct in the shape of the co-ordinated support plan. No accredited examples of CSPs are in circulation, and nobody is quite sure how they will be implemented in practice. What is lacking is a clear statement of the principles upon which the bill is based; of how the bill fits into the context that was established by the Standards in Scotland's Schools etc Act 2000 and its presumption of mainstreaming; of how the bill sits with the United Nations Convention on the Rights of the Child; and, indeed, of how the bill sits within the broad aims of Executive policy on inclusive education and social justice.

The statement of principles that is encapsulated by amendment 154 complements the purpose of education as stated in the Standards in Scotland's Schools etc Act 2000—that is, to develop

"the personality, talents and mental and physical abilities of the child or young person to their fullest potential"—

and firmly establishes the intention of the Education (Additional Support for Learning) (Scotland) Bill to improve educational outcomes and equality of opportunity for children and young people who have additional support needs, wherever they live in Scotland.

I move amendment 154, and commend it to the committee.

Fiona Hyslop: I support amendment 154. At stage 1, the committee grappled with the general thrust of the bill, because it can be interpreted in two ways, either as an administrative change or as a fundamental change in service provision. Successful bills and their successful interpretation rely on people understanding the broad principles on which they are based.

Amendment 154 would be a useful way in which to proceed. The statement in amendment 154 is broad enough and recognises what is required. It would bridge the gap, as Adam Ingram pointed out, between the Standards in Scotland's Schools etc Act 2000 and the bill. It would be a helpful addition, and would aid both future interpretation of the bill and understanding of what we are trying to achieve. Inclusion of such a statement would be preferable to just having a general title that says, "Isn't it a good thing that we provide additional support for learning?"

10:00

Ms Byrne: I will speak briefly in support of amendment 154, which would make a good

change to the beginning of the bill and set out clearly the aims, which are missing—Adam Ingram was right about that. I am happy to support the amendment.

The Deputy Minister for Education and Young People (Euan Robson): I listened to Adam Ingram and I respect his genuine intention in lodging amendment 154, which tries to state the principles that underpin the bill. I appreciate and understand that. However, the problem is that the amendment introduces terms that do not appear in the bill and which would require to be defined separately. For example, the reference to "barriers to education" covers social factors, linguistic factors and cognitive factors, which would need to be defined, as would barriers to education.

The amendment defines support for learning in terms of four dimensions—duration, intensity, breadth and coherence—but the legal meanings of all those terms are not immediately clear. The concepts that the principles cover include the need to promote social inclusion, continuity of support and partnership with children and parents. Those concepts could readily be taken account of in the code of practice and in any guidance that is issued in connection with the bill's implementation.

Some of the principles in the section that would be inserted by amendment 154 seem to go beyond the bill's scope. For example, subsection (4) talks about

"coherence of … encouragement of pupil and parent participation."

In his opening statement at stage 1, my colleague Peter Peacock described the bill's context. I understand what Adam Ingram said about that and in particular his point about the relationship with other legislation. Perhaps that could be covered more extensively at stage 3; I will consider that interesting point. However, the Executive is not in favour of amendment 154 and asks the committee to reject it.

Mr Ingram: I note what the minister said about definition of barriers to education, but I assume that we could deal with that at stage 3. The minister said that the code of practice could cope with some of those issues. He said that some provisions in the amendment went beyond the bill's scope, but if that were the case, the amendment would not have been admissible and would not have appeared on the marshalled list.

I intend to press the amendment.

The Convener: Rosemary Byrne has indicated that she wants to speak, but we have had the debate, which Adam Ingram wound up. Members had their chance to speak earlier. I am afraid that that is the format for stage 2.

The question is, that amendment 154 be agreed to. Are we 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.

Amendment 154 disagreed to.

Section 1—Additional support needs

The Convener: Amendment 155, in the name of Lord James Douglas-Hamilton, is grouped with amendment 156.

Lord James Douglas-Hamilton: I lodged amendments 155 and 156 on behalf of Independent Special Education Advice (Scotland), which is a charity that represents parents.

Under the Education (Scotland) Act 1980, education authorities have a duty to identify children who are aged two or over and are not yet of school age—which is generally five years old—and who have, or appear to have, pronounced, complex or specific special educational needs. Those children can also have a record of needs opened and maintained. I therefore wish the same right to apply under this bill to children who are aged two years and over but who are under five. I note that the minister has lodged amendment 65, which we will debate later, and I welcome that. However, if I may say so, amendment 65 is not as comprehensive as amendment 155 because it might well be that not all those who need learning support have conditions that are defined as disabilities.

I move amendment 155.

Mr Kenneth Macintosh (Eastwood) (Lab): When we discussed this matter, the committee was sympathetic to the idea that the rights that already exist under the 1980 act should not be lost and, in particular, that the rights of those who are over two years old and under three years old to secure an assessment should be maintained. I was struggling to draft an amendment, so I was relieved to see amendment 65, which will come up for debate shortly. I would like the minister to clarify whether amendment 65 deals with the committee's fears.

I seek further clarification on who is included in the term "prescribed pre-school child". The

definition that is included in the bill is not very helpful; it says that a prescribed pre-school child is one who is prescribed under the 1980 act. It would be helpful if the minister would translate that into lay terms.

Euan Robson: The area is complicated. I will deal with Kenny Macintosh's point first. A prescribed pre-school child is one who is aged three or more—three-year-olds and four-year-olds—in nursery provision. The term does not, therefore, include two-year-olds.

The Executive wishes to oppose amendment 155 because we are not minded to accept its purpose. The amendment appears to attempt to shift from three to two the statutory age by which education authorities are obliged—I stress the word "obliged"—to provide for additional support needs. We think that to do so in the way that is proposed by amendment 155 makes nonsense of the definition of additional support needs. As the bill stands, section 1(3)(a) defines additional support as support that is additional in relation to the support that is generally provided for children in schools.

School education begins at age three. Below that age, there is no standard of comparison by which to judge what is generally provided in schools. Amendment 155 fails to recognise that the bill already contains several measures to ensure that children under three are given the support that they need.

The bill will introduce a duty on education authorities to prepare CSPs for nursery-age and school-age children, and also for children who are approaching school age. In effect, that will allow children who have the most extensive needs to have a CSP from upwards of age two and a half. Furthermore, as Lord James Douglas-Hamilton and Kenny Macintosh have acknowledged, amendment 65 proposes a duty on the educational authority to provide additional support for disabled children under the age of three when those children have been brought to the education authority's attention by a health board.

In addition to those measures, the bill provides education authorities with a power to help children under the age of three. We have always said that the code of practice will be used to encourage education authorities to help children under three who have significant additional support needs, where they come to the attention of the education authority. The code of practice is important in that area. The education authority cannot be expected to identify the needs of those children before they are brought to its attention. Health services and social services, rather than the education authority, will be responsible for those children. We believe that amendment 155 would not create any extra safeguards for children between the ages of two and three years and that the bill achieves that by the other means that I have mentioned.

Amendment 156 would exclude children aged two and under from consideration for support under the definition of additional support needs. I am sure that that is not what Lord James intended when he lodged the amendment. As the bill stands, additional support is defined as support that is additional in relation to the support that is generally provided for children in schools. School education begins from the age of three. Below that age, there is no standard of comparison by which to judge what is generally provided in schools; therefore, section 1(3)(b) appeals to a standard of appropriateness as a measure by which to judge the educational provision that should be made. Removing those two lines, as amendment 156 proposes to do, would remove the consideration of what might be appropriate support for those children. For that reason, I would be grateful if Lord James would agree not to press amendment 156, which represents a diminishment of rights for children aged two and under.

Lord James Douglas-Hamilton: I am more concerned with the principle than with the drafting. The principle is that early intervention can be in the best interests of the child. If one takes the case of a child with cerebral palsy, early intervention could be in the interests of that child. My understanding is that records of needs are available at a very early age. I would like an assurance from the minister that services every bit as good will be available in the future for very young children when the child concerned has a definite, established and comprehensive need. If the minister can give me that assurance, I will not press amendment 155, because I am much more concerned with the principle that there should be early intervention in the best interests of the child. I recognise that the minister has gone a long way towards addressing that principle in amendment 65, to which we shall come later.

Euan Robson: I can give Lord James that assurance. The example that he gave of a child with cerebral palsy will be covered by the new duty in the bill that covers those children under three who are disabled. I am grateful to Lord James for agreeing that we have gone some way to assisting those children—that was our intention. As he says, we will debate amendment 65 in due course.

Lord James Douglas-Hamilton: I also ask that, in comparable circumstances, those parents who could apply for a record of needs on behalf of their children will be able to put the case for a co-ordinated support plan for the child concerned if it had severe learning problems.

The Convener: The intention is that members should speak to their amendment, move it and

then respond to the debate. We are drifting a little bit, although I am prepared to allow some leeway. Does Lord James have other points to make?

Lord James Douglas-Hamilton: Will the matter be covered clearly in the code of practice, with a view to ensuring that early intervention can and will be made?

Euan Robson: On the first point, it depends on the eligibility for the CSP. On the second point, the matter will be covered to a great extent in the code of practice. I hope that Lord James will accept my assurance on that point.

Lord James Douglas-Hamilton: At this stage, I will not press amendment 155, but we will follow closely what goes into the code of practice.

Amendment 155, by agreement, withdrawn.

Amendment 156 not moved.

The Convener: Although we do not have to have a debate, as such, on section 1, I have a question that relates to section 1(1). The minister will recall that the committee commented in its stage 1 report on whether the definition in section 1(1) was entirely adequate. The definition suggests that if people could benefit at all from school education, they do not have additional support needs. No amendments to the provision have been lodged, but will the Executive indicate whether it intends to do anything to address the issue that I have raised?

10:15

Euan Robson: I will certainly consider the matter. I know that there has been some discussion of the point. We have given consideration to lodging an amendment, but we have not yet reached a firm conclusion. This is a difficult area and we are seeking appropriate legal advice on the formulation of an amendment. I am happy to discuss the point with you in the run-up to stage 3, but I do not commit the Executive to lodging an amendment. We are considering the point in some detail. I hope that that is helpful.

The Convener: Do members have further observations to make on section 1?

Ms Wendy Alexander (Paisley North) (Lab): There is no place for observations when we are considering a bill at stage 2. Given the volume of work that we have to get through, should we not stick to amendments instead of making observations? The time for observations was the three full sessions that we spent debating the committee's stage 1 report. I am keen that we stick to the legislative process that is encapsulated in the amendments.

The Convener: Nevertheless, it is appropriate to debate each section if there is a desire to do that. I am not encouraging it, but that is the procedure.

Ms Alexander: Okay.

Section 1 agreed to.

Section 2—Co-ordinated support plans

The Convener: Amendment 1, in the name of Lord James Douglas-Hamilton, is grouped with amendments 2, 54, 55, 110 to 112, 5, 6, 9, 10, 12 to 15, 17 to 21, 23 to 27, 184, 28 to 30, 33 to 40, 42, 43, 46 to 48 and 62.

Lord James Douglas-Hamilton: On a point of order, convener. The marshalled list indicates that I support amendments 110 and 111, but those are not the amendments that I signed. I signed an amendment for the National Autistic Society that in my view meant something quite different. The amendments are in the name of Donald Gorrie and I understand that he may not move them.

The Convener: We note those comments. I do not know how to deal with the point procedurally.

Lord James Douglas-Hamilton: Amendment 1 goes to the root of what I believe to be the weakness in the bill. The bill as introduced unfairly divides children with long-term additional support needs into two classes. Children with educational support needs and support needs that require provision to be made by other agencies will be eligible to be considered for a co-ordinated support plan, but children with educational needs only—no matter how severe—will not be eligible to be considered for a CSP. Only children with CSPs will have the legal right of reference to the additional support needs tribunals. That means that thousands of children with records of needs will not have the same legal rights as, under the bill, children with CSPs will have. The committee expressed concern about that in its report.

All children and young persons who have additional support needs that meet the criteria set out in section 1 and paragraphs (a) and (b) of section 2(1) of the bill should be entitled to be considered for a support plan. Where a child or young person has additional support needs that require significant provision to be made by a number of agencies, the education authority will have the duties and powers that are described in the bill.

I have already mentioned that the amendment that I signed was not what is now either amendment 110 or 111 and I am not committed to either of those. My view is that significant additional support should be provided either by the education authority, by one or more appropriate agencies or by the authority and the agencies. It is conceivable that an amendment along those lines could be made at a later stage. I would not have

objected to the words "and/or" at the end of section 2(1)(c)(i), but the suggested wording does not, in my view, achieve exactly what the National Autistic Society was asking for.

Amendment 184 would make section 9 refer to "any authority" rather than "the authority", as more than one authority may be involved. My other amendments are drafting amendments and it is for Fiona Hyslop and Rosemary Byrne to speak to theirs.

There are many people in Scotland with severe learning problems, such as those suffering from dyslexia. My amendments in this group are lodged on behalf of Dyslexia in Scotland. Children who suffer from dyslexia can have severe learning and educational problems, but many of them may not require support from other agencies. Those children should at the very least be entitled to a CSP, but many of them will not be entitled to one under the bill. That is a fundamental defect and amendment 1 and the consequential amendments represent one way of resolving the issue. Amendments 54 and 55, which were lodged by Fiona Hyslop, offer an alternative. I look forward to hearing the minister's reply in due course.

I move amendment 1.

Fiona Hyslop: I will speak to amendments 54 and 55. One of the major issues that we considered at stage 1 was the definition and scope of the groups of people who will be eligible for CSPs. Some of us felt that the scope was far too narrow. The bill as introduced reflected a producer and supplier-led view of the world, not necessarily a child-centric one. The definition used was determined by who was providing the services, as opposed to what services were needed. Both my amendments seek to expand the scope of who will be eligible for a CSP. In particular, amendment 54 would mean that, where significant additional support was needed from the education authority alone but multiple factors were involved, that would grant eligibility to a CSP. Amendment 54 would ensure that children with autism and dyslexia are eligible for a CSP.

Amendment 55 answers the concerns about the fact that

"one or more appropriate agencies",

as well as the education authority, must be involved before a CSP is provided. Some members may be concerned that the amendment expands the range and number of children who might be eligible for a CSP, perhaps unnecessarily. The minister, too, might be concerned about that, but he will be comforted by one of his amendments, which I think followed approaches made by the Convention of Scottish Local Authorities. Under that amendment, a CSP does not have to be drawn up where the parents and the local authority agree that one is not necessary to provide the required support. That would provide a nice balance to the wider provision that I propose in amendments 54 and 55, which represent a reasonable attempt to expand the CSP in a way that would be manageable. My amendments offer a sensible way forward and reflect much of the discussion and evidence at stage 1.

The Convener: After discussion with me, Donald Gorrie has indicated that he does not wish to proceed with amendments 110 or 111, so, unless anybody else wishes to speak to them, we will move on.

Ms Byrne: Through amendment 112, I wish to firm up access to the co-ordinated support plan. The amendment, which would leave out lines 7 and 8 on page 2, would take away one of the perimeters, so to speak, and open up the possibility of providing a CSP for those young people who have needs requiring careful planning and, in some cases, co-ordination. Like Lord James Douglas-Hamilton's amendment 1, which would remove the word "co-ordinated", my amendment would broaden access. As Fiona Hyslop says, if parents do not want their child to have a CSP, amendments in this group will help in that regard as well.

Amendment 112 would deliver a system with greater access that is more equal and less adversarial, particularly for those parents who might feel that they were left out because only one agency was dealing with their child. The proposal is an improvement. It satisfies some of the concerns that were raised. It might not be the best solution, but it certainly moves towards an improvement in access. I therefore ask everybody to support amendment 112.

Dr Murray: I will not be supporting the amendments that have been discussed, which cause me significant concern. They go against the fundamental point of the bill, which is to help us to move away from a situation in which the record of needs leads resource and towards a situation where people can come round the table at the point at which support tends to collapse. Passing the amendments would lead us into the situation that COSLA flagged up as a significant concern when it suggested that around 15 per cent of children could end up with a CSP. That would mean that a lot of resource, time and energy would be concentrated on procedures and documents rather than on providing support for children, which is the fundamental issue in the bill. I will not vote for any of the amendments.

Mr Macintosh: I share Elaine Murray's concern. We all appreciate the genuine concern that has motivated the members to lodge the amendments that we have been discussing, but we have

debated these issues at length at stage 1 and I cannot help thinking that, if we accepted the amendments, we would be undermining everything that we have so far agreed during our consideration of the bill.

The situation is difficult. For example, there are difficulties relating to the use of co-ordination and the levels at which it is possible to access a tribunal. However, the suggestions in the amendments undermine the purpose and functions of the bill and work against our attempt to get parents and education authorities to work in partnership rather than to come into conflict.

Rhona Brankin: I will be voting against the amendments, which I regard as wrecking amendments. Underpinning the bill is a desire to move away from a deficit model and to state that certain categories of disability should qualify automatically. That makes the situation more complicated, but the point of the bill is that, currently, the system breaks down in the course of interagency involvement. The amendments imply that, if a child does not have a CSP, their needs will not be met. I fundamentally disagree with that assumption.

Euan Robson: This has been an interesting debate, as it deals with a fundamental point. The co-ordination aspect of the bill is absolutely fundamental—I entirely agree with Elaine Murray, Ken Macintosh and Rhona Brankin on that point. It is vital that the word "co-ordinated" should remain in the title of the plan. The fundamental principle of the plan is that support should be co-ordinated across a diverse range of agencies and sources. That is the purpose of the plan and it should be reflected in the plan's title. The co-ordination of support is central to effective planning and provision for those children with the most extensive additional support needs.

Mention has been made of children who will not qualify for the CSP. We address that issue in amendment 63, which we will deal with in due course. I do not want to prolong the debate; the question is fundamental and one is either on one side or on the other. However, I invite Lord James to withdraw amendment 1 and I ask that the 35 consequential amendments be not moved—if you will forgive me, convener, I will not list them all.

The Executive opposes amendment 2, which seeks to include in the criteria for a CSP those pupils who receive additional support from only the education authority. The purpose of the CSP is to co-ordinate services from a variety of different agencies to provide the most effective support package for the pupil. An education authority has the opportunity effectively to co-ordinate the support that it provides to a pupil; if the co-ordination of that support needs to be improved, it is within the control of the authority to improve it. That is not the case for support that is provided by other agencies. I hope that I have convinced the committee that to widen the criteria for a CSP to those who receive additional support from only the education authority would be an error. I therefore ask Lord James not to move amendment 2.

10:30

We think that amendment 54 adds nothing to section 2(1)(c), which stipulates that "significant additional support" requires to be provided by the education authority in relation to education as well as the authority's other functions, such as social work services. Amendment 54 does not make that stipulation; its effect is to state that the education authority might be carrying out its education functions, its non-education functions, or both. As the amendment has little effect, I ask Fiona Hyslop not to move it.

I understand the thinking behind amendment 55 but I do not think that it is necessary. Let me explain why. The amendment would extend the criteria for a CSP to include those who receive significant additional support from one or more of the appropriate agencies—for example, health services—but who do not receive additional support from the education authority. In practice, that would mean that the pupil's education provision would remain exactly the same as that of his or her classmates, but additional support would be provided separately by one or more other agencies. We think that that approach is unlikely to work in practice. If another agency makes provision, that is likely to impact on the education provision and it should therefore be implemented in partnership with the education authority and should not be delivered and implemented in isolation. I ask Fiona Hyslop not to move amendment 55.

I understand that amendments 110 and 111 will not be moved. The Executive opposes amendment 112, which significantly narrows the criteria for eligibility for a CSP. The amendment would withdraw from eligibility for a CSP those pupils who are in receipt of significant additional support from other agencies, such as the health service, in addition to the education authority. I do not believe that it is acceptable to draw the criteria that close and therefore to exclude a large number of pupils. I do not think that that is intended, but we believe that to be the amendment's effect. I call on Rosemary Byrne not to move amendment 112.

Amendment 184 is a technical amendment. Its purpose appears to be to ensure that persons who are referred to in relation to the provision of support through the CSP include those in the education authority as well as those outwith it. Currently, the reference to "persons" in section 9(5)(d) refers to those who provide support from

outwith the education authority. We have some sympathy with the amendment and we would like to consider the matter further. We are not clear that the drafting is correct. I invite the committee to reject amendment 184 on the understanding that, before stage 3, the Executive will consider the issue fully and discuss it with the member. If we decide not to lodge an amendment at stage 3, we will tell the member in enough time for him to be able to lodge his own amendment.

Lord James Douglas-Hamilton: I thank the minister for what he said about amendment 184. In view of the assurance that he has given, I will not press that amendment.

The other amendments in my name are crucial for children with dyslexia both in this and in future generations. The amendments would remove the anomaly whereby legal entitlement to any sort of support plan would not be provided for children who have educational needs only. Such children would therefore not have a legal right of reference to the tribunal. That is a major problem.

I feel that the bill does not address the problems of children who suffer from dyslexia. Dyslexia in Scotland shares my view. As a marker, and as a matter of principle, I will press amendments 1 and 2 all the way. Otherwise, I fear that many children with dyslexia could fall through the net. If amendments 1 and 2 are not agreed to, I shall not press the consequential amendments, but I will be minded to vote for Fiona Hyslop's amendments, which would go a long way towards achieving the same result.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1 disagreed to.

The Convener: By way of explanation, I should explain—in case members are wondering—that the votes on the other amendments in the group will come in due course.

Amendment 157, in the name of Fiona Hyslop, is grouped with amendments 158 to 162.

Fiona Hyslop: Although the amendments are grouped together under the title "Additional support needs giving rise to requirement for co-ordinated support plan", committee members should perhaps consider the amendments individually, as there are separate arguments for each of them. I will be interested in the minister's response to some of the amendments in particular.

Amendment 157 would redefine the requirement that a child can get a CSP only if the relevant factors

"are likely to continue for more than a year".

I understand that there must be some arbitrary cut-off, but the issue is whether the time should be specified. Amendment 157 would replace the current definition with

"have a continuing and sustained impact".

One of my concerns about the current definition is how it would affect children who are living in temporary accommodation such as a bed and breakfast. We know that the Executive is of the view that children should not be in bed-and-breakfast accommodation for a significant length of time, but it often happens, unfortunately, that children are in such accommodation for longer than a year. Under the current definition, those children would definitely get a CSP if they were in bed-and-breakfast accommodation for more than a year, but they would not necessarily get a CSP otherwise. Despite the fact that they would need co-ordinated support from different agencies, those children would be ruled out by the definition.

Another concern is children who live in households in which one or more parents have mental health problems. Such problems may not occur in a sustained fashion over the period of an exact calendar year but may come and go over a period of time. Amendment 157 explores those issues. I want to find out why the Executive has chosen the period of one year rather than using a definition that talks about "continuing and sustained impact".

Amendment 158 would amend the definition that, in order to qualify for a CSP, a child must have needs that require "significant" additional support to be provided. The amendment reflects points that were made by colleagues in our previous discussion. In that debate, Rhona Brankin in particular made the point that the bill tries to move away from a deficit model. Surely, therefore, the important thing about the Executive's definition is that the child must have needs that require additional support from different agencies, regardless of whether or not that additional support is "significant". I would be interested to hear the Executive's explanation of why the word "significant" is in the bill, if the main

purpose of a definition of who gets a CSP is to determine the need for co-ordinated support across agencies. Again, the definition seems to be producer led, which is a separate issue.

Amendment 159 is similar to amendment 158, in that it would ensure that, under the definitions, the consideration is an "adverse" impact rather than a "significant adverse" impact.

Amendment 160 is an approach to what we mean by school education. Section 2(2)(a) refers to factors that

"have a significant adverse effect on the school education of the child".

If we are taking a child-centred view, consideration of the child's whole development, in line with the principle espoused in section 1(2), is required. That would ensure that education authorities must treat the pupil holistically, not looking merely at the priorities of the education department. Again, the definition of "school education" is what is provided for the child as opposed to what the child needs. If we add the words "or other development", that would provide a more holistic view of what is required.

Amendment 161 is similar to amendment 159. Again, it questions the use of the word "significant", given that, under the terms of the arguments that the Executive has used, the bill is about the requirement to deal with complex factors and the need for co-ordination. Amendment 162 also follows the same arguments as amendment 160.

I move amendment 157.

The Convener: I saw some puzzled faces at the procedure. I should explain that, although the debates take place on the groups, the votes follow the marshalled list. I know that that is a little confusing—I am confused myself—but there it is.

Mr Macintosh: I welcome Fiona Hyslop's comments. I appreciate that there is a general concern perhaps not about definitions, but about whom the bill will include. The lines can be slightly fuzzy. What we are really looking for is further explanation or clarification in the code of practice. I hope that the code of practice will give far more examples and will flesh out exactly how the definitions are meant to be interpreted by local authorities. However, although I understand where Fiona Hyslop is coming from—at least I hope that I understand where she is coming from—I am concerned that, again, she is radically altering the definitions in a way that would be unhelpful rather than helpful, particularly for the most vulnerable children.

I have a specific concern about amendment 157, which would replace the phrase

"continue for more than a year"

with

"have a continuing and sustained impact".

I know from experience that, in the national health service, there are big problems with the definition of continuing care, because that phrase is open to interpretation. I think that the current wording—

"continue for more than a year"—

is a more practical criterion. However, I would like to hear the minister's response to Fiona Hyslop's amendments.

Euan Robson: The Executive opposes amendment 157, which, as Fiona Hyslop rightly observed, would remove the quantifiable timescale for which additional support needs are expected to be endured by the pupil. The drafting of the amendment makes the situation less clear, particularly with regard to the significance of the needs. In addition, the extent of "continuing" is not clear—it could be anything from a short time to a considerably lengthy time. It is also unclear what the extent of the "sustained impact" could be and whether that impact is on education alone or is much wider. For those reasons—indeed, Fiona Hyslop hinted at those problems—we oppose amendment 157.

We also oppose amendments 158, 159 and 160, because their effect is to widen the criteria for the CSP, as Fiona Hyslop said. If the additional support that is to be provided is not to be considered as significant, as amendments 158, 159 and 161 suggest, the number of pupils who would be eligible for, or who would receive, a CSP would increase. However, as we have said, the purpose of the CSP is to co-ordinate services from a number of sources for those who have the most extensive additional support needs and who therefore require the most extensive support. That is the group at which we are aiming. If the group to which the CSP would be available were widened, the focus would move from those with the most extensive needs to a much wider group, which was not the intended purpose of the CSP.

We will consider amendment 63 in due course, but education authorities will have a duty to identify and address the additional support needs of all children. Other measures, such as personal learning plans and individualised educational programmes, will be used to plan the learning of children and young people who do not qualify for a CSP. I re-emphasise the point that the purpose of the CSP is to focus on children who have the most extensive needs and who need the most extensive support.

We will also resist amendments 160 and 162, which attempt to widen the definition of the term "complex factor" by including reference to "other development". Unfortunately, the term "other

development" is not defined and it is not clear to what it applies and to what extent.

I believe that amendments 157 to 162 would not improve the bill. Consequently, I ask Fiona Hyslop to withdraw amendment 157 and not to move the others in the group.

10:45

Fiona Hyslop: I am a bit disappointed by what the minister has said. I had hoped to have a firmer commitment on how the Executive intends to deal with children such as those in bed and breakfasts who clearly need co-ordination of support for less than a year. Many members have constituency cases in which families suffer from domestic abuse. We should also include children who need support because of periodic incidents. The example that I used was that of children who live with mental health problems in their family. I hope that the code of practice, to which we will return, will address those examples.

The definition of "significant" cuts to the heart of the bill. The minister says that my suggestion is not clearly defined enough, but, frankly, I am not sure that the definition of "significant" that he gave in his response is clear, either. We all face the problem of ensuring that the definition is drawn tightly enough to be meaningful.

I hope that the minister will consider the points and criticisms that have been made. In the light of the discussion, I am prepared to withdraw amendment 157 and not to move the other amendments in the group, but we may need to return to the issue at stage 3.

Euan Robson: I will happily take away the points that have been made. The code of practice will cover a number of the issues. In particular, I will consider the point about children who are in bed and breakfasts. I do not give a commitment to introduce amendments on that matter, but we will consider further the issues that have arisen.

Amendment 157, by agreement, withdrawn.

Amendment 158 not moved.

The Convener: Amendment 2, in the name of Lord James Douglas-Hamilton, has been debated with amendment 1.

Lord James Douglas-Hamilton: In the interests of consistency, I will move amendment 2.

Amendment 2 moved—[Lord James Douglas-Hamilton].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 2 disagreed to.

Amendment 54 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 54 disagreed to.

Amendment 55 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 55 disagreed to.

Amendments 110 to 112 not moved.

The Convener: Amendment 97, in the name of Fiona Hyslop, is in a group on its own.

Fiona Hyslop: Amendment 97 is self-explanatory and recognises that there will be a transitional period. We have heard a serious concern from witnesses, particularly from parents with children, that children who currently have a record of needs will not get a CSP. Indeed, according to the Executive's own figures, 50 per cent of the children who have a record of needs will not get a CSP. Amendment 97 is an attempt to provide a bridge between the old system and the proposed new one, which may relieve the pressure on tribunals.

Peter Peacock said in oral evidence to the committee that all children who currently have a record of needs will be assessed for a CSP, so there is an understanding that a bridge must be built between the current system of records of needs and the proposed new system of CSPs.

I am uncomfortable with the fact that the proposal in amendment 97 would act only as a temporary bridge, in that it would make temporary provision for children who currently have a record of needs to get a CSP. Children who come after who would have had a record of needs under the current system will not get a CSP, and that is an inequality. However, my final judgment is that it is better to provide half a loaf for some people than to provide nothing at all. Amendment 97 would provide a form of security and give confidence in the system.

The two words that the committee kept coming back to are trust and confidence. With trust, confidence and good will, we can make the proposed new system work. One way of ensuring that would be to provide children who currently have a record of needs with access to a CSP. With reference to the minister's later amendment, if parents agree with a local authority that there should be no CSP, none would need to be drafted. Amendment 97 is an attempt to provide transitional arrangements and a temporary bridge to the proposed new system for children who currently have a record of needs.

I move amendment 97.

Dr Murray: I think that I understand where Fiona Hyslop is coming from on amendment 97, but I do not know that she is approaching the matter correctly. Essentially, amendment 97 would introduce temporarily two completely different systems: one would be based on the old record of needs and the other would be based on CSPs. However, their rationale is different and there could be problems in trying to run both systems at the same time. I accept that there is a need to reassure parents whose children currently have a record of needs and who will not get a CSP. I think that we all recognise that that is a genuine issue, and I believe that the Executive is considering how such reassurance can be strengthened. I understand what Fiona Hyslop is trying to do, but the amendment does not represent the best way to do it.

Lord James Douglas-Hamilton: I hope that the minister will agree to take away and consider the matter, as there is no doubt that many thousands who have records of needs will not receive co-ordinated support plans. The minister is not in a position to deny that the legal rights of many thousands will be affected. In a parliamentary answer to me, the Minister for Education and Young People said:

> "Until the implementation of the new system, when each and every child with a record of needs will be considered for a co-ordinated support plan, the exact number of those currently with a record of needs, but who will not receive a co-ordinated support plan, cannot be determined precisely."—[*Official Report*, *Written Answers*, 4 February 2004; S2W-5576.]

He estimated that 50 per cent of those who have records of needs will be eligible for co-ordinated support plans. That massive change will cause considerable upset to parents who have fought for records of needs and whose children will not be eligible for co-ordinated support plans.

Fiona Hyslop's amendment is not unreasonable, when all the circumstances are taken into account. The minister will argue that he is moving to a new system and does not want to use two systems simultaneously, but surely scope should exist for some transitional provisions or, at the least, an evolutionary process.

Rhona Brankin: I echo what Elaine Murray said. There is no doubt that some parents have had concerns about the matter. I seek the minister's assurance that the bill will comprehensively meet all children's additional support needs.

Mr Macintosh: The gulf that might exist between those who enjoy records of needs and those who have a CSP has been flagged up to all committee members from the word go. Our initial understanding was that a CSP would directly replace a record of needs. The committee has worked through the issue thoroughly and considered extensively the idea of running the two systems in parallel to close the gap for parents whose children have records of needs and who feel that they will somehow lose out. I understand that the committee rejected the idea of running two systems.

Much as I appreciate that Fiona Hyslop has made a reasonable attempt to address the concerns, I think that the proposal is impractical and runs the risk of undermining the bill. It could undermine the definition of those who have access

to a CSP and the extension of rights—the idea that rights that were previously the preserve of those who had a record of needs should now be extended to virtually all children with additional needs. The principle that all children will now benefit from rights that were the preserve of a few is important.

I appreciate where Fiona Hyslop is coming from, but we have been through the subject with the minister several times. I still look for further measures to reassure parents. I do not expect the minister to reply to this suggestion now but, at stage 1, I suggested that letters of comfort could be issued to parents. We all recognise the genuine anxieties, but Fiona Hyslop's amendment does not provide a way to deal with them. I would welcome the minister's comments.

The Convener: I echo Ken Macintosh's comments. At the beginning of our discussion, we did not altogether take on board the importance of section 3, which is the general additional support needs provision. As Ken Macintosh said, it is not a question of replacing records of needs with CSPs. Records of needs are being replaced by both CSPs and additional support needs provision. That creates a different system, rather than something that is directly comparable, and that raises issues, which members have touched on.

All committee members are anxious to have as much reassurance—legislative or otherwise—as can be given. When we deal with the appeal and review procedures, the differences may also raise other issues.

11:00

Euan Robson: I fully recognise the intention behind amendment 97 and quite understand why it has been lodged. However, as Lord James Douglas-Hamilton predicted, I point out that the bill introduces a new system. Indeed, the convener referred to that new system in referring to section 3.

In considering the amendment, the committee should remember that the proposed system has been developed with the aim of addressing the current system's weaknesses. A major criticism of the current system that arose time and again in the consultation is that it is perceived to be applied unequally across Scotland. The criteria for the co-ordinated support plan seek to address that issue. As I have said, more detail about that will emerge with the code of practice.

We fully recognise that some pupils who currently have a record of needs might not meet the criteria for a co-ordinated support plan. However, making those who have a record of needs eligible for a co-ordinated support plan—whether or not they fit the criteria—would perpetuate the difficulty that we seek to address and would get the system off on the wrong footing.

That said, I reassure the committee that that does not mean that those who currently have a record of needs, but who will not receive a co-ordinated support plan, will not receive any support. That is absolutely not the case. I remind the committee of the assurances that Peter Peacock gave during the stage 1 debate when he said that he had already written to local authority chief executives to indicate his expectation that the support in place for those with a record of needs should not change, unless of course the pupils' needs change.

Moreover, Peter Peacock gave a commitment in the stage 1 debate to consider what further steps can be taken to secure the provision—I underline that word—made for those with a record of needs who will not receive a CSP. We have tried very hard to address concerns about that matter in amendment 63.

Fiona Hyslop mentioned the transitional phase. However, as Mr Peacock also pointed out, there will be assessments for those who have a record of needs. In effect, there will be a form of transition and time for the proposed arrangements to bed down.

Taking all those points into account, we wish to oppose these amendments. We feel that they are not consistent with our vision of how these matters should be taken forward with the co-ordinated support plan.

Fiona Hyslop: I reassure the minister that we are considering only amendment 97. We are not considering amendments in the plural.

Euan Robson: I apologise.

Fiona Hyslop: I think that we have reached the nub of the matter. The committee is simply seeking guarantees. We know that there is a problem; indeed, Peter Peacock knows that there is a problem. Why else would he say that he will look to provide a transitional arrangement to ensure that all those with a record of needs will be assessed for a CSP? Our problem is that we want guarantees—do we have them or not?

During the stage 1 debate, Peter Peacock said that he would write to local authorities. The minister mentioned the word "expectation", but we are looking for stronger guarantees than expectations or hopes. As for my colleagues' concerns that, if amendment 97 were agreed to, we would be running two systems in parallel, I have to say that that would not happen. The whole point is that all those with a record of needs would move automatically to a CSP. I remind members that most of the bill is not about eligibility for CSPs, but about the practicality of operating a CSP and a

new additional support system. All we need is a quick system that allows us to get into the meat and bones of providing support through a CSP, and amendment 97 seeks to provide reassurance in that respect.

If the minister had more comprehensively addressed some of the concerns that were raised at stage 1, we would feel a bit more reassured. My concern is that, regardless of the Executive's correspondence, records of needs are not being opened at the moment. Indeed, I suspect that there has been a downturn in the number that have been opened in the previous period because local authorities are waiting for the new system to be introduced. If local authorities knew that all those who have a record of needs would be eligible for a CSP, that would address the problem.

The intention of my proposal is genuine—we all seek guarantees, and amendment 97 offers one way of addressing that. We have heard warm words and expressions of expectation and hope from the minister, but we are looking for something a bit stronger than that. For that reason, I will press the amendment.

The Convener: The question is, that amendment 97 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 97 disagreed to.

Amendments 159 to 162 not moved.

The Convener: We will now take a five-minute break.

11:07

Meeting suspended.

11:18

On resuming—

The Convener: We resume the meeting. Members were considering section 2 as a whole.

Ms Byrne: I would like to make some comments and would like my dissent to the section to be recorded. I will vote against the section—

The Convener: You are not entitled to vote against the section, as there will be no amendment to it.

Ms Byrne: I would like my dissent to be recorded.

The Convener: You are certainly entitled to comment on the section, if you want to.

Ms Byrne: The crux of the problem—which is shown by the division in the committee and by what has been said prior to today—is that the system in question is a two-tier system, or three-tier system at worst. There could have been a single-tier system with a planning format that would have been appropriate to all young people, the weight of which would have indicated the young person's needs. There is no reason why the needs of young people cannot be co-ordinated through a system with a single planning format. That has been done with the individualised educational programme, in which good practice showed that there can be co-ordination. We have had many difficulties in trying to identify who will or will not get a CSP and whether children who currently have a record of needs should transfer or not.

I welcomed Lord James Douglas-Hamilton's and Fiona Hyslop's amendments and hoped that they would have gone some way to improving the situation. I will vote against the section, as we have not moved forward at all. I still propose that a universal system should be considered and debated.

The Convener: The procedure is that, unless an amendment to section 2 is lodged, we are not entitled to vote against the section. As I said earlier, it is possible to lodge a manuscript amendment, but I point out that what members have said will be in the *Official Report*. Members might be satisfied with that at this stage and Rosemary Byrne might want to bear that in mind for section 3.

Section 2 agreed to.

Before section 3

The Convener: Amendment 63, in the name of Euan Robson, is grouped with amendments 63B, 63C, 63A, 63D, 98, 113, 64, 3, 4, 49, 163 and 114. If amendment 64 is agreed to, I cannot call amendments 3, 4, 49, 163 or 114, which will be pre-empted, and if amendment 4 is agreed to, I cannot call amendments 49 or 163, which will be pre-empted. Amendments 49 and 163 have a slightly different relationship with each other. If amendment 163 is agreed to, it would supersede

the decision on amendment 49, even if that amendment had been agreed to. In other words, the second amendment would replace the first amendment, even if the first amendment had already been agreed to. I hope that members have followed what I have said. I think that things will work themselves out. We will see what happens.

I invite the minister to speak to and move amendment 63 and to speak to all the other amendments in the group.

Euan Robson: Do you want me to move my amendments and then speak against the other amendments in the group?

The Convener: You should speak to and move amendment 63, then make any comments that you want to make on the other amendments in the group.

Euan Robson: Amendment 63 is an important amendment that makes absolutely clear—in a new section—the duty that we are placing on education authorities towards each and every child and young person who has additional support needs. We recognise the strength of the arguments that were deployed in the consultation and during stage 1, and amendment 63 is our attempt to respond to those arguments.

Amendment 63 obliges authorities to make provision that is both "adequate and efficient" to support the child or young person on the journey towards developing their full potential. The obligation is towards all children and young people with additional needs and therefore applies equally to those who are eligible for a CSP and to those who are not: it covers everyone.

Once provision is set in place, the education authority must keep it under consideration to ensure that the individual's needs continue to be adequately met. In subsection (2) of amendment 63, it is made clear that, in meeting their obligations, authorities are not forced to incur unreasonable expenditure nor to act outwith their powers. However, that does not mean that they cannot do so.

Subsection (2)(b) of amendment 63 has been reworded to reflect the wording that is used in the Education (Scotland) Act 1980 and in the Standards in Scotland's Schools etc Act 2000. Emphasis is now placed on public expenditure that would be unreasonable. That does not mean that cost is the primary consideration in determining what provision would adequately meet the child's needs. I know that many people have been concerned about that matter and I emphasise that cost is only one part of the consideration and that that is the right and proper approach when public funds are being committed. I hope that the committee will recognise that we have listened to its concerns. I repeat that we do not see subsection (2) of the amendment as some kind of escape clause or escape hatch—whichever colloquial term one wishes to use—for local authorities.

Obviously, there are inspection powers. When a duty is imposed on an education authority, Her Majesty's Inspectorate of Education can inspect on the basis of that duty and the general discharge of duties. There are powers of direction in the bill and, of course, complaints can be made under section 70 of the 1980 act. We mean what we say—there should be no hint of an escape clause for local authorities through pleading excessive expenditure. I hope that we have made that abundantly clear.

Amendment 64 complements amendment 63 by removing from section 3 the provision that would be inserted earlier in the bill by amendment 63. It serves a technical purpose to avoid duplication of provision. The result is that section 3 provides for general duties and powers.

I move amendment 63.

Convener, do you wish me to discuss the amendments thereto, or do you wish them to be moved first then for me to discuss them?

The Convener: I should point out that in a sense there will be a sub-debate on amendment 63, so you should discuss the amendments to it now.

Euan Robson: Fine.

Amendment 63B is not appropriate or necessary and in practice it would not work. The duty in Executive amendment 63 applies to those children and young people for whom the authority is responsible. Extending the duty to a group of children for whose education the authority is not responsible would be inappropriate.

The group affected consists of those who are not yet of pre-school age, those whose parents have elected to send them to private school, and those who are home educated. Amendment 63B would force the education authority to interfere without any consideration of parents' arrangements for their children's education, since the authority would be obliged to provide if a child had additional support needs. In addition, it would place duties on the education authority in relation to privately or home-educated children with additional support needs but not on other privately or home-educated children, so it would create a division.

It would also be impossible for the education authority to know about every one of those children. Before school age, the education authority will interact only with children who attend either its own pre-school centres or those with which the authority is in partnership, or with

children who are brought to the authority's attention because of their disabilities or needs. It would be impractical for the authority to seek out all other children in the area, which is what amendment 63B implies.

Lastly, amendment 63B is not necessary because the duty in Executive amendment 63 covers all children of pre-school age and upwards for whom the authority is responsible. There is a discretionary power to offer help to those for whom the authority is not responsible, and there is a duty to offer help to those children who are under 3 who are disabled and who have additional support needs. I oppose Fiona Hyslop's amendment 63B.

Amendment 63C is not entirely appropriate, as it seeks to remove from the education authority the responsibility for deciding the appropriateness of the arrangements that it will put in place to consider an individual's additional support needs and the adequacy of support that is provided for. It is not clear from amendment 63C who would determine the appropriateness of the arrangements. There is silence on that aspect. That lack of clarity would weaken the accountability of the education authority. As I said earlier, there is the HMIE inspection process, and ministerial powers of direction are set out in later sections of the bill. Although I understand partly the reasons why Ken Macintosh lodged amendment 63C, I would be grateful if he would not move it. If he wishes to have further discussions, I am happy to enter into them.

11:30

Scott Barrie's amendment 63A is not strictly necessary, since unreasonable expenditure could never be expected to occur on anything other than an exceptional basis. I understand that the aim of amendment 63A is to give a message that it would be exceptional for an education authority to restrict provision on the basis of unreasonable public expenditure.

I completely understand that point, which is entirely correct, but we believe that the amendment is not necessary. The vast majority of provision to meet the additional support needs of children and young people will incur what will and must be regarded as reasonable expenditure, because section 3 imposes a duty on education authorities to take account of additional support needs when they make provision for school education in general. Also, the new section that amendment 63 proposes would impose on education authorities an explicit duty towards individuals. It is most likely that only in occasional cases would provision be considered out of the ordinary in the context of what would normally be provided for additional support needs. Such expenditure might be deemed unreasonable. However, if the child's circumstances were such that the expenditure was justified, the expenditure could not be unreasonable.

It is worth noting that in cases in which the expenditure was considered unreasonable, the education authority would have to justify its conclusion. The authority could be held accountable for its decision in court if judicial review proceedings were instigated and it would also be accountable to the Scottish ministers if action was taken on a referred complaint under section 70 of the Education (Scotland) Act 1980, to which I referred earlier. The situation would therefore be unlikely to occur other than exceptionally.

I appreciate Scott Barrie's concern and although I cannot give a commitment to make any changes at stage 3, I would be interested to hear any further views that he has on what is clearly an important and sensitive area. On balance, however, the Executive asks him not to move amendment 63A but is happy to entertain further discussion on the matter.

I turn to amendment 63D—I am sorry that I am delivering a long monologue. I do not agree that amendment 63D is necessary, because it stands to reason that unreasonable expenditure would not ordinarily be incurred by a public body such as an education authority. The consideration that provision might incur unreasonable expenditure must be balanced with the consideration of education authorities' duties towards children and young people in general and to individual children and young people with additional support needs in particular; one does not carry more weight than the other and a child's exceptional circumstances might well justify what could otherwise be considered unreasonable expenditure. I therefore ask Rosemary Byrne not to move amendment 63D.

Shall I go on to amendment 98?

The Convener: That is up to you. It might be helpful to explain that Fiona Hyslop will lead on the other amendments in the group; at that point, you will be able to come back on points that are raised in relation to the other amendments in the group, if you are minded to do so.

Euan Robson: I am sure that you will keep me right, convener.

Fiona Hyslop: I will lead on the other amendments, then.

The intention behind an amendment that I lodged before the Executive lodged amendment 63 was to ensure that section 3, on general powers and duties, would specifically mention children who are more than two years old. The committee has serious concerns about two-year-

old children who might be missed out by the new system.

I am concerned about the order in which we are debating the amendments, because I suspect that amendment 65, which we will debate in the next group, addresses that issue. However, I appeal to the committee: we have not yet reached amendment 65 and we do not know whether the minister will lose the argument on that amendment. The logic of the debate therefore suggests that it is appropriate to consider the matter at this point. The issue was raised during our debates on sections 1 and 2—although that might have been less appropriate in the context of our discussion about CSPs under section 2—but the minister himself recognises that the position of two-year-olds should be included in section 3. Amendment 63B was lodged to ensure that we had a debate on the matter and an opportunity to embed the rights of two-year-olds in the bill.

I want to make two points. First, the minister said earlier that the bill—I am not sure whether he meant the bill as drafted or as amended by amendment 65—would make education authorities responsible for two-year-olds who were "approaching" pre-school education. What does he mean by "approaching"?

The second point that I want to address is on home education. It was brought to our attention that quite often the parents of children who are in need of additional support are in dispute with the local authority at the time. The fact that the children's parents are in dispute with the local authority does not mean that the children suddenly stop needing whatever additional support they had; it needs to continue. The minister made a point about people choosing not to be part of the state sector, but he must reflect on the rights of the children who are being home educated in the period during which there is some form of dispute between their parents and the local authority. I did not appreciate the arguments that the minister was using against amendment 63B in that context. I would be interested to hear the minister's comments, because the issue relates to amendment 65, which might satisfy all our concerns.

I refer to amendments 63A and 63D, in which Scott Barrie and Rosemary Byrne both use the word "exceptionally". I understand that they are trying to address some of the cost issues. My concern about the word exceptionally is that exceptional occurrences could arise. I use the example of a small local authority such as Clackmannanshire Council, which might, in a given period, have a number of severely disabled children who need special school education. The incidence would be unusual; perhaps the area might expect one such child over a period of time but it happens to have a large number. That could be defined as exceptional and might be used as an excuse to consider the cost issue. That is a practical example. I would be interested to hear whether the word exceptional would deal with those circumstances. Otherwise, what is suggested is reasonable, but there are practical examples to address.

I hate to think that I am thinking along the same lines as the minister, but amendment 98 seeks to do something similar to what he is suggesting in amendment 63, which is to emphasise the point that regardless of whether a child has a CSP, the duty and responsibility of the local authority is to provide the additional support. Amendment 98 seeks to strengthen that general duty and make it explicit in the bill that the duty and responsibility exist, regardless of whether a child has a CSP, as defined under section 2. The thrust of amendment 98 is probably covered by the point in amendment 63, but it makes the duty more explicit later in the bill. It would be logical for the Executive to accept amendment 98 for that reason.

Amendment 49 is on reasonable cost. Every member of the committee was concerned about section 3(2)(b), which says that a local authority does not need to do anything that

"is not practicable at a reasonable cost."

Everybody acknowledges that that is not desirable.

Amendment 49 was lodged before amendment 63, so I am glad that my suggestion has been taken up in amendment 63. A number of witnesses suggested that we should be using the definition in the 1980 act, which is what amendment 49 suggests. Amendment 49 might fall, given the logic of the other amendments. I am quite happy to accept in the post commission from the Executive for drawing the issue to its attention before it lodged amendment 63.

I move amendment 63B.

The Convener: I call Ken Macintosh to speak to amendment 63C and the other amendments in the group.

Mr Macintosh: Do I speak also to amendments 63, 63A, 63B and 63D?

The Convener: You speak to your amendment and any other amendment in the group that you wish to speak to.

Mr Macintosh: I thank the minister for lodging amendment 63. Without wishing to soften up the minister too much, as it were, I have to say that I welcome the general approach that the Executive has taken in responding to the committee's concerns: amendment 63 is a good example of that. We have all wrestled with the issue to which

it relates and we have made our views known. I appreciate that the Executive and its bill team has also wrestled with it at great length. We are trying to reach compromise, consensus and agreement on the best way forward. I welcome the rewording in amendment 63.

I turn to amendment 63C. The Executive's amendment 63 will place a duty on education authorities, which is tempered or qualified by use of the term, "as they consider appropriate." Authorities must already make decisions on such matters and the use of the term, "they consider" will give them further discretion.

I am concerned that the section that amendment 63 would introduce is a subjective section that would not be relevant to the best interests of the child, merely to the interests of the education authority. I am concerned about that subjectivity, and about the possibility that it could open the gates to the problem that already exists—which the bill is trying to deal with—of authorities throughout the country exercising their discretion fully, such that there is unwelcome postcode diversity. That would lead to anomalies whereby parents perhaps 10 miles apart would have access to different services and different treatments.

I do not think that that is the Executive's intention, but I fear that that would be the result of using the Executive's terminology. My understanding is that a spectrum of terminology exists that could be used—correct me if I am wrong. The absolute duty would be that

"Every education authority must … make such arrangements".

To that could be added "as appropriate" or, as I have suggested, "as are reasonably appropriate", or—as the Executive has suggested—"as they consider appropriate". That is a spectrum. The use of "reasonably" would temper the discretion that the Executive would be giving to authorities.

I seek guidance from the minister on how he sees authorities interpreting the duty that he will place on them. Do you envisage different standards being applied and different decisions being made in different circumstances around the country? I have no wish to be overly prescriptive to authorities: I acknowledge their difficult duties in the circumstances. The minister argued that my amendment 63C would in effect remove from education authorities responsibility for taking such decisions, but I do not accept that—it would do nothing of the sort. However, what guidance will the minister put in place to ensure that standards are maintained throughout the country, and to ensure that it is clear to authorities and to parents what they can expect, so that parents in one part of the country do not have totally different expectations from parents in other parts?

In passing, on amendment 63B, I look to amendment 65 to address my concerns and those of the committee. The minister made a point—it was raised by Fiona Hyslop—about the situation that faces children with additional needs who are educated at home or who have private provision. However, that private provision may not reflect choice, but the circumstances in which people find themselves. We made that point in committee.

I am unclear whether the Executive will address that point in its amendments at any stage. I think that the Executive accepted at stage 1 that that was a genuine concern, but I am not sure whether the minister will address it. I can see that there are problems with amendment 63B, but I would like to be reassured that the issue will be addressed, even if we discuss it only when we get to amendment 65.

Although my name is not down against amendments 63A and 63D, I should explain that I lodged exactly the same amendments with the clerk and was told that such amendments had been lodged already. We have all—including the minister—repeated the argument that although authorities have a fiscal responsibility not just to children with additional needs but to all children in their areas, they must balance that duty with their duty to provide education to all children, and particularly to those with special educational needs. It is clear that the duty does not give authorities the right to refuse treatment or support on the ground of cost. However, a test of unreasonableness needs to be applied. I welcome the fact that the minister has returned to the committee with the wording that is now to be found in amendment 63, which reflects the wording that was used in the Standards in Scotland's Schools etc Act 2000.

11:45

Amendment 63A, which was lodged by Scott Barrie, and amendment 63D, which was lodged by Rosemary Byrne, reflect the full context of the wording that was used in the 2000 act. They emphasise the fact that cost is to be used only as a ground in exceptional circumstances and not as a general opt-out by authorities in order to evade their responsibilities. I believe that there is an argument that the wording in those amendments might be redundant; that the terminology that the minister has used makes the point and that the wording does not need to be repeated either as Scott Barrie proposes in amendment 63A or as Rosemary Byrne proposes in amendment 63D. I am not sure, however, that I accept that argument totally, unless there is a technical reason why we should not have the wording that they suggest, which would give a very strong and clear message to parents and to authorities that have difficult

decisions to make in relation to how Parliament intends the new section to be interpreted in practice.

That said, Fiona Hyslop made a good point about how to define exceptionality and the word "exceptionally". I know of the case of a child with autism who goes to Daldorch House School at a cost of several hundred thousand pounds, but the costs involved are not thought to be either exceptional or unreasonable. I ask the Executive to respond to all of the points that I have raised.

The Convener: Thank you. I ask Scott Barrie, who has waited a long time for our committee's endeavours to reach him, to speak to amendment 63A and the other amendments in the group.

Scott Barrie (Dunfermline West) (Lab): There is always a silver lining; I have missed the Communities Committee. As Ken Macintosh said, amendment 63A is an attempt to make the Education (Additional Support for Learning) Bill consistent with the Standards in Scotland's Schools etc Act 2000. I accept fully that with amendment 63 the Executive has gone a long way towards addressing the perception that the bill contains a get-out clause for authorities and I thank the Executive for that. Further to that, I recognise that resources are not infinite and that difficult decisions often have to be made about provision of services in relation to a child's or a young person's needs.

That said, I think that insertion of the words

"presumed to arise only exceptionally"

would strengthen the Executive's amendment 63. The wording in amendment 63A would give additional comfort to concerned parents that costs alone would not be used routinely as the reason for not doing something.

I agree with Ken Macintosh that Fiona Hyslop raised an interesting point about the definition of "exceptionally". In common with words like "reasonably", the word "exceptionally" is open to wide and varied interpretation. During the passage of a bill, we have to be careful about the language that is used in its drafting. We have to bear in mind the points that Fiona Hyslop made about the word "exceptionally". If I decide to pursue the substance of amendment 63A at another time, I will consider whether the language needs to be looked at yet again.

It is strange that ministers have to respond to amendments in a group before members get to say why they lodged amendments. That said, in his opening remarks on the amendments in the group, the minister anticipated reasonably well the subsequent arguments. He said that he would be willing to meet me to discuss whether it is strictly necessary to add the clarification that I propose. I will take him up on that suggestion should I choose not to move amendment 63A.

If I am allowed to do so convener, I suggest that, if I choose not to move amendment 63A, I will reserve my position in order to return to the subject at stage 3. I will also take up the offer that the minister made to meet me to discuss why I think we should reconsider my proposal in amendment 63A.

Ms Byrne: Most of the case for the changes has been put. As Scott Barrie said, the wording in the amendments is as that which is used in the Standards in Scotland's Schools etc Act 2000—the words would blend in very well with the aim to prevent a get-out clause for authorities. Fiona Hyslop picked up on the word "exceptionally". We might need to clarify that, which I imagine could be done fairly easily. Perhaps interpretation of the word "exceptionally" could be clarified in the code of practice—I do not think that there would be a problem with that. Scott Barrie said that he would consider not moving amendment 63A, so I will wait to see what he does before I decide what to do about amendment 63D. We need to ensure that the bill does not contain a get-out clause. Amendment 63D would tidy up the matter very well.

The Convener: I call Lord James Douglas-Hamilton to speak to amendment 3 and the other amendments in the group.

Lord James Douglas-Hamilton: I will speak briefly to amendments 113, 3, 4 and 63C. Amendment 113 in Rosemary Byrne's name and which I support is extremely important because it stresses the "best interests" of children and young people. It is always important to keep it in mind that the interests of the child should be paramount; indeed, that was the principle in the Children (Scotland) Act 1995.

I also support amendment 114, in the name of the convener. I hope that he will not ask me to rule on its competency, as I have added my name to it. It is much better to use "effectiveness" instead of "adequacy"; no one would wish to be accused of having delusions of adequacy.

Amendment 3 seeks to strengthen the duty on education authorities to provide the necessary support, bearing it in mind that the education authority concerned should be directed towards

"the development to the fullest potential of the personality, talents and mental and physical abilities of"

children and young people. That is a worthy ideal, which I commend to the committee.

Amendment 4 seeks to prevent local authorities from having one of the most obvious get-out clauses of all time, which would be grossly unfair to parents. Section 3(2)(b) says that an education

authority is not required to do anything that

"is not practicable at a reasonable cost."

That would mean that children with disabilities or other support needs would not receive the support that they needed if the education authority thought that it would be too expensive to provide such support. I recognise that the minister's amendment 63 applies a different test, the principle of which he has eloquently explained this morning, and I am very grateful to him for accepting the principle of my amendment, which he must have done before lodging amendment 63.

For the record, I mention that there has been a significant House of Lords ruling on the subject. In 1988, the ruling in the Regina v East Sussex County Council ex parte Tandy case stated that duties to educate children with special educational needs were absolute and could not be avoided because of cost. The provision in section 3(2)(b) would erode the rights of the most vulnerable people and put them in a worse position than they were in before. It would mean that children with severe learning difficulties would in Scotland have fewer rights than they have now and fewer rights than children who are in the same position south of the border. It would also make it very difficult for parents to challenge the lack of educational provision for children with additional support needs.

I accept that the minister has lodged amendment 63, but I think that we need to examine carefully subsection (2)(b) of the new section that amendment 63 would insert. Perhaps the minister can give the committee some reassurances on the points in question. He is saying that the onus of proof would be on authorities to establish that unreasonable expenditure would be incurred and he suggests that authorities could be subject to judicial review and would be accountable to ministers if they were seen to be acting unreasonably in any way.

I hope that the minister will examine the presumption that is mentioned in amendments 63A and 63D. It would reassure parents a great deal if such a presumption could be considered for stage 3. I hope that he will give us some reassurance on that.

In amendment 63C, Ken Macintosh objects to the use of the word "consider" in amendment 63, which he says would make the education authority's decision subjective. I have taken up that issue in other amendments later on in the bill and I strongly support the principle that there should be an objective test and consistency of provision in that regard.

Mr Macintosh: I am not sure whether this is a point of order, but I think that it is in order at this stage for me to mention my support for Rosemary Byrne's amendment 113. I did not mention that earlier because—

The Convener: In fairness, you have had your shot. I do not want to delay proceedings too much.

Mr Macintosh: I believe that amendment 113 would fall if we agreed to amendment 63. I tried to submit a similar amendment to amendment 113; it was very much part of the same argument that says the decision of a local authority is quite subjective. It would be helpful to have a restatement of—

The Convener: I am sorry to interrupt you, but I think that you have had your shot on that one. We will follow the rules on pre-emptions.

Lord James Douglas-Hamilton: On a point of order. Would it be in order to vote on amendment 113?

The Convener: No. We will come to that in due course. We have to take things in order or we will get into a total mess. I now call myself to speak to amendment 114 and the other amendments in the group.

I do not propose to move amendment 114; assuming that amendment 63 is agreed to, it would be pre-empted anyway. Amendment 114, which seeks to insert the word "effectiveness", is covered by the minister's amendment 63, which includes the phrase "adequate and efficient". That comes to pretty much the same thing.

I take the opportunity to say one or two things in support of other points that have been raised. Amendment 63 goes a long way towards satisfying the committee's concerns on many issues. It does that in the general duties that are stated and in the new phrase "unreasonable public expenditure" in subsection (2)(b). That is to be welcomed.

I am not at all enthusiastic about amendment 63A and amendment 63D. Speaking as a lawyer and considering the meanings of the words, I do not see how those amendments would add anything to the substance of the original amendment. Such issues may be dealt with in the code of practice. I have no particular difficulty with that, but we would end up with an extraordinarily clumsy phrase if either of those amendments were agreed to. I am aware that the amendments have an element of consistency with the Standards in Scotland's Schools etc Act 2000, but I am not entirely persuaded that the wording should have been in that act in the first place. Things can be dealt with in the code.

Later on, I will talk about an amendment of mine that is on a similar point to that which was raised by Ken Macintosh in amendment 63C. It is an important point. The minister talked about who has discretion: it is clear that the education authority

has discretion; it makes the decisions. The amendment, if agreed to, would make it clear that every education authority must make subsequent arrangements as appropriate. That is perfectly straightforward and sensible and would substitute an objective test for a subjective test. That is the proper way of dealing with this issue.

When Lord James Douglas-Hamilton was a minister, I doubt whether he would have been all that keen on some of the amendments that he has lodged, but he is entitled to take a different line today as an Opposition member.

An objective test is very important. I accept that the issue could be dealt with by direction to authorities in the code or in some other way. That may be the way that the minister is thinking of going. However, I would not be content for the words of amendment 63 to be left as they are without there being some direction to authorities on what is meant in practice. The objective test will have to be imposed somehow or other. Otherwise, we will run into the sort of difficulties that Ken Macintosh eloquently alluded to earlier.

The rest of the amendments in the group have largely been dealt with, so I will not say any more. Do any other members wish to comment?

Dr Murray: I welcome the fact that the Executive has lodged amendment 63. It is now very clear that authorities have a duty to meet the additional support needs of all children who have such needs. That was always the intention. That provision is the fundamental difference between this bill and the legislation that exists at the moment.

Parental reassurance is still an issue. If an education authority does not meet the additional support needs of a child or a group of children, and if parents use the advocacy arrangements that will be available to them and go through mediation or dispute resolution, and if the authority continues not to meet the additional support needs, what will the parents do then? Should they take up the issue with their MSP and seek ministerial direction of the authority?

The Convener: Fiona Hyslop has the answer on that, but I am prepared to let the minister come in again if he has any observations to make on amendments 63A, 63B, 63C and 63D. A number of forceful points have been made. Would that be in order?

Euan Robson: It is up to you whether it is in order or not.

The Convener: It is in order, but is it suitable?

Euan Robson: Yes. It will be complicated to try and cover everyone's points but I will do my best. Do you want me to sum up on amendments 63 and 64 later?

The Convener: Yes please.

12:00

Euan Robson: Okay. If I may, I will deal with Elaine Murray's point. Section 70 of the Education (Scotland) Act 1980 is the route by which a complaint would be made to ministers. I have a copy of that section in front of me if the committee would like to see it. I hope that that answers the specific question but if it does not, I can give more detail. A fair number of section 70 complaints come to ministers from time to time.

I return to Scott Barrie's amendment 63A and Rosemary Byrne's amendment 63D. We understand what both amendments are trying to do but we think along the lines that the convener suggested; that is, that the amendments would cloud the issue and are not necessary in the context of the bill. I appreciate the point about the Standards in Scotland's Schools etc Act 2000 and I understand the genesis of the phrases that are contained in the amendments, although they would apply in different circumstances. I will take the issue away and consider it further without necessarily promising that we will come back with another amendment. We will discuss the matter in ample time to allow members to lodge other amendments at stage 3 if the Executive is not minded to do so. I hope that that is reassuring.

In more general terms, on the four amendments 63A to 63D, certain specifics will be fleshed out in regulations and, of course, in the code of practice. I appreciate that it is difficult for members to understand that when they have not seen the code of practice that is being drafted.

On the word "exceptionally", I hear the point that was made. Again, I will take that point away and consider it further.

Convener, I think that that covers the points that have been made. I apologise if I have missed any.

The Convener: Do you have anything to say about amendments 98, 113, 64, 3, 4, 49 and 163? You will not get another chance.

Euan Robson: I do not think that I said anything about those amendments, so I will say a word or two about them

The Convener: The procedure is slightly unusual because we have amendments to amendment 63.

Euan Robson: I am grateful for your guidance.

The Executive's view is that amendment 98 is not necessary because all additional support needs of all children and young people are covered in the duty on education authorities to take account of additional support needs when providing school education. No distinction is made

between needs that might require a CSP and those that do not—all needs will be treated equally. I hope that members acknowledge that that will be further strengthened by amendment 63, which seeks to place an obligation on education authorities to provide adequately and efficiently for the needs of each and every child and young person. That also applies to all children and young people with additional support needs regardless of whether they have a CSP. I mention that for emphasis.

I think that Fiona Hyslop acknowledged that her amendment 98 is aimed at ensuring that equal account is taken of the needs of children and young people who have CSPs as is taken of those without them in providing general school education. As I explained, we consider that that will be taken care of adequately by amendment 63.

I do not accept that amendment 113 is necessary because there is already a duty on education authorities to direct school education towards developing the full potential of pupils. The amendment seeks to oblige authorities to take account of the best interests of children and young people as well as their additional support needs when making provision for school education. It is not clear whether those interests should be restricted to educational interests or whether they should include all types of interests. That is a deficiency in the amendment. The existing duty to direct school education towards development of the full potential of pupils, along with the duty in section 3(1)(a) to take account of additional support needs will, therefore, take account of the best educational interests of pupils, in the Executive's view. Therefore, I ask Rosemary Byrne not to move amendment 113.

We believe that amendment 3 is not necessary because section 1(2) states that school education should be

"directed to the development of the … child or young person to their fullest potential."

In order for provision for additional support to be "adequate and efficient", it must be aimed at pupils gaining benefit from school education which, in turn, is directed towards developing pupils to their fullest potential. Amendment 3 repeats what is already in the bill.

Should I say something about amendment 4?

The Convener: I think that amendment 4 has already been effectively dealt with by amendment 64, but you can say something about it if you want.

Euan Robson: For the sake of completeness, I should say that we do not think that amendment 4 is helpful. We think that it should be rejected as it would remove the concept of consideration of public expenditure—which would remain implicit anyway. Making the bill silent on the matter, which is what the amendment seeks to do, would not remove the consideration of costs and expenditure in relation to making provision for additional support needs. As a public body that is accountable for public funds, an education authority has to consider the reasonableness of any public expenditure. That is why we have an Auditor General and various duties on councils. I would ask for amendment 4 not to be moved.

Fiona Hyslop: The bill is both emotive and technical, which is why it is essential that we get the technical bits right. I detect, from the remarks that have been made, that we would probably want time to reflect on the amended bill after stage 2—bearing in mind that we do not know where we will be left if amendments 63, 64 and 65 are passed—to allow us to think about how the bill addresses disputes involving children who are home educated, those in rural areas who do not have access to public nurseries and are therefore using private nurseries, others who are using private nurseries and so on. We cannot properly reflect on those matters until the bill has been amended.

I will not press amendment 63B, because I think that amendment 65 will cover it. However, we might want to plug some areas at stage 3. I think that amendment 63C is perfectly reasonable and is worthy of support.

I think that there is a case to be made for amendments 63A and 63D and will move them when it is appropriate to do so. Although the convener has expressed concerns about the legal definition of "exceptionally" and whether the concept should have been in other pieces of legislation in the first place, I agree with Rosemary Byrne that we have a duty to be consistent with other pieces of legislation.

With regard to the example that I raised earlier about Clackmannanshire, I would like the code of practice to say what would happen in those circumstances. Hopefully, with regard to the code of practice, the officials will take note of the various issues that we have raised today. I suspect that we are scoping a lot of the issues that will need to be in the code of practice.

The Convener: I think that we are practically writing it.

Fiona Hyslop: That is no bad thing.

Euan Robson: I confirm that points will be taken away from this discussion for the code of practice, which is being developed.

The Convener: That is helpful.

Amendment 63B, by agreement, withdrawn.

The Convener: Amendment 63C, in the name of Ken Macintosh, has already been debated with amendment 63.

Mr Macintosh: Can I ask a question? The minister spoke before I spoke to my amendment. I am not sure whether he responded to the points that I made; if he did, I was looking at my notes at the time. He responded to the points on amendments 63A and 63D and I heard his initial arguments about what they may or may not do, but did he respond after I had spoken? I am not sure that he did.

The Convener: Perhaps you could clarify that, minister. I think that you gave assurances about the code, did you not?

Euan Robson: Yes, but in responding before Ken Macintosh spoke I also said that we would take his suggestions away and consider them, without the assurance that we will lodge a new amendment. I asked him to withdraw his amendment on that basis, but I am happy to have a further discussion of the point that is at issue.

Mr Macintosh: I hear what the minister says, but I point out that in section 1, which we have agreed, section 1(3)(b)—

The Convener: Sorry to interrupt you again, but we have had that debate.

Mr Macintosh: Absolutely, yes.

The Convener: We are not going to open it up again and start making other points.

Mr Macintosh: I am not going to move my amendment, but I am saying that—

The Convener: With great respect, all that I want to know is whether you move amendment 63C.

Mr Macintosh: I welcome the minister's comments. I will not move the amendment, but I would welcome the minister's comments on amendment 113, which is similar to the wording that I would have suggested. I just want to clarify the position, because this is a complex—

The Convener: Sorry. With great respect, we must deal with the matter in the right way. You have had quite a long say on the matter this morning.

Mr Macintosh: Okay.

The Convener: Ken Macintosh is not moving amendment 63C. Is that acceptable to the committee?

Members: No.

The Convener: Someone else can move it if they want to do so.

Mr Ingram: I do not think that we have had a guarantee from the minister that he will bring back a new amendment, so it is reasonable to move amendment 63C at this stage.

The Convener: The minister has given an undertaking that he will consider the matter in the code, which is also important.

Amendment 63C moved—[Mr Adam Ingram].

The Convener: The question is, that amendment 63C be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 63C disagreed to.

The Convener: Does Scott Barrie want to move amendment 63A?

Scott Barrie: I will not move amendment 63A, with the caveat that we will meet the minister. We reserve our position with a view to returning at stage 3.

Amendment 63A not moved.

Amendment 63D moved—[Ms Rosemary Byrne].

The Convener: The question is, that amendment 63D be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 63D disagreed to.

The Convener: The minister may wind up on amendment 63, if he wants to do so. He might not have anything else to say.

Euan Robson: In view of the time and the extensive debate that we have had, I waive my right to reply.

The Convener: I am grateful for that.

Amendment 63 agreed to.

Section 3—General functions of education authority in relation to additional support needs

The Convener: Believe it or not, we have only just reached section 3.

Amendment 98 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 98 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (SSP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 98 disagreed to.

The Convener: Amendment 113, in the name of Rosemary Byrne, has already been debated with amendment 63.

Ms Byrne: In light of what the minister said, I will not move amendment 113 at the moment, but I might want to raise the matter again at stage 3.

Amendment 113 not moved.

12:15

The Convener: Amendment 64, in the name of the minister, has already been debated with amendment 63. If amendment 64 is agreed to, it will pre-empt amendments 3, 4, 49, 163 and 114.

Amendment 64 moved—[Euan Robson]—and agreed to.

The Convener: Amendment 65, in the name of the minister, is grouped with amendments 65A, 65C, 65B, 66, 115 and 67. I point out that amendments 66 and 115 are direct alternatives and do not pre-empt each other.

Euan Robson: Amendment 65 is perhaps much heralded. It places a new duty on education authorities to help those children in their areas who are under three and disabled. That is because they are the group of children who will be most likely to have additional support needs—although not all necessarily will—and early intervention will help to prepare them for the time when they start their school education. There is a power to help such children and others in section 3(4), but amendment 65 takes that further and makes it explicit that authorities must provide appropriate support for children in their areas who are under three and disabled. That does not mean that children under three who are not disabled cannot be supported, because they can be supported under the power that is given to authorities in section 3(4). Amendment 65 means that those under three who are likely to have the most significant needs will receive the help that they and their parents need at an early stage in their lives.

I commend amendment 66 to the committee, as it ensures that an education authority is not prevented from offering help to any child for whose education it is not responsible. Section 3(4) is an enabling power for education authorities to help children who are outwith the public system: those who are being educated at home; those in private education; and those who are still too young for pre-school education. Amendment 66 is partly a technical amendment to complement amendment 65, which places a duty on authorities to offer support for disabled children under three who have additional support needs.

Amendment 67 is a technical amendment to reflect the intention of amendment 65 for there to be a duty on, rather than a discretionary power for, education authorities to make provision for a certain group of children. Section 3(4) provides for a discretionary power for education authorities to make provision for children and young people for whose school education they are not responsible. To avoid double counting, amendment 67 excludes from that discretionary power the group of children for whom there is intended to be a duty in amendment 65.

In effect, the amendments provide for a duty to support disabled children who are under three in an authority's area and a power to support all other children and young people in the area for whose education the authority is not responsible.

Do you wish me to go on to the other amendments in the group, convener?

The Convener: Yes. You had better deal with the other amendments, because you will not get

another chance, given the way in which the system operates when there are amendments to amendments.

Euan Robson: Right. I do not consider amendment 65A to be appropriate, as it would leave the bill silent on who should determine the appropriateness of the support that is provided to the group of young children involved. In turn, that would remove the explicit accountability for the decision on appropriateness. In our view, education authorities are in the best place to take that decision and it is right and proper that they should be held accountable for their decisions in the ways in which we discussed previously. With respect, convener, I ask you not to move amendment 65A. I am interested in what you have to say on that.

Amendment 65B is again not entirely necessary. The issue is difficult. Health boards are the lead agency for children of that age and there is no doubt that they are best placed professionally to refer children to education authorities on the basis of a disability. As we understand amendment 65B, it seeks to extend the power to make such referrals to voluntary organisations, parents and relatives of the child. However, in practice, anyone who is concerned about possible disabilities in a child who is under three should refer the matter to health professionals. In any circumstances that I can imagine, if an education authority received a direct approach, it would almost inevitably refer the case to a health authority in some way. In the unlikely event that the health board does not refer to the education authority a child under three whom it considers to be disabled, parents can, under section 5, request the authority to assess their child for additional support needs.

I am prepared to discuss the issue in more detail ahead of stage 3, but I do not anticipate that the Executive will produce amendments on the issue for the reasons that I have given, although I am open to further discussion.

Amendment 115 would take away from education authorities the responsibility for determining the appropriateness of any provision that they offer for children and young people in their areas for whose education they are not responsible. As section 3(4) will give a discretionary power to make provision for such children, it is right and proper not only that education authorities determine when they use that power, but that they determine the provision that they offer as a result of using it. In using the power, education authorities should clearly be accountable for their decisions. Amendment 115 would weaken the accountability by removing the responsibility for the decision from the education authority. I do not wish the accountability to be weakened. Therefore, I ask you not to move amendment 115, convener, although I am happy to discuss any issues that the committee wants to raise. I do not foresee that the Executive will produce an amendment on the issue.

The Convener: Perhaps you want to say something about amendment 65C.

Euan Robson: Forgive me; I missed that one. Amendment 65C is not appropriate; it would extend unnecessarily the intended duty towards young disabled children and would duplicate duties and powers towards some children that are provided for elsewhere in the bill. In effect, amendment 65C would place a further duty on authorities towards children aged three and four for whose school education the authorities are not responsible. As it would be a duty, where children had additional support needs, authorities would have to intervene, even if the children were being educated privately or at home. Therefore, no allowance would be made for parental choice. Disabled children aged three and four with additional support needs who attend local authority partnership pre-school centres will be recipients of the duty on authorities provided for in the new section before section 3 that was introduced by amendment 63. For disabled children aged three and four with additional needs who are not educated by a local authority, section 3(4) provides an enabling power for a local authority to offer them help. For the reasons that I have stated, I ask Fiona Hyslop to not move amendment 65C.

I move amendment 65.

The Convener: I will move amendment 65A, but I will not press it. Amendment 65A and amendment 115 embody the point in Ken Macintosh's amendment 63C. The minister will know from the earlier vote and discussion that there are strong views in the committee on the point that amendment 65A addresses and he must make a substantive response. Frankly, I do not accept his explanation of where the liability lies.

Amendment 65 currently states:

"Every education authority must … provide such additional support as they consider appropriate for each child".

That represents a double lock for an education authority in deciding whether to provide additional support. Even if we change "as they consider appropriate" to "as is appropriate" and make the test objective, the decision on additional support will still be made by the education authority; the education authority will be the starting point and it will estimate what support is required.

We are trying to draw attention to the criteria that education authorities will use when deciding on additional support. I am indifferent as to whether that essential issue will eventually be

dealt with in the act or its code of guidance, but we must have a clear assurance that it will be dealt with substantively, otherwise deficiencies will arise as different local authorities make different decisions in exercising their discretion. There will also be issues about how local authorities are to be challenged.

An education authority has a duty—the word "must" implies a duty—to provide additional support, but that duty is almost entirely removed by the phrase "as they consider appropriate". That issue must be dealt with by the definitions that the bill uses.

Amendment 65B raises the question of what the trigger is for an education authority to exercise its duty to provide additional support to children. The minister will be aware of the Craighalbert Centre, which deals with children at an early stage and not only looks after them, but assesses them and makes them ready for school. Obviously, what we are discussing does not apply to children in all conditions or situations, but in a number of cases, such as those with which the Craighalbert Centre deals, the question of how the duty is triggered is important.

We are all aware that health boards are often painfully bureaucratic organisations. Where will the decision be made in it? What happens if a health visitor decides something and that is not passed up the line? How exactly will the whole process be triggered? What importance is attached to input by experts—who are often far more significant in their areas than people from the health boards—from institutions such as the Craighalbert Centre, which is very much tuned into this kind of work? Such bodies are funded by the Executive to provide expert input, which has an important part to play. It seems to me that there is a substantive point that must be dealt with.

I am prepared not to press amendment 65A until there has been further discussion, but I do not think that the point contained in the amendment is as trivial as the minister suggested.

There is also the issue of how parents get in on the act. Obviously, any parent could approach a local authority and say that they had a child in this, that or the other situation. However, the question must be how they can press a local authority to act on its duty in what must be a rather delicate and difficult situation.

I am not talking about a situation that affects many hundreds of children; relatively small-scale numbers are involved. However, a number of people in organisations in the field feel significant disquiet about what the bill proposes and I am keen to see some movement.

That is all I want to say, other than to observe that amendment 65 represents a considerable improvement. The Executive has gone a long way towards satisfying the committee's concerns.

I move amendment 65A.

12:30

Fiona Hyslop: Amendment 65C goes to the heart of how we will deal with three and four-year-olds who are in rural nurseries or who are in private nurseries because our wonderful child care system does not provide the majority of people with child care and nursery education facilities from 9 to 5.

I am not convinced that amendment 65 has found the exact solution. I very much welcome the amendment and what the Executive is trying to do, but I do not know whether it goes far enough. I want to reflect on that following stage 2. As the minister said, perhaps my amendment would shift the balance in law too far one way, but leaving the reference to every child under school age who falls within the education authority's remit and responsibilities is not good enough. We need to find something in the middle. Unless we have other solutions, we may have to tip the balance in favour of three and four-year-olds later.

I am minded not to move amendment 65C, but the argument about how we resolve the issue has still to be addressed. I welcome the inclusion in the bill of a reference to health boards' responsibilities with regard to children from zero to three. That is a good move. As the convener said, outstanding issues are how those responsibilities are triggered, where the responsibilities lie and how parents ensure that children who are under three enter the system. Those are process issues. I am not saying that they need to be resolved in the bill, but perhaps those are other matters for the code of practice.

The convener's points were well made. The minister has moved to a great extent to address the committee's concerns, but we need to reflect a bit more on home education, the situation for three and four-year-olds and whether the partnership agreement with a local authority to provide two and a half hours of nursery education is a passport to access under amendment 65. Having that clarification would be helpful.

Mr Macintosh: I was just remarking to Rhona Brankin that it is difficult to remember all the points that we want to make without repeating ourselves. I welcome Executive amendment 65. As I said, I struggled to produce something similar and I was relieved to see the amendment.

The amendment will introduce a duty to complement the power that is already in the bill. However, one matter remains unclear and I am not sure whether it relates to amendment 65 or to

the convener's amendment 65B. It is clear that the parents of many children who are under school age will have the right to support and that the additional needs of such children will be recognised at an early age. However, if diagnosis is a matter of dispute or concern, some may not qualify and may have difficulties. I know that local authorities have a power, but I am slightly concerned about the duty that is imposed on local authorities to address children's needs, particularly the needs that arise from developmental conditions that are not obvious at birth but appear from the age of two onwards.

I echo the convener's remarks about the importance of addressing needs at an early age. The Craighalbert Centre gives children an educational service that prepares them for mainstream school by addressing their mobility needs from the age of two.

As for the term "they consider appropriate", I do not want to flog the matter, but I echo the convener's comment that that is a matter of substance, notwithstanding the vote that we had on my amendment 63C. I refer the minister to the use of the word "appropriate" in section 1(3)(b). Perhaps that is not an exact parallel, but in the sentence at line 21 on page 1 of the bill, the Executive refers to

"educational provision as is appropriate",

and not as anybody considers appropriate.

The Convener: That is a good point.

Mr Macintosh: The consistency argument is important throughout the bill. I flag that up, but I welcome Executive amendment 65.

The Convener: Because of the way in which the procedure works, the minister does not get to give a response, but if he has new assurances to give us or anything of that sort I would be happy to let him in.

Euan Robson: We recognise the point about appropriateness. We will check that use of language to ensure that there is consistency. I hope that that will sort the issue out.

I did not intend to suggest that the points raised by the convener's amendment 65B were in any way trivial, particularly in relation to the Craighalbert Centre; I was getting at the number of occasions on which in practice a referral would not be made through the health board. I have made it clear that we will take that amendment away and have a look at it in relation to the Craighalbert Centre in particular.

A lot of these points will be picked up in the code of practice: that is beyond doubt and we can give that firm assurance. I hope that I made it clear to Fiona Hyslop earlier that we would pick up a number of the points that have been made in the code of practice. In fact, an Executive official at one stage whispered in my ear that the committee has been doing a good job during this meeting in helping us to write the code of practice.

I have gone as far as I ought to. Thank you for allowing me the opportunity to come back in, convener.

The Convener: I have the opportunity to wind up the debate on amendment 65A, but I do not propose to say anything further on it. As I have already stated, I do not intend to press the amendment, in the light of the minister's assurances and the pressure that has been put on him in this area.

Amendment 65A, by agreement, withdrawn.

Amendments 65C and 65B not moved.

The Convener: I call the minister to wind up the debate on amendment 65 if he is so inclined.

Euan Robson: I have nothing further to add, except to express my appreciation of some of the committee's remarks.

Amendment 65 agreed to.

Amendment 66 moved—[Euan Robson]—and agreed to.

Amendment 115 not moved.

Amendment 67 moved—[Euan Robson]—and agreed to.

The Convener: I propose that we finish with section 3 today, which means that there is one final group to be dealt with. Amendment 164, in the name of Adam Ingram, is in a group on its own.

Mr Ingram: You will be glad to know that I shall be brief. Amendment 164 takes us back to what I said at the start of this morning's proceedings about trying to link the bill back to the body of education legislation—the amendment links the bill to the Standards in Scotland's Schools etc Act 2000 on mainstream support for learning. Essentially, I am asking that additional support be put into the planning process for educational provision. Amendment 164 requires education to be planned with additional support needs in mind.

I move amendment 164.

Lord James Douglas-Hamilton: I wonder whether the minister might be able to take amendment 164 away and examine it in consultation with the teachers' unions. We are probably all familiar with the argument that teachers should not have too much bureaucracy and paperwork thrust on them. It would be helpful to know whether amendment 164 would introduce obligations that could be easily met without imposing undue burdens on teachers.

Euan Robson: The Executive resists amendment 164 because, with respect to Mr Ingram, we believe that it serves no particular purpose. It is implicit that education authorities and schools will take account of the new duties introduced by the bill—particularly the duty under section 3(1)—when meeting obligations that they have outwith the bill, for example in drawing up and reviewing improvement and development plans. We have an inspectorate that will ensure that that will happen To address Lord James's point directly, we believe that amendment 164 would lead to considerable bureaucracy—for want of a better phrase.

Under section 22, education authorities must publish information about their policies and arrangements for providing additional support needs. In addition, I think I made it clear at stage 1 that the Executive will look to send information through what is colloquially called the school bag drop if the bill receives royal assent.

I do not believe that amendment 164 is necessary. I hope that members will feel that section 22 covers the proposals in amendment 164.

Mr Ingram: On the basis of the minister's suggestion, I will not press amendment 164.

Amendment 164, by agreement, withdrawn.

Section 3, as amended, agreed to.

The Convener: That is a suitable point at which to conclude today's business.

I have two things to say before we depart. First, members can lodge amendments to the later sections of the bill—from section 4 onwards—until 2 pm on Monday 23 February. Those amendments will be the subject of our later discussions.

Secondly, I received a letter from the minister in the last day or so—I thought that it was sent to the clerk, but it was not—which deals with a number of the matters that he promised to come back to us on. The letter covers mediation and other such issues, which largely are dealt with later in the bill. Copies of the letter are available.

Mr Macintosh: I seek clarification. To which sections can amendments be lodged until 2 pm on 23 February?

The Convener: They can be lodged to any section from section 4 onwards. The information will be in the business bulletin, but amendments can be lodged to the sections that we have not dealt with. Sections 1 to 3 are finished with—end of story. Sections 4 onwards can be subject to amendment if you wish.

I thank committee members for their forbearance this morning in what has been a useful session. I also thank the minister and his officials.

Meeting closed at 12:43.

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