# EDUCATION COMMITTEE

Wednesday 25 February 2004
(*Morning*)

Session 2

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## Wednesday 25 February 2004



## EDUCATION COMMITTEE
**6th Meeting 2004, Session 2**

**CONVENER**

*Robert Brown (Glasgow) (LD)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

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

**COMMITTEE SUBSTITUTES**

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

*attended

**THE FOLLOWING ALSO ATTENDED:**

Donald Gorrie (Central Scotland) (LD)
Euan Robson (Deputy Minister for Education and Young People)

**CLERK TO THE COMMITTEE**

Martin Verity

**SENIOR ASSISTANT CLERK**

Irene Fleming

**ASSISTANT CLERK**

Ian Cowan

**LOCATION**

Committee Room 2

# Scottish Parliament

## Education Committee

*Wednesday 25 February 2004*

(*Morning*)

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

## Medical Standards (Scottish Executive Consultation)

**The Convener (Robert Brown):** Welcome to this meeting of the Education Committee. We are in public session and I ask people to ensure that their mobile phones and pagers are turned off.

There are two items on the agenda. Under the first item, we are invited to note or comment on the Executive's consultation paper on medical standards. The paper has come before us at a relatively early stage; that is helpful for members, who may have thoughts about it. Broadly speaking, the Executive proposes that the requirement for a medical examination before entry to teacher training courses and registration with the General Teaching Council for Scotland should be abandoned, for the reasons stated in the consultation paper. Following the consultation, a Scottish statutory instrument will be introduced to give effect to the proposal.

I would be interested in any comments the committee may have on the paper. We do not need to do anything with it, however, and there may be issues about whether we should get involved in consultations at this stage, rather than later on. Do members have any concerns about the proposal and the way in which it is going forward?

**Fiona Hyslop (Lothians) (SNP):** The proposal seems to make sense, particularly given concerns about disability discrimination. I can see a logic and consistency there. It would be better if we could consider it again once we have heard what other organisations have to say. Even if the proposal has been made with the best of intentions, my concern would probably be about the ramifications of the proposal, or what could be interpreted as a result of its implementation.

**Lord James Douglas-Hamilton (Lothians) (Con):** I would like to put a question to the minister.

**The Convener:** I am sorry. Although the minister is in the room, he is not here for agenda item 1; he is here for the next item. We are causing alarm and distress in ministerial circles.

**Lord James Douglas-Hamilton:** I am not hoping for an answer today. The query at the back of my mind concerns people with a mental instability. For example, a lecturer whom I knew had manic depression. At times he was a brilliant lecturer, but when manic depression overcame him, he could not cope. I wonder whether appropriate arrangements are in place to deal with people who have a considerable contribution to make, but who at certain times will not be able to perform. That needs to be taken into account.

**The Convener:** When people join the profession, such conditions are hardly likely to be revealed by medical examination. Would the matter not be dealt with in the context of disciplinary procedures during a person's career?

**Lord James Douglas-Hamilton:** There are several questions to be answered. My point is that I hope that the matter will be looked at because the protection of children's interests—not only their physical protection—is important.

**Rhona Brankin (Midlothian) (Lab):** The consultation is long overdue and I welcome it.

**The Convener:** I get the impression that there is no desire to do anything at the moment. As Fiona Hyslop said, we should await the responses to the consultation and pick up any issues that emerge later. Lord James's comments are valid and it might help our understanding of the matter if we got some idea from the Scottish Parliament information centre or from the minister about how the proposal might affect people during their careers.

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

09:51

**The Convener:** The second item is consideration of the Education (Additional Support for Learning) (Scotland) Bill at stage 2. We seem to have been considering the bill for ever, but this is only the second day of the stage 2 procedure. Members should have in front of them the bill, the second marshalled list of amendments and the draft groupings.

**Fiona Hyslop:** Is it possible to have a copy of the final groupings?

**The Convener:** Yes. My copy is entitled "Draft groupings", but it is the same as the others.

### Section 4—Children and young persons for whom education authority are responsible

*Amendment 5 not moved.*

**The Convener:** Amendment 99, in the name of Fiona Hyslop, is grouped with amendment 118.

**Fiona Hyslop:** Amendment 99 inserts text into section 4(1), which deals with the identification of children who have additional support needs. The amendment is in keeping with the bill's acknowledgement that children who do not have a co-ordinated support plan but who have additional support needs must be recognised. The need for amendment 99 is compounded by the amendments that the Executive moved at our previous meeting.

When the arrangements in section 4(1) are referred to, it would be helpful to emphasise the point by making a statement to indicate what, if any, additional support needs each child or young person has. That would cover the situation in which a child has an individualised educational programme or a personal learning plan. In some instances, an indication of those additional support needs might take up only half a page.

Any recognition of additional support needs, whatever they are, should be accompanied by a statement. The intention is not to be prescriptive as to where that statement must be made; the amendment just suggests that there needs to be a statement in some shape or form. Obviously, for some children, the statement will be in the form of the statutory co-ordinated support plan; for others it will be the individualised educational programme or personal learning plan. The amendment is deliberately non-prescriptive about where the statement should be made, but would simply provide that there must be a statement that indicates the support that a child needs or recognises that a child has no support needs. The amendment recognises how PLPs will evolve, without being prescriptive about that in the bill.

I move amendment 99.

**The Convener:** Amendment 118 was suggested by the Convention of Scottish Local Authorities. Although I am not thirled to the wording of the amendment, it raises a valid point about what happens if people do not co-operate with the arrangements for assessment. Normally, of course, people are good parents and do what is necessary to have their children's needs assessed and identified and to follow through on the issues that assessments raise, but from time to time parents with problems do not do what they ought to do. There is an issue about whether the authority has the proper powers to ensure that things happen in the best interests of the child. Identification and assessment represent a key area of the bill and it is important that we get the arrangements right and ensure that they are workable and practical on the ground. Amendment 118 is really a probing amendment and I would be interested to hear the minister's comments on the matter.

**Lord James Douglas-Hamilton:** Amendment 99 is a good amendment. The Executive has been unable, in parliamentary answers, to confirm the different types of conditions that are covered by records of needs but which will not be covered by CSPs. We need clarity about that—however brief.

In amendment 118, the convener has lodged an extremely good amendment, in every sense. Amendment 118 would make it absolutely clear that the most vulnerable people in the community should be properly looked after and that the neglect of those people should not be tolerated. I hope that, in his wisdom, the minister will agree to that well thought-out amendment.

**The Deputy Minister for Education and Young People (Euan Robson):** We have difficulties with amendment 99, because it would unintentionally create delays in the system and encourage bureaucracy. The impact of amendment 99 would be the requirement for a statutory statement to be made every time a need was identified. In effect, a piece of paper would be generated when any change occurred in a child's needs. As we know, additional support needs are often on a spectrum and change can be quite frequent, so quite a number of pieces of paper would be generated.

Amendment 99 also infers, but fails to specify, what would happen when a need ceased. There is a danger that outdated information might be extant by default. Any additional requirement to remove a

reference to a need would imply that another record would have to be created to show that the need had ceased, which would potentially double an already increased paper trail. For those reasons, we oppose the amendment and ask Fiona Hyslop to withdraw it.

I appreciate the points that have been made about amendment 118, but it would introduce a somewhat confrontational aspect to the bill. I understand the desire to repeat the provision in the Education (Scotland) Act 1980, but the system that we are creating with the bill sets a different context from that set under the 1980 act, under which the statutory set of assessments must be undertaken before a record of needs can be opened. The bill does not provide for a fixed set of assessments; a co-ordinated support plan can be prepared whenever the authority is satisfied that it is needed. In the unlikely event that co-operation from the parents or the child is not forthcoming, the authority should proceed on the information that is available. The code of practice will provide guidance to education authorities on such situations, and that guidance will include—this is important—the ability to make reference to the children's reporter.

Amendment 118 fails to set out an appeal procedure—short of court procedure—for bodies or individuals to contest a notice issued by a local authority. It could even be viewed as mildly intimidatory by parents, who would, if the amendment were agreed to, find themselves with a legal imposition, with only an expensive route of appeal open to them. A further, perhaps compelling, basis on which to reject the amendment involves the definition of "co-operate". What tests would be applied? How would it be defined? Finally, we are not aware of the use of the 1980 act to compel parents to co-operate.

For those reasons, we would suggest that the convener not move amendment 118.

10:00

**Fiona Hyslop:** I agree with Lord James that the convener's amendment 118, which was suggested to the committee by COSLA, makes sense. I think that the minister has got the wrong end of the stick, and that the purpose and intent of amendment 118 is not to force parents to comply, but to force those authorities and agencies that need to co-operate with the arrangements that are necessary to provide identification to do so. There has perhaps been a misunderstanding on the part of the Executive about the target of the amendment. I think that the target is not parents but agencies and organisations. In that case, a harsh line appears to have been taken, considering that we are seeking co-operation and that the whole ethos and intent of the bill is a result of the recognition that co-ordination between agencies is the fault line in the current system. I suggest that the Executive reflect on the interpretation of amendment 118 further.

The minister's main argument about my amendment 99 seems to be that it would create more pieces of paper. I am sorry, but pieces of paper are already going to be produced by the Executive. We know that IEPs currently exist for some children with additional support needs, and we know that it is the Executive's intention to have a PLP for every single child. It would be remiss of us to produce a bill that put duties on local authorities to recognise what the additional support needs were for any children, but which did not require any form of record of that.

We are not being prescriptive in any way. There is room for the Executive to say what should and should not be in the statement. It would seem strange if we recognised that many children had additional support needs without being prepared to put some sentences in either a PLP or an IEP in order to reflect that. The minister asked what would happen if the support needs no longer applied. The amendment covers that when it says:

"what, if any, additional support needs each child or young person has."

We know that PLPs should be regularly reviewed—the Executive said that in evidence—and that IEPs are regularly reviewed. We would expect that, if support needs did not continue, the record of them could easily be—and should be—removed from the statement.

**The Convener:** The question is, that amendment 99 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 99 disagreed to.*

**The Convener:** Amendment 68, in the name of the minister, is grouped with amendments 69, 165, 70, 8, 71, 72, 75, 79, 167, 80, 169, 170, 83, 84, 179, 91 to 93, 96, 96F, 96D, 96E, 96A and 232. If amendment 69 is agreed to, amendments 165, 70

and 8 cannot be called. If amendment 79 is agreed to, I cannot call amendment 167. If amendment 80 is agreed to, I cannot call amendments 169 and 170. If amendment 84 is agreed to, I cannot call amendment 179. If amendment 93 is agreed to, I cannot call amendment 60. That is because of pre-emption. Of course, members will have followed all that very closely; we will deal with matters as they arise.

**Euan Robson:** In order to explain amendments 68, 69, 71, 72, 75, 79, 80, 83, 84 and 91 to 93, I will start by explaining amendment 96, which is the main amendment to which they are all consequential.

There are two parts to amendment 96. The first seeks to facilitate accessibility with regard to requests that parents and young persons make under the bill, while the second seeks to promote openness and fairness. As members will probably recall, during stage 1 there was some discussion about the stipulation that requests to the education authority must be made in writing. It is right to say that, for some people who want to make such a request, the requirement that it be written could pose obvious difficulties. I therefore ask the committee to accept amendment 96, which allows requests to be made in writing or in other permanent forms. The bill is about recognising needs and amendment 96 recognises that people have different communication needs and allows for a widening of access to the education authority.

Furthermore, amendment 96 states that when an education authority decides not to comply with a request, it must inform the person who has made the request of the reasons for that decision and their ensuing rights. Those rights might include a right to use mediation services or dispute resolution services, or a right of appeal to the tribunal, depending on the circumstances.

It is important that we encourage accessibility; that is why amendment 96 suggests that requests may be made in alternative forms. It is also important that we encourage openness; that is why the education authority must provide reasons for its refusal of a request. We must encourage fairness; that is why the education authority should be obliged to tell people about their rights following a request. Amendment 96 works toward those ends.

Given that amendment 96 seeks to deal in one new section with making and responding to requests that are made under the bill, the other amendments that I mentioned seek to remove individual references in other sections. In that sense, they complement amendment 96.

I move amendment 68.

**The Convener:** It might be helpful to members to mention that amendment 96 is on page 25 of the marshalled list.

**Euan Robson:** Do you wish me to speak to the other amendments in the group?

**The Convener:** You can do that either at this stage or when you wind up.

**Euan Robson:** It might be more sensible to do that when I wind up.

**The Convener:** In that case, I ask Lord James Douglas-Hamilton to speak to amendments 165, 70, 8, 167, 169, 179, 96F, 96D, 232 and the other amendments in the group.

**Lord James Douglas-Hamilton:** I will start with two of the most important amendments that I have lodged—amendments 96F and 232, which appear on pages 25 and 27 of the marshalled list. Amendments 96F and 232 have been lodged on behalf of the Royal National Institute of the Blind Scotland. The basic intention behind the amendments is to make provision for the blind to be properly informed. We believe that the sections of the bill that are identified will have a discriminatory impact if they are not amended. At best, that is the result of imprecise drafting.

It is estimated that 180,000 people in Scotland—a number that is at least equal to the population of three parliamentary constituencies—suffer from serious and correctable sight loss. That figure is rising year on year, largely because of the aging population. Many other disabled citizens, such as those with dyslexia, physical or learning disabilities, or deafness, find it hard—if not impossible—to request information or services in writing or to read written information. In that connection, we believe that extra efforts should be made to keep those who are severely disabled through blindness properly informed.

As well as feeling that the drafting falls short of the founding principles of the Scottish Parliament, the RNIB doubts whether the sections referred to could be deemed compatible with articles 10 and 14 of the European convention on human rights as transposed into the Human Rights Act 1998, and they are certainly not in the spirit of the Disability Discrimination Act 1995.

**The Convener:** I draw your attention to subsection (1)(a)(ii) of the new section that amendment 96 would introduce, which mentions requests made in other forms having some degree of permanence.

**Lord James Douglas-Hamilton:** I wish to have a clear undertaking from the minister to examine the issue with a view to ensuring that the needs of the blind are fully and properly taken into account. The United Nations “Standard Rules on the Equalization of Opportunities for Persons with

Disabilities" say that

"Persons with disabilities … should have"

full access to information, diagnosis, rights and available services and

"Such information should be presented in forms accessible to persons with disabilities."

I look forward to the minister's reply to amendments 96F and 232 in due course.

I lodged amendments 165, 169 and 179 on behalf of Independent Special Education Advice (Scotland), which is a charity that gives a great deal of unselfish service to parents. It is only fair that children and parents who make a request should be told in writing why their request was turned down. It is also appropriate to tell them in writing if an authority refuses to comply with an assessment request. It follows that if a request for a review of a co-ordinated support plan is turned down, the person who made that request should be told of the decision in writing and given reasons for it. In conjunction with the minister's amendment 96, amendment 96D would introduce the same requirement to turn down requests in writing.

Amendment 70 would require a person who requested independent advocacy services to be informed if the authority did not comply with their request. Similarly, amendment 8 was lodged on behalf of a parent who believes that it is highly desirable for a person who makes a request to know of the existence of mediation services and how to contact local providers.

Amendment 167 would remove the requirement that a request must contain a statement of reasons for the request. Some people in Scotland cannot read or write. We should bend over backwards to be fair to the most disadvantaged in our community. If that means that the local authority takes some of the strain, so be it.

I lodged those amendments as a matter of common sense and with the hope of ensuring that those who are involved are motivated by considerations of fairness and professionalism at all times. The amendments would keep parents well informed and satisfied.

**Ms Rosemary Byrne (South of Scotland) (SSP):** I am happy not to move amendment 170, in favour of Lord James Douglas-Hamilton's amendment 169. The main aim is to ensure that people receive feedback and understand what is happening if their requests are refused. I am also happy not to move amendment 96E, in favour of Lord James's amendment 96D, for the same reason.

**The Convener:** That is helpful. I call Fiona Hyslop to speak to amendment 96A.

**Fiona Hyslop:** I will start by speaking to the other amendments in the group. The Executive has made steps forward in recognising that prescribing what should be in writing does not help communications among all parties. We will probably have to return to the subject at stage 3 once we have seen what we are left with. I appreciate Lord James Douglas-Hamilton's argument that we should not prescribe what should be in writing. To be fair, I think that the Executive has recognised that in amendment 96. However, if we acknowledge that many people have difficulties with writing, I am confused about the arguments for Lord James's other amendments to require replies to be in writing.

We probably all have the same aim of trying not to prescribe in the bill what should be in writing, because other forms of communication are available. I would like the intentions behind Lord James's amendments, which are to ensure accountability and feedback and not to be too prescriptive in the bill about writing, to be reflected in what the Executive is trying to do with amendment 96.

I hope to hear the minister confirm that other forms of communication are suitable for some people. One of the striking things that we found when we visited the school in Glasgow was the number of children with additional support needs whose parents have some form of disability. That should inform the way in which we treat the matter.

We are trying to achieve the same thing; I am not convinced that Lord James's amendments are the right way of proceeding, although they are well intended and, if they were redrafted along the lines of amendment 96, they might achieve our aim. I am interested to hear responses from other members of the committee.

My amendment 96A is not about what is in writing and what is not. It recognises that we need to expand the right to information, regardless of what form that information is in, to cover more people. Under the bill as introduced, as the minister has recognised by lodging amendment 96, the group of people who have the right to information and the right to appeal is narrow. I want to expand that, so that everyone who has the right to appeal has access to the information that they require. That is an issue of natural justice, apart from anything else.

10:15

**The Convener:** The process is complicated because of the substantial amendments and their consequences. I would certainly appreciate some clarity from the minister on the intention of subsection (2) of the new section that amendment

96 would add. It does not state that the decision, like the request, may be given in writing or in another form.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I greatly welcome the minister's comments on amendment 96, although there are still issues to clarify. The gist of his comments was that statements should be given in writing or in another accessible format and that nobody should be excluded. Much as I have sympathy with Lord James's comments, I seek clarification that that is the exact intention and effect of the Executive's amendment.

On the advantage of having statements in writing at different stages, I am sure that we, as MSPs, know that phone calls and other forms of communication can be misconstrued and misinterpreted. There is less room for oversight and misinterpretation when things are in writing. I am slightly concerned that, although amendment 96 places an obligation on parents and others to put requests in writing or in another form that has some permanence, there is no concomitant obligation on the authority when it informs parents of its decision. It strikes me that that is one sided and unfair; I have lodged an amendment on that subject.

If one hears a piece of bad news, the details and explanation that surround it are often lost or not remembered accurately—that is commonplace. In such cases, it is important to have a permanent written record to refer to. Parents might miss the importance of a decision if that decision is not recorded in a permanent form. Although I am keen to support the Executive's amendment, we must reflect on the principle of the amendments that have been lodged by Lord James and Fiona Hyslop.

Amendment 70, in the name of Lord James, is a consequential amendment on the proposals on advocacy. The principle of advocacy is important and we have discussed it on many occasions. To me, it implies not an adversarial approach but a form of support for parents. We all know that parents and young people need support throughout the system. It is a common experience for parents to go into meetings surrounded by groups of professionals and to feel outgunned, isolated and alone. Advocacy is an important support that needs to be provided.

I am sorry if I am rehearsing arguments that we will consider later but, if we do not support the idea of providing legal aid at tribunal stage, it is extremely important that, at the very least, parents should have access to advocacy or other support at that stage. Under the record of needs system, a named person was able to give the sort of support that could be available through an advocacy service. That facility was not accessed by everyone, but it was a valuable part of the record of needs system and does not seem to have been replaced. We have argued that advocacy does not necessarily negate mediation or the non-confrontational approach associated with that. However, it is important that advocacy is supported. Although I have concerns about amendment 70, the principle behind it is a good one.

**The Convener:** I agree.

**Dr Elaine Murray (Dumfries) (Lab):** It would be helpful if members, in speaking to their amendments, indicated on which page of the marshalled list those amendments appear. I was conscious of shuffling papers around when I was trying to listen to what Lord James Douglas-Hamilton was saying. Given the way in which the amendments are laid out on the marshalled list—over 27 pages—it would be helpful if we were directed to the place where they appear, so that we can listen to what members are saying.

I think that amendment 96F is redundant, as subsection (1)(a)(ii) of the new section that amendment 96 introduces refers to

"another form which, by reason of its having some permanence, is capable of being used for subsequent reference (as, for example, an audio or video recording)".

That provision would deal with the concerns that the RNIB, the British Dyslexia Association and others have expressed. The other amendments are not necessary, however desirable or laudable their aim.

I wonder whether the Executive would be prepared to consider a further amendment to subsection (2) of the new section, which states that the education authority must

"inform the person who made the request of that decision".

Could consideration be given to indicating that that information should be provided in writing or some other form of permanent record, to ensure that parents get the information in a form to which they can refer back? That would balance the equation. Would the Executive be prepared to consider lodging an amendment of that type at stage 3?

**The Convener:** I invite the minister to respond. A couple of issues have arisen in the debate. In particular, the committee would appreciate guidance and an indication of the Executive's position on issues relating to amendment 70 and to subsection (2) of the new section that would be inserted by amendment 96.

**Euan Robson:** I shall try to cover all the points that have been made.

We will consider the issue that Elaine Murray has just raised. I agree with her about the content of amendment 96, which covers the issues raised

in some of the other amendments that are before us.

I will try to split up the issues. We believe that amendments 165, 169, 179 and 96D are unnecessary. It will be expected of education authorities that when they respond to a request of this nature they should do so in writing. There is no reason to believe that they will not do so, especially as the decisions conveyed by such responses may be subject to appeal. We do not envisage that authorities will not respond in writing, so we do not think that amendments 165, 169, 179 and 96D are necessary.

I accept the principle that parents and young people should be advised of other avenues that are open to them and I recognise that amendment 70 is intended to ensure that that happens. However, I do not agree with the content of the amendment. As Ken Macintosh said, the amendment raises a number of issues that relate to the debate on amendment 90, which would amend section 15 of the bill. I will consider the points that have been made and consider them when we discuss amendment 90 and section 15. The situation is rather unfortunate—in effect, amendment 70 puts the cart before the horse. Amendment 96 addresses the point about providing information, which I have already covered. Therefore, we request that Lord James Douglas-Hamilton does not move amendment 70, on the understanding that we will return to the issue when we discuss section 15. Similarly, the intentions of amendment 8 are covered by amendment 96, so we ask him not to move that amendment, either.

We resist amendment 167 because we think that its effect would be obstructive to the process of assessing the child. We assume that the intention of the amendment is to relieve parents and make the task of requesting assessment much simpler, but there must be grounds for parents to make such requests and it would be best for those to be shared with the education authority, particularly if they relate to observations that are not apparent in school. That would also help the education authority to begin to determine the assessments that are required.

The education authority must also be able to determine where requests may be frivolous or vexatious, or where they duplicate a previous request. There may even be circumstances in which a request does not relate to the question whether or not a child has additional support needs. An education authority will be able to fulfil its duty with regard to the request only by asking that the request be submitted with reasons. The intention is not that the specification of reasons should be particularly extensive, but that it should give sufficient indication of why the request is being made. That is a fair requirement to make of the person who is making the request and, as the bill stands, it is a fair provision.

I am grateful to Rosemary Byrne for saying that she would not move amendments 170 and 96E and I understand the point that she has made.

Amendment 96F is unnecessary. I will deal with a point to which Lord James Douglas-Hamilton paid particular attention. Amendment 96 already recognises that people have different communication needs for different reasons—including as a result of a disability—and it allows for different formats to be submitted when a request is being made. Elaine Murray drew attention to that matter. The meaning of the phrase "in writing" includes large print, Braille and other means of writing, as well as other formats such as audio or video recordings. I want to make that clear to the committee, as it is important.

I resist amendment 96F and amendment 232, which seeks to define disability and is therefore unnecessary. If the reference to disability that amendment 96F seeks to insert is not made, there is no need to define disability in section 24. The only other reference in the bill to disability is in section 3(3A), in which a specific definition is given. I therefore ask Lord James Douglas-Hamilton not to move amendments 96F and 232 on the basis of the assurances that have been given.

On amendment 96A, I am keen to ensure that, where a refusal of a request gives rise to a right of referral to the tribunal, that right is highlighted in any education authority response. I think that Fiona Hyslop made it clear that that is the intention behind amendment 96A, although it might be linked to amendments to extend the grounds of referral to the tribunal, which is a debate for a later day. I ask Fiona Hyslop not to move amendment 96A on the basis that I would like to consider the necessary and appropriate wording and the implications of that wording. I will come back on the matter at a later date.

I think that I have covered matters. I think that Fiona Hyslop said that we are not far apart. Once amendments have been agreed to and disagreed to and we have a revised text of the bill, we will be able to see more clearly where there must be further explanation or tidying up. I am prepared to consider that in the spirit of what members have said.

**The Convener:** That is helpful.

**Lord James Douglas-Hamilton:** Will I be allowed to come back on what has been said?

**The Convener:** No, because amendment 68 is the minister's amendment. You would be able to say something only in certain circumstances—for

example, if your amendment was the lead amendment.

*Amendment 68 agreed to.*

*Amendment 6 not moved.*

10:30

**The Convener:** Amendment 7, in the name of Lord James Douglas-Hamilton, is grouped with amendments 116, 11, 50 and 22.

**Lord James Douglas-Hamilton:** I lodged amendment 7 on behalf of a parent who wrote to me saying:

"neither I nor any of the parents of children with additional support needs that I know were aware of the initial consultations of this Bill."

He also said that the

"education committee should recognise that it is not legislating for authorities that generally follow good practice, but that in most respects it is legislating for those that do not."

Amendment 7 would strengthen the duty on local authorities by imposing an objective test and would remove the words "they consider", which yet again provide a get-out provision for any unreasonable authority. Having been a councillor, I am only too aware that local authorities are no more infallible than anyone else is.

Amendment 116 would strengthen duties further by ensuring that a local authority had to take into account the written findings of any process of assessment or examination of whether a child has additional support needs or requires a co-ordinated support plan. It would also make it clear that such an assessment must be undertaken by an appropriate person.

Amendments 11, 50 and 22 remove obvious get-out provisions for any local authority. Saying that an authority need not proceed if it considers doing so to be unreasonable is not an objective test and is not agreeable to many children and parents.

As I said, I lodged the amendments in the group on behalf of a parent who sent evidence to the committee. I have not mentioned his name, but he has given me permission to do so if I am pressed on that. His verdict is:

"I feel there remain fundamental weaknesses in the Bill, specifically regarding the potential for opt-out for any or all of the agencies."

The amendments would go a little way towards redressing the balance in favour of giving a fairer deal to children with additional support needs and to their parents, who are desperately worried on their behalf.

I move amendment 7.

**Mr Macintosh:** I had a similar amendment to the amendments in the group and the convener has similar amendments coming up. The matter was pushed to a vote, which was lost—I voted against my amendment—but the argument is strong and I hope that the Executive will consider it further.

Lord James Douglas-Hamilton stated the argument well, but perhaps he overstated it. We should not make legislation with the expectation of bad authorities. A balance must be struck between parental rights and authorities' responsibility to fulfil their duties. In this case, subjective criteria are undoubtedly being applied. That could reintroduce postcode inequality, which we are trying to avoid with the bill.

For those reasons and for consistency—as I said at our previous meeting, the Executive does not use the phrase "they consider" in section 1(3)(b), which uses the words "is appropriate"—we should review the bill to achieve consistency throughout and a more appropriate balance between parents' rights and local authorities' responsibilities. Subjective criteria should be removed.

**Fiona Hyslop:** The debate is central to the bill and Lord James Douglas-Hamilton has made some valid points. Amendment 116 would create the right to a valid independent assessment. That central issue must be considered.

The points that Ken Macintosh made at our previous meeting hold true. Unfortunately, the whole committee should have expressed those views more strongly at that time. However, we have the opportunity to do so now, especially with amendments 7, 116 and 11.

I would be interested to have a legal explanation from the minister of the technical differences between a reasonable request and a request that is considered to be reasonable. The drafting inconsistencies in the bill should be addressed.

I support amendments 7, 116 and 11. Amendments 50 and 22 might be subject to technical interpretation and I am interested in the minister's response to them.

**Ms Byrne:** Amendment 116 is helpful. It would clarify the situation for many parents who have expressed concerns and it would make the system much fairer. Part of the problem with the bill is the inequality that runs through it. The committee needs to scrutinise the bill carefully. I hope that we support amendment 116 and the other amendments in the group.

**Dr Murray:** I seek clarification from the minister on amendments 7 and 11. How would a parent test in law an authority's decision that their request was unreasonable? Appropriateness and

reasonableness have legal definitions in other acts. Will the minister clarify what those concepts mean here, in relation to protection and challenging the authority's decision?

**The Convener:** I agree about the importance of the objective test in such situations. It seems to me, for the reasons given by Ken Macintosh and others, that it is unsatisfactory for the test to be entirely at the authority's discretion. There is some validity in amendment 116, but I wonder whether what it deals with is a matter for the code of practice. We are talking about the procedure for the identification of assessment. It is difficult to phrase all the ins and outs of that important issue in statute, but it is important to take on board the amendment's central point that people can get reports at their own hand and that such reports should not be dismissed out of hand—there should be a procedure under which it is necessary for the authority to take those reports into account.

**Euan Robson:** As has been said, amendments 7, 50 and 22 are similar in intent to previous amendments lodged by the convener and Ken Macintosh with regard to removing the element of subjectivity. Amendments 7 and 50 are on the test of reasonableness of a request under sections 4 and 6 respectively and amendment 22 relates to the provision on requests for an early review of a co-ordinated support plan in section 8. We have carefully considered the debate that we had at the previous meeting and the effect of the three amendments. As I am advised that the education authority will still be accountable for such decisions, I am minded to agree to amendments 7, 50 and 22. As the convener rightly mentioned, the code of practice will be used to give guidance on the matter. I hope that that is helpful.

Amendment 116 is slightly different; I will go through it carefully. We think that the amendment is unnecessary. When a person makes a request, they have to submit their reasons for doing so and that does not preclude them from submitting whatever information they want to submit. As public bodies, education authorities must act reasonably and they could not operate a blanket policy to ignore such inclusions. Furthermore, as I mentioned at the previous meeting, Her Majesty's Inspectorate of Education will ensure that they do not do so—that is an important point. The amendment presents a difficulty in that it does not determine what is meant by appropriateness or who such appropriate persons are. Finally, we think that specifying that written materials must be considered might lead to the exclusion of unwritten evidence from the process, which would create considerable problems.

I strongly resist amendment 11, because it would impose a blanket duty on education authorities to comply every time someone—no matter who they are or what their relationship to the child or young person is—brings to its attention the need for the child or young person to have their additional support needs established or considered for a co-ordinated support plan. That would mean that a neighbour could contact the education authority and the authority would have a duty to assess the child. The amendment would remove any element of discretion from education authorities, even where the act of bringing a child to its attention was vexatious or where there was duplication. In addition, the amendment would be at odds with section 4(2), which allows the authority to consider whether a request from a parent or young person is unreasonable. For those reasons, I ask Lord James Douglas-Hamilton not to move amendment 11.

**Lord James Douglas-Hamilton:** I thank the minister for agreeing to the principle of amendments 7, 50 and 22.

**Euan Robson:** We accept it.

**Lord James Douglas-Hamilton:** I am grateful to the minister for that, which means that amendments 7, 50 and 22 will not need to be pressed.

**The Convener:** I think that it is the other way round.

**Lord James Douglas-Hamilton:** So the minister will not come back with other drafting.

**Euan Robson:** To clarify, convener, I accept amendments 7, 50 and 22 as lodged and ask the committee to agree to them. In the same token, I should perhaps have said that we will also get back to Lord James Douglas-Hamilton and Ken Macintosh at stage 3.

**Lord James Douglas-Hamilton:** In that case, I am even more grateful. I always thought that there was a presumption that parliamentary draftsmen for the Administration were better at drafting than we were. I am grateful to the minister. What he has said is a great help.

As Ken Macintosh stated, there is a balance to be struck between parental rights and the powers of local authorities. The danger with the bill is of the balance moving away from parents and in practice giving greater discretion to local authorities, so there needs to be an objective test in the bill.

I will not press amendment 11, which leaves only one amendment—amendment 116—that the minister is not accepting. I will state why I would like the minister to examine the issue before stage 3. To give a current topical example, anyone who has seen the film "Lorenzo's Oil" will be aware that the greatest experts do not necessarily get things right about a child's medical condition. In that instance, the mother eventually did. The moral is

that, when there is something wrong with the child that should be taken into account, the local authority should be under a moral obligation to act. If the minister could agree, not necessarily with the commitment, but to examine the issue before stage 3, I would be content.

*Amendment 7 agreed to.*

**The Convener:** Lord James, do you intend to move amendment 116?

**Lord James Douglas-Hamilton:** I will not move amendment 116, in view of the minister's implicit undertaking.

**The Convener:** I think that you are referring to the minister's nod at an earlier stage.

*Amendment 116 not moved.*

**The Convener:** Amendment 117, in the name of Scott Barrie, is grouped with amendments 119, 120, 128 to 131, 134, 137, 142, 145, 147, 149, 96B, 96C and 153. Scott Barrie is not here this morning, but Ken Macintosh will move amendment 117 and speak to the amendments in the group.

**Mr Macintosh:** I apologise on behalf of Scott Barrie, who is on another committee and cannot be here. I also apologise in advance for the brevity of my remarks. I do not feel that I am in a position to do justice to Scott Barrie's amendments 119, 120, 128 to 131, 134, 142, 145, 147, 149, 96B, 96C and 153, but I support the thrust of what he is saying.

First, under the Standards in Scotland's Schools etc Act 2000, we established the principle that a child with capacity should be not only involved in decisions affecting their future, but able to initiate the process by which those decisions are arrived at. It is clear to me and to the committee that many children who need additional support are still capable of understanding the process. I am sure that we can think of many examples of that, such as children with cerebral palsy or dyslexia. There is no contradiction between capacity and additional support. Although the principle is contained in the Standards in Scotland's Schools etc Act 2000, it is necessary to restate the message in the bill; if we do not do that, we are in danger of, at the very least, being condescending towards children with additional support needs.

Secondly, in the bill, when we talk about capacity we do not talk about it in those terms; we talk about children who are "incapable", which is a pejorative term, and we use a deficit model. For those reasons, we should at the very least revisit the terminology that we use. Instead of defining incapable children, we should talk about children with capacity.

I move amendment 117.

10:45

**The Convener:** That was a very comprehensive survey, notwithstanding the limitations that you mentioned.

**Fiona Hyslop:** Amendment 137 is similar to Scott Barrie's amendment 117, which I support. The committee's stage 1 report made it clear that we wanted to address such matters. A theme that has emerged is the importance of legislation being consistent and of pejorative terms being removed. The simplicity of Scott Barrie's amendments will make it easier for the committee to agree to them.

**Lord James Douglas-Hamilton:** Scott Barrie's amendments are of great interest, and they look altogether reasonable. However, they raise the point that if the child does not have capacity, not only should the child's parents be able to act, but surely another person should be able to act in loco parentis. There is a case for the Administration to consider the matter carefully with a view to lodging an appropriate amendment at stage 3. The child's interests must be taken into account and the child should be able to speak for himself or herself, if they have capacity to do so. I hope that the minister will consider the matter. Fiona Hyslop's amendment 137 is similar to Scott Barrie's amendment 117. There would be consequential effects in the bill if the minister takes such points on board.

I have some sympathy with Scott Barrie's proposal in amendments 96B and 96C. Amendment 96C states:

"Where the request was made by a child and it would be contrary to the child's best interests to be given the reasons for the decision in relation to the request, or any other information connected with the decision, an education authority must give reasons for the decision to the child's parents instead of the child."

I am familiar with a case in which the child's life expectancy was extremely limited. In such cases, it might not be in the child's best interest to cause that child unnecessary distress. Scott Barrie may have had other considerations in mind, but the key principle is that the child's interests must be paramount. His amendments seem to be altogether reasonable and I hope that the minister will carefully consider all the amendments.

**Dr Murray:** I have considerable sympathy with Scott Barrie's amendments. I know that there are arguments relating to the complexity of the decisions that might have to be taken by the child, but I would think that, to some extent, those would be covered by the term "capacity" because, if a decision is too complex for a child to take, the child would surely not have capacity to take that decision. Therefore, I am not completely convinced by such arguments.

A problem with wording might arise if we agree to Scott Barrie's amendments, with which, as I said, I have considerable sympathy. Ken Macintosh talked about how we express ourselves. The amendments refer to a child having capacity, but section 4(3)(b) refers to a young person being "incapable". There would be drafting differences with respect to the treatment of children and young people, which would have to be addressed later.

Lord James Douglas-Hamilton spoke about parents and whether the term "parent" includes carers and foster carers. Perhaps the minister can clarify whether the definition of "parent" at the end of the bill relates to the Education (Scotland) Act 1980; I understand that "parent" in the 1980 act includes carers, foster carers and other people acting in loco parentis.

**The Convener:** We argued about that matter at stage 1 and I think that we reached that conclusion about the definition of "parent". I sympathise with what members have said. There are issues relating to capacity and consistency with other expressions. Like Elaine Murray, I am not altogether persuaded by the argument that the matter is too complex—I think that it can be dealt with.

The presumption must be that we deal with such matters in the light of other arrangements about capacity. Capacity was dealt with in the Age of Legal Capacity (Scotland) Act 1991, as well as in the Children (Scotland) Act 1995, on the basis that people above a certain age have the ability to deal with all sorts of complicated issues. The matter that we are discussing is one such issue, which is of interest as well as of some importance. A child will sometimes have a contrary interest to that of its parent—not often perhaps, but that will certainly happen from time to time.

It probably does not make much difference to the reality of the situation, but the language in the bill must be made less derogatory. Derogatory is probably too strong a word, but the language must be less unsatisfactory with regard to the incapable child. The phraseology is not helpful—perhaps the language of the legal definitions makes it appear that way—and it has been the subject of objection by almost all the groups that have an interest. I would be happy if the minister could assure the committee that those matters will be considered by the Executive between now and stage 3, with a view to those rather complex issues, which are not as simple as Fiona Hyslop suggests, being tidied up in a more satisfactory way.

**Euan Robson:** Elaine Murray asked about the definition of "parent" in the 1980 act—it includes carers and foster parents. We will consider the convener's point about some of the language in the bill before stage 3; the point is well made.

Some of the arguments are finely balanced, as the committee rightly suspects; that has been the flavour of the debate. I understand fully the intent behind Scott Barrie's amendments and I recognise, not only from my discussions with him but from the debate, why he has proposed them. However, I am not entirely convinced that placing full responsibility for decision making on a child is the best route forward. Giving a child that level of responsibility would be onerous in some circumstances. The burden of having to consider their many options and reach a conclusion on something as important as their education would place unnecessary pressure on a child.

The point about the Standards in Scotland's Schools etc Act 2000, from my recollection, is that the child is choosing between what one might describe as two concrete choices—placement in one school or in another. In relation to this bill, we are talking about dealing with a changing range of abstract concepts because, as we know, needs change. There is a difference in the level of difficulty.

I emphasise that we are not saying that children should not be involved in decision making about their education. The new legislation encourages the participation of children in decisions about their education and children will be given the opportunity to express their views and to have them taken into account. It is important that children are given a voice and that that voice is listened to. Education authorities have a duty to have due regard to the views of children in decisions that affect them significantly, while taking account of the individual's age and maturity. The bill further promotes involving children in the decision-making process; I draw members' attention to section 10 in particular. If we deal with that section today, we will see that point in more detail.

Furthermore, it is our intention that children will have the right to attend the tribunal hearing and will be able to give evidence to the tribunals should they so wish. The approach that we have taken in the bill is in line with article 12 of the UN Convention on the Rights of the Child. The purpose of article 12 is to ensure that children have a voice in matters that affect them; it does not suggest that the child should take full responsibility for decision making. The responses from children and young people to the consultation on the draft bill reflected that view and influenced our developments in the area. It was clear that the children who were consulted felt strongly that they should be entitled to give their views and to be heard, but they did not state that they should be the primary decision makers.

It seems that the amendments would create a situation in which—the convener alluded to this—

there could be tensions between the rights of the parents and those of the child. The amendments do not stipulate whose right would prevail in the event that a parent and a child disagreed on a matter. That could be a very significant point. Conflicting appeals, for example, would be particularly difficult.

There would also be difficulty in sharing sensitive information. Scott Barrie recognises that point in amendment 96C, but it would apply not only to decisions about requests—it would apply throughout. Any information that affected a child's additional support needs, and which was deemed too sensitive or not in the child's best interests to know, could compromise the effect that the amendments intend to achieve.

Children's rights are a much wider issue than is covered by the bill. I do not think that the bill is the right vehicle to address the issue per se, since it does not concern all children but only those with additional needs.

The bill as it stands ensures that rights for children with additional support needs are consistent with those for children who do not have additional support needs. If the amendments were accepted, there would almost be two different types of rights. Most important, the bill ensures that children are able to give their views and that their views are listened to.

We will take away the amendments and look at them carefully. I have made it clear in the past that, in doing that, I am not saying that we will come back with a conclusion in favour of the amendments. However, we will have further discussion on them because they raise interesting issues and some finely balanced judgments have to be made. We will take account of what members have said and if we come to the conclusion that we will not lodge any amendments at stage 3, we will let members know in advance so that they can lodge their own amendments and we can return to the debate in the full chamber.

I ask Ken Macintosh, on behalf of Scott Barrie, to withdraw amendment 117 and not to move the other amendments.

**Mr Macintosh:** I thank the minister for his remarks. I listened carefully to his comments and I am not persuaded by some of the arguments. It is certainly not the intention behind the amendments to place an onerous burden on children, nor do I think that the amendments single out the child as the primary decision maker. That interpretation of the amendments is wrong and I cannot see how the minister could read them to suggest that that is the case.

If a situation is created in which a child and a parent disagree, the situation can be dealt with; it is still up to the education authority or the tribunal to make the decision. The child's view should be taken into account in the process, no matter what. There may be other situations in which a child's views are taken into account—they should certainly be taken into account whether or not they disagree with their parent's views. The fact that a child may disagree with a parent is no reason not to accept the amendments.

I am fundamentally concerned about the minister's opening argument that some ideas are too complex for children to grasp. He is suggesting that the complexity of the ideas can be grasped by an adult, but not by a child. That is not the case. We all have different abilities. Many adults have difficulty in grasping certain concepts, but there are many very able children who can grasp them. Children have rights to be consulted and, in this case, to initiate action. I disagree fundamentally with the idea that the complexity of the issue means that children should be disbarred from having a key stake or a key role in the process.

Having said all that, I am in a difficult situation as the amendments are not mine. I accept that the minister has agreed to address the use of pejorative terminology and to try to address the issue of how we deal with children with capacity. Although there have been no guarantees, Scott Barrie will be able, if I do not press amendment 117, to move all the amendments at stage 3 if he is not happy with the Executive's position. Therefore, I will ask the committee to agree to amendment 117 being withdrawn.

*Amendment 117, by agreement, withdrawn.*

11:00

**The Convener:** Amendment 69 has been debated with amendment 68. I remind members that amendment 69, if it is agreed to, will pre-empt amendments 165, 70 and 8.

*Amendment 69 moved—[Euan Robson]—and agreed to.*

*Amendments 9 to 11 and 118 not moved.*

*Section 4, as amended, agreed to.*

**Section 5—Other children and young persons**

*Amendment 71 moved—[Euan Robson]—and agreed to.*

*Amendments 12 and 119 not moved.*

*Amendment 72 moved—[Euan Robson]—and agreed to.*

*Amendments 13 and 120 not moved.*

*Section 5, as amended, agreed to.*

**Section 6—Assessments and examinations**

**The Convener:** Amendment 73 is grouped with amendments 74 and 76 to 78.

**Euan Robson:** I lodged amendment 73 in order to extend the rights of parents and young people to request a particular type of assessment, which has always been the policy intention. The importance of allowing parents and young people a degree of freedom in specifying a particular type of assessment was emphasised during consultation on the draft bill.

According to the bill as introduced, however, parents and young people can go on to request a particular type of assessment only if they themselves had made an initial request for the education authority to establish additional support needs or eligibility for a CSP. In cases where, according to the bill as introduced, the education authority has initiated the process, there is no right for parents and young people subsequently to request a particular type of assessment. Such a right should obviously be granted to them. Amendment 73, and the consequential amendments 74, 76, 77 and 78, follow through on the policy intention that informed section 6.

I move amendment 73.

*Amendment 73 agreed to.*

*Amendments 74 to 77 moved—[Euan Robson]—and agreed to.*

**The Convener:** Amendment 166, in the name of Lord James Douglas-Hamilton, is grouped with amendments 168, 122 to 125, 171, 127, 172 and 152. If amendment 123 is agreed to, amendments 124 and 125 will be pre-empted.

**Lord James Douglas-Hamilton:** Amendments 166, 168, 123, 125, 171, 127 and 172 are enabling provisions and have exactly the same theme. It is right to ensure that an assessment takes into account other factors and applies tests, because examination by itself might provide merely a superficial overview of a child's needs. Parents must have the right to request an assessment and/or an examination, as they deem appropriate, or a combination of educational, psychological or medical assessments or examinations as appropriate. I point out that I am speaking to amendments 166, 168, 171 and 172 on behalf of Independent Special Education Advice (Scotland).

Parents need to be able to request an assessment and/or examination from educational, psychological and medical personnel. Medical personnel would give the diagnosis and should include, if necessary and depending on the circumstances, a specialist therapy assessment report from speech and language therapists, physiotherapists, occupational therapists or whoever. The educational psychology assessment will establish the intelligence quotient and true potential of the child or young person. As both disciplines have different functions, children should have access to both and not have to choose between them.

I support amendments 123 and 152 in the name of Rosemary Byrne. They were recommended by the National Autistic Society on the ground that a process of assessment or examination should be carried out by appropriately qualified professionals. I do not think that amendment 125, which suggests that it is appropriate for the education authority to consult the person making the request, is unreasonable.

I also support amendment 127, in the name of Donald Gorrie, which has also been recommended by the National Autistic Society. It seeks to ensure that multidisciplinary assessment or examination should include educational, psychological and medical elements unless the person who makes the request specifies that one or more of those elements should not be included. Such a request appears to be entirely reasonable, especially in cases that involve autism. It would mean that the local authority would have to take action unless the parents considered it to be unnecessary.

I move amendment 166.

**The Convener:** I will speak to amendments 122 and 124 and the other amendments in the group. I said earlier that the process of assessment and examination was one of the most important elements of the bill to get right. Although I am perfectly satisfied that the bill need not specify everything in that respect, the matter raises a number of questions that Lord James Douglas-Hamilton touched on. That said, I do not support the amendments to which Lord James spoke. They are too prescriptive and would perhaps move the balance too much against local authorities which will, after all, have been initiating rights in that regard.

Amendment 122 seeks to ensure that the assessment procedure is stimulated not just by a request from a parent. In most cases, it might happen more automatically through action that is initiated by the education authority. However, it does not follow that the parent should not have greater involvement in the process, such as section 6 seeks to secure. Although the wording of the amendment might or might not be correct, it suggests that we need to consider assessments more broadly, not just those that are stimulated by the parent under the formal request provision.

The intention behind amendment 124 is not entirely dissimilar to that which is behind amendment 122, in that it seeks to widen the range of issues that must be considered. For

example, it seeks to bring into consideration not only the person in question but the means by which an investigation should be carried out.

The difficulty is that we are trying to include a wide range of different situations in one go. Some people's conditions will be identified early and given a label; however, others will require more complicated psychological assessments to identify the problems, some of which may be multifaceted. Most such issues will have to be dealt with in consultation on the code of practice, but we need reassurance from the minister on the process that local authorities will have to go through.

I have some sympathy for some of the other amendments and I understand the reasoning behind them, but I feel that they are a little prescriptive about what local authorities would be required to do: they would not fit all circumstances.

**Ms Byrne:** As Lord James said, amendments have been lodged at the request of the National Autistic Society. I think that everyone knows of my concerns about ensuring that correct assessments are carried out by appropriate people and that parents are listened to. I believe that most parents know better than professionals when something is not right and needs to be assessed. With amendments 123 and 152, I seek to ensure that the correct professionals are involved.

In some areas, there is a dearth of appropriate clinical psychologists, who are the experts in, for example, autistic spectrum disorder. In some areas, speech and language therapists, who also have expertise in that area, are thin on the ground. It is incumbent on us to ensure that assessments and examinations are excellent so that appropriate identification is made, which will allow appropriate planning to be made for, and will allow appropriate monitoring of, young people. If identification is not correct, it will not matter what planning is made because it will not be appropriate.

This is a key issue and I hope that Lord James's amendments will also be accepted. They are in the same spirit as amendments 123 and 152, and seek to tighten things up so that parents do not go round the houses trying to get assessments when they have a gut feeling. Sometimes teachers, too, can feel that something is not right, but no appropriate assessment is made because the correct professionals are not there to make the assessment. We need to tighten up the bill, rather than have such matters in the code of practice. I hope that committee members will agree to the amendments.

**The Convener:** I welcome Donald Gorrie to the committee. He has been sitting patiently through our other deliberations. I ask him to speak to amendment 127 and the other amendments in the group.

**Donald Gorrie (Central Scotland) (LD):** As Lord James said, amendment 127 endeavours to address points that have been raised by a number of organisations, in particular, by the National Autistic Society. The thrust of that society's request, which led to the amendment's being lodged, was that multidisciplinary assessments should be made. Section 6(5) of the bill says that reference to assessment or examination

"includes educational, psychological or medical assessment or examination."

Amendment 127 suggests replacing that phrase with

"relates to multi-disciplinary assessment"

and so on.

In any services, there is always a risk of professional fragmentation. It is important to ensure that all three relevant services are brought together. That is the first objective.

Secondly, there is the issue of whether parents or young people should opt into or out of a system. The amendment suggests that the norm would be the tripartite multidisciplinary assessment, but that parents or young people would have the right to opt out of all, or any part, of the assessment.

It seems to be a reasonable proposition that, rather than parents having to request each assessment—whether educational, psychological or medical—individually, their child should get the whole group but that, if they wished some aspect not to be considered they could, accordingly, request that. In this case, opting out is a sensible proposition. I am happy to speak to amendment 127 but, as an incomer to the committee, I am also happy to leave it to Lord James Douglas-Hamilton to decide, in the light of the whole picture, whether to press the amendment to a vote. Obviously, I do not have a vote.

11:15

**Rhona Brankin:** Donald Gorrie was not here during the committee's evidence taking. I understand that the overwhelming majority of the evidence and the consultation results suggested that the existing system of assessment was over-burdensome and that, in many cases, a medical assessment was not appropriate. The committee's discussion brought up the concerns of certain groups that represent children—notably, children with autistic spectrum disorder—whose occasionally difficult behaviour could be the result of an underlying condition.

Given that children have been diagnosed incorrectly in the past, even with multidisciplinary assessments, I would like the minister to reassure the parents of such children that the bill will ensure that assessment is of the highest quality and that

the conditions in question will be diagnosed accurately.

**Mr Macintosh:** I will speak specifically to amendments 122 to 124. I endorse the convener's remarks. I am not wedded to the specific wording that is proposed, although I inform the committee that I intended to lodge amendments that were the same as those which Lord James Douglas-Hamilton has lodged, because I think that the underlying issue needs to be addressed.

The wording of section 6(3) will give too much power and control to the education authority and does not even refer to the role of parents or children or their right to be consulted. The use of the term "education authority" is redundant because the education authority will be responsible for the process in any case. To include the term in section 6(3) will emphasise the centrality of the education authority's role and, by doing that, will to some extent exclude parental rights in the matter.

There is no doubt that assessment, diagnosis and examination can be very contentious; they are certainly important for children with additional needs. I can think of many examples of that. MSPs tend to get involved in additional support issues when the system has broken down. That can relate to resources or support that are available, or to placing requests, but very often it relates to assessment, diagnosis and examination. Without giving names, I can think of an example in which the parents feel that their child is likely to be diagnosed as being on the autistic spectrum. There has been no diagnosis yet, but the authority wishes to use a psychiatrist who has no expertise in that area but specialises in another area.

The fact is that assessment, diagnosis and examination are a matter of contention. It could be argued there should be systems in place to resolve such matters but, ultimately, it is the education authority that decides. It is probably for the code of practice to describe best practice. The fact that parents are not mentioned—indeed, they are excluded—from the provisions of section 6(3) will be to their detriment. Education authorities, however, are mentioned specifically, which is too one-sided. We have not struck the right balance between the two, albeit that it is a difficult balance to strike.

I am sympathetic to Rosemary Byrne's amendment 123. Indeed, I was going to suggest a similar amendment that would have included in section 18 a reference to the code of practice. We do not want to encourage a situation in which parents could shop around for a pet expert. We do not want them to go anywhere they can to get the person who will give them the diagnosis that they want. There is no doubt about the fact that a balance has to be struck.

I move on to comment on Donald Gorrie's amendment 127. The committee has looked at the importance of multidisciplinary assessments. Although the bill removes the compulsory element from assessments, it does nothing to take away from the multidisciplinary element, which continues to be implicit in the system.

Given that the substance of Donald Gorrie's amendment 127 concerns professional practice, we should consider including its provisions in the code of practice rather than in the bill, because there is a danger that it could quite easily become outdated. I echo my colleague Rhona Brankin's point about opting in and opting out, which we debated previously and concluded that we were happy with the current system.

**Dr Murray:** I have two or three points to make. The first relates to Donald Gorrie's amendment 127. Like my colleagues, I do not support it because it could result in young people being subjected to unnecessary assessment. If a parent did not know that they could opt out of the assessment, the child would be subjected to an unnecessary and intrusive assessment.

I seek guidance either from the minister or the bill team about the legal meaning of the word "or". We had some debate about its meaning when we looked at section 2. In the definition of eligibility for the comprehensive support plan, is the use of the word "or" inclusive or exclusive? Does "assessment or examination" mean one or other or does it mean both? The answer to that question is central to whether Lord James Douglas-Hamilton's amendments are necessary.

**Fiona Hyslop:** The central issue lies in Lord James Douglas-Hamilton's amendment 125 and Donald Gorrie's amendment 127. It is true to say that the overwhelming body of evidence was that there should be an end to compulsory multidisciplinary assessments.

It was the professionals who gave evidence to the committee who expressed the view about the importance of assessments in allowing them to decide which assessments are necessary. Ken Macintosh reflected the debate well: a balance has to be struck. Again, at stage 1 we said that we wanted to see a general shift in the balance of power in the bill from local authorities and agencies towards parents. I ask Lord James Douglas-Hamilton to address that in his summing up.

Amendment 127 may be slightly misplaced. It assumes that there should be compulsory multidisciplinary assessments from which parents could opt out. I do not think that that is what is in the amendment. As I think the minister will reflect, the drafting of amendment 127 would allow a multidisciplinary assessment if the professionals

wished it. A fine line is involved and we have to ensure that we interpret it correctly.

The strongest evidence that we received on assessments came from the parents' group that we spoke to in committee room 1 and from parents who wrote to the committee. Parents who have gone through the system successfully, who got a record of needs and all the support that they need for their child, told us that other parents would not have been able to navigate the system as well as they had. We have to ensure that children are not missed. That is implicit in what we are trying to achieve.

I am open to the arguments that have been made for amendment 127: the opt-out makes sense. I am not sure, however, that the current drafting of amendment 127 would allow it to do that under the law.

**Euan Robson:** We will resist amendment 166 and consequential amendments 168 and 171. Amendment 166 makes explicit what is implicit in the bill. The process that is referred to in section 6(1)(b) may be a process of assessment or a process of examination or a mixture of both. I hope that that covers Elaine Murray's point—I think that Fiona Hyslop made a similar point. The bill is deliberately not prescriptive in that regard. It has never been the policy intention that the terms "assessment" and "examination" should be taken to be mutually exclusive and we do not believe that the drafting of the section implies that they are. The references to assessment and examination have not been defined specifically in the bill, other than to indicate that they include educational, psychological and medical assessments and examinations.

One of the principles of the bill is that the new system should be responsive to the individual needs of the child. That applies as much to the process of assessment as to the support that will be provided to meet those needs; the bill has been drafted to reflect that. That is a positive move away from the current system of formal assessments, which is the point that Rhona Brankin made. I repeat that the process that is referred to in section 6(1)(b) is flexible and allows for both assessment and examination. Therefore, amendment 166 and the consequential amendments are really not needed.

I turn to amendment 122, which I do not think is necessary. It appears to intend to stipulate that where assessments or examinations are used other than as a result of a successful request under section 6, the authority must use such a person as it thinks appropriate to carry out the assessment. That is an unnecessary stipulation. To turn the argument around, it is difficult to imagine an education authority's using an inappropriate person. In addition, if an authority systematically used inappropriate people, HMIE would pick that up quickly. More important is the fact that the effect of the amendment would be much wider than is intended. Insertion of the words "or otherwise" would take the provision beyond assessment requests to any process of assessment or examination, not just in relation to education, and would apply it to any child or young person, not just those for whom the education authority is responsible. I appreciate the points that the convener made but we will, for the reasons that I have outlined, resist amendment 122.

I turn to amendments 123 and 152. Again, I appreciate the intention behind Rosemary Byrne's amendment 123, but it is important that an education authority that is charged with identifying and addressing the needs of children who require additional support is allowed discretion as to who might be an appropriate person to assess those needs. Although qualifications are important and applicable, they should not be the sole factor that determines the appropriateness of professionals to carry out assessment or examination. Other factors will be considered, such as availability and experience that relates to young people. It is most unlikely that authorities would operate arrangements whereby an unqualified or inappropriately qualified individual would be responsible for assessing children's additional support needs. Again, HMIE would pick that up in inspections.

Amendment 152 intends that the code of practice include provision about

"appropriate persons to carry out a process of assessment or examination under section 6(1)(b), and the professional qualifications of such persons".

To set out all the professional qualifications of all those who might carry out the various types of assessments—which is what the amendment seeks—would be burdensome and possibly not even achievable. Given that additional support needs address a wide spectrum of needs, the range of professionals who might become involved in assessing children with additional support needs and the range of their qualifications could be extensive. I do not believe that amendment 152, like amendment 123, is necessary and I ask Rosemary Byrne not to move it.

Amendment 124, in the convener's name, attempts to clarify that a variety of assessment tools and techniques might be employed during assessments for additional support needs. I agree whole-heartedly that we need such flexibility. However, the amendment does not clarify the situation: it separates the person who is charged with undertaking an assessment from the means of assessment, yet the person whom the education authority charges with performing an

assessment should be responsible for the means by which they undertake that assessment and will be chosen by the education authority on that basis. For example, educational psychologists use their professional judgment to decide their approach to assessing a child or young person. That is right and proper and will bring to bear the accepted standards and practices of their profession. Therefore, the amendment is unnecessary, so I ask the convener not to move it.

11:30

As for amendment 125, I agree with Lord James Douglas-Hamilton that the views of the parent, young person and child are vital to the assessment and support process. We have included a provision that will ensure that the views of parents, children and young people are taken into account in the system. Section 10 says that authorities must take into account information that is submitted

"by or on behalf of the child or young person".

I am not convinced by Ken Macintosh's argument: we cannot include such a provision in every section. The appropriate place to put the provision is in section 10. However, I take the point that several members made about the code of practice, which will give guidance on encouraging and facilitating parents' participation. Amendment 125 would add a layer of bureaucracy and is unnecessary, so I ask Lord James not to move it.

Amendment 127 is interesting. What Fiona Hyslop said was correct and I agree with Donald Gorrie that multidisciplinary assessments may be important. I also agree that parents and young people should be entitled to give their views on the assessment process. However, amendment 127 represents a retrograde move. It is important that the bill says that assessments may include educational, psychological or medical elements, but it is not prescriptive about that. Other assessments, such as care assessments, may be requested and undertaken by the education authority when it is thought that such matters would have an impact on the child's learning. As Fiona Hyslop said, that flexibility was requested and supported during the consultation on the bill.

Amendment 127 harks back—if members will excuse the expression—to the 1980 act, which restricts the assessments that can be undertaken for the record of needs process to educational, psychological and medical assessments. It has never been our intention to do that in the bill. We want to move away from an inflexible system—we want the new system to be responsive to the individual child's needs and the bill has been drafted to achieve that. The bill's scope is wider than the amendment would allow for, so I ask the committee to reject the amendment.

Similar points can be made about amendment 172. I resist that amendment because it fails in its intention to allow flexibility in assessments. Instead, it would restrict the assessments to medical, psychological and educational assessments. The word "includes" in section 6(5) will ensure that other types of unspecified assessment—such as care assessments, which I mentioned—can be undertaken when they might reveal whether a child has additional support needs or requires a CSP. The greater flexibility in the bill is extremely important. The amendment would not improve the assessment process: it is well meant, but it would do the reverse by restricting the process. On that basis, I ask the committee to reject the amendment.

I hope that my response has covered as many of the issues as possible.

**Lord James Douglas-Hamilton:** I listened carefully to the minister. The principle that we stand for is that the most vulnerable people must be protected and properly cared for. Ken Macintosh correctly stated that the underlying issue needs to be addressed fully and that parental rights should not be excluded. The fact that parents are not mentioned is to their detriment, and there is a balance to be struck. The great worry throughout the bill is that local authorities could see it as an opportunity to lessen levels of support for certain categories of children who have additional support needs. I know that that is not the deputy minister's purpose—nor is it Peter Peacock's purpose—but it is a genuine worry among parents.

Donald Gorrie's amendment 127 is important and it would be helpful to have its wording in the bill. I listened carefully to what the minister said, and I think that it will be fair to the National Autistic Society and to Donald Gorrie if we do not press amendment 127 now but seek to return to the issue at stage 3. I believe that something needs to be done and that greater efforts should be made than were suggested by the minister's statement. I would like to leave open the option to return to the matter. As the minister said, the amendment could perhaps have been worded better—it may have been defectively drafted or even inadequately worded—but the point that it makes is valid and we should have the right to return to the subject at stage 3 because it is important to those who suffer from autism.

On Rosemary Byrne's amendment 123, I do not think that it is unreasonable to include in the bill "an appropriately qualified professional". In days past—20 years ago—one of my friends who wanted to be a parliamentary candidate was turned down by a constituency association on the ground that he was too professional.

**The Convener:** That may account for a lot.

**Lord James Douglas-Hamilton:** Happily, those days are long gone. To include a suitable description in the bill would do nobody any harm.

*Amendment 166, by agreement, withdrawn.*

*Amendment 50 moved—[Lord James Douglas-Hamilton]—and agreed to.*

*Amendment 78 moved—[Euan Robson]—and agreed to.*

**The Convener:** I propose that we take a five-minute break.

11:38

*Meeting suspended.*

11:48

*On resuming—*

**The Convener:** Amendment 121, in the name of Lord James Douglas-Hamilton, is grouped with amendment 126.

**Lord James Douglas-Hamilton:** The idea for amendment 121 came from the Scottish Human Services Trust. The meaning of new subsection (1A) in amendment 121 is that, when a child's parents or a young person has arranged for or undergone an independent assessment or examination by a relevant professional, the local authority must take into account the findings of such an assessment or examination. New subsection (1B) defines the nature of written findings.

Amendment 126 requires the authority to inform in writing the person who is making the request of the findings. It also requires the authority to take into account the written findings. That is straightforward professionalism. It is important that there should be written findings because, in a contentious case, the parent will need to know the reasons behind a decision before making an appeal. Also, a parent or young person can appeal only with a written document. The amendment supports high professional standards and operates as a safeguard for parents.

I move amendment 121.

**Mr Macintosh:** I understood that an authority was already obliged to take into account an independent assessment that a parent, child or family sought because they were unhappy with the assessment that they had received through the education or health authority. That is my understanding of the current record of needs system and of the bill. I would like the minister to clarify that point.

**Euan Robson:** Yes, that is provided for in section 10. I hope that that is helpful.

Despite Lord James's eloquence, we still find the drafting of amendment 121 unclear. I assume that its purpose is to require the education authority to take account of any previous assessments regarding additional support needs submitted by the parent on behalf of the child. The education authority has a duty to take account of any reports submitted by or on behalf of the child or young person as part of the process of establishing additional support needs under section 10. However, such an assessment report—which could be out of date, partial or misleading—should not form the whole basis of the education authority's assessment of the child. That would be inappropriate. The education authority is charged with responsibility for identifying the child's needs and, although it must not submit the child to any unnecessary duplication of assessment, it must undertake an accurate and thorough investigation in reaching any conclusions as to the needs of the child or young person and the appropriate way in which to meet those needs.

Further, amendment 121 fails to define what request it refers to—if it does not refer to an assessment request, what does it refer to?—and what it means by

"prima facie an appropriate person".

The amendment is unhelpful and unclear, and it relates to duties that have already been placed on education authorities. I ask Lord James to withdraw that amendment.

I ask the committee to reject amendment 126, as it would not help the education authority to assess the needs of the child. It adds nothing to the process and proposes that a parent who is dissatisfied with the authority's findings regarding an assessment may initiate another assessment process. It then proposes that the education authority must take account of those findings. Of course, there will be cases in which the outcome of the assessment is what parents expected it to be and there will be other cases in which it is not. We do not want to encourage a culture of counter-assessments in which reports that do not find in favour of the parents are automatically rejected. Including this amendment would run the risk of creating a cycle of assessments that would never end. That would not be helpful for the child, who would be subjected to those continuous assessments. The process must have an end point and the amendment would seem to preclude that.

As the committee knows, the bill includes ways in which any difference of opinion can be addressed, such as mediation and dispute

resolution procedures. I think that the provisions in section 10(2)(c) are sufficient to require the education authority to take account of any additional information that is supplied by parents. For those reasons, I hope that Lord James will be prepared not to move amendment 126.

**Lord James Douglas-Hamilton:** I would like to study in detail what the minister has said. The most important point is that, when there is a dispute involving a parent and a local authority, the parent needs to be given reasons in writing because, without that, the parent cannot effectively appeal. That is an extremely important safeguard. It might be that there are all sorts of drafting inadequacies, which the minister has highlighted, but the principle is that parents should be dealt with fairly by being given written reasons so that they can take the matter forward.

I accept what the minister says about the need for there to be an end point to any dispute. I am not concerned about the drafting, which might be inadequate, but I am concerned about the principle. If the minister is prepared to take that point away and consider it before stage 3, I will not press amendments 121 and 126.

**The Convener:** It is not usual to allow the minister to come back in at this stage.

**Lord James Douglas-Hamilton:** The minister nodded his head.

**Euan Robson:** I will do more than nod my head and will say that we will take the matter away but I do not assure you that we will come back with amendments. We will certainly consider the points that have been made, but we believe that amendment 96 covers the points that you have just articulated.

**Lord James Douglas-Hamilton:** We will study the bill and what the minister has said. If necessary, either the minister or I will return to the issue at stage 3.

*Amendment 121, by agreement, withdrawn.*

**The Convener:** If amendment 79 is agreed to, amendment 167 is pre-empted.

*Amendment 79 moved—[Euan Robson]—and agreed to.*

*Amendments 168 and 122 not moved.*

*Amendment 123 moved—[Ms Rosemary Byrne].*

**The Convener:** The question is, that amendment 123 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 123 disagreed to.*

*Amendments 124 and 125 not moved.*

**The Convener:** Amendment 51, in the name of Lord James Douglas-Hamilton, is in a group on its own.

**Lord James Douglas-Hamilton:** Amendment 51 was lodged because there is a need for an objective test. The amendment would ensure that professionals in the field could carry out their duties without having to look over their shoulders to consider matters that are not strictly relevant. It would involve strengthening the duties on local authorities with a view to ensuring fairness to the child and to the child's family.

I move amendment 51.

**Dr Murray:** I was a bit puzzled by the meaning of the amendment. It could also be read as saying that after an authority has taken a decision on receiving an assessment, it does not have to bear in mind whether any facilities are available to provide the child with the necessary support. That might just be the way in which I am reading the amendment but, if the local authority is not to

"take into account the … human resources, or the available facilities",

a child could end up requiring something that is not available anywhere in the country. I find the amendment to be very peculiar.

**Mr Macintosh:** We have debated the question of reasonableness and reasonable costs already and I accept that that is an important principle. However, standing the principle on its head and suggesting that authorities should never take account of human or financial resources is unreasonable and unrealistic. We have already established the principle and I ask Lord James not to proceed with the amendment.

12:00

**Fiona Hyslop:** Will the minister confirm that the provision that we thought might be an open-ended get-out clause was deleted by amendment 63, which was agreed to at our previous meeting? The inclusion of that amendment means that what the bill says about expenditure being reasonable and appropriate reflects the wording of the Education

(Scotland) Act 1980; that is, education authorities do not have a complete get-out, although there are restrictions so that the commitment is not completely open-ended.

I genuinely understand Lord James's argument, but I think that it may be beside the point because the issue was addressed last week, when we considered whether local authorities should be able to resist applications for support that go beyond the realms of what is felt to be reasonable. The definition of what is reasonable was improved by the Executive in a previous amendment.

The problem with dealing with stage 2 week in, week out is that some amendments can be overtaken by what has happened at previous meetings. Lord James's concerns have already been addressed, although we may need to look at the shape of the bill to see how all those amendments fit in. I think that amendment 51 has been superseded by last week's decision.

**The Convener:** I must say that I would have been astonished if Lord James had agreed to an amendment like amendment 51 when he was a minister.

**Ms Byrne:** I am not convinced that we have addressed these issues. My reading of amendment 51 is that it is a perfectly sensible amendment, which would simply ensure that the person who carries out the assessment does not have an eye to what facilities or resources are available. That is right and proper. The assessor should carry out the assessment without any prejudices in mind and the recommendations that the assessor makes should then be considered. I hope that if this perfectly sensible amendment is not agreed to, as looks likely, the minister will take on board and consider the premise of the amendment.

**Euan Robson:** Other members have adequately dealt with the arguments, but one further point is that amendment 51 is slightly confused in its execution, because it seems to confuse the roles and responsibilities of the person who undertakes the assessment on the education authority's behalf and the education authority itself. I do not know that I need go into that much further, but those roles are essentially different. The education authority has a duty under the bill to meet the child's needs once those have been identified. The education authority also has a duty to provide adequate and efficient education for every child. That is a weighty responsibility, which the education authority must take seriously, but it is not part of the responsibility of the assessor. Amendment 51 confuses those issues. It makes no sense to place a restriction on the assessor that relates to a responsibility that the assessor does not have. The amendment does not respect the difference in the roles of the assessor and the education authority.

I agree that the question of expenditure was addressed by amendment 63, which was agreed to last week.

I invite Lord James to withdraw amendment 51.

**Lord James Douglas-Hamilton:** The amendment makes the valid point that assessments should be carried out in a professional way, although its wording is perhaps not as clear as it might be. However, the issue comes down to reasonableness and the way in which the professional duty of assessment should be carried out. That should be dealt with fully in the code of practice. I will not press amendment 51, but it has flagged up the concern that the duty of assessment should be carried out on professional grounds and that irrelevant material should not be considered.

*Amendment 51, by agreement, withdrawn.*

**The Convener:** Amendment 126 has already been debated with amendment 121. Do you wish to move amendment 126, Lord James?

**Lord James Douglas-Hamilton:** The minister has given an undertaking that he will consider the issue. He made no further commitment than that, so we may seek to return to the issue with another amendment at stage 3.

*Amendment 126 not moved.*

**The Convener:** Before calling amendment 80, I remind members that amendment 80 pre-empts amendments 169 and 170.

*Amendment 80 moved—[Euan Robson]—and agreed to.*

*Amendments 171, 127 and 172 not moved.*

*Section 6, as amended, agreed to.*

### Section 7—Duty to prepare co-ordinated support plans

*Amendment 14 not moved.*

**The Convener:** Amendment 81, in the name of the minister, is grouped with amendments 81A, 81B, 173, 82, 85, 85B, 85A and 87 to 89. If amendment 82 is agreed to, I will not be able to call amendment 17, because it will have been pre-empted.

**Euan Robson:** The purpose of amendment 81 is to allow for the requirement for a co-ordinated support plan to be disapplied where the parent and the education authority are content with the arrangements that are in place. That will eliminate unnecessary time and paperwork. The situation might become more common as service levels improve in years to come. There will be no time limit on the waiver and no obligation to review it. It will automatically fall when the parent or young

person requests a CSP or the authority subsequently initiates arrangements for considering whether a CSP is required.

Amendment 82 is a technical amendment to facilitate amendment 85. It deletes the provisions on the regulation-making power in respect of co-ordinated support plans, which amendment 85 relocates to section 9. From a drafting point of view, it is felt that they sit better in that section.

Amendment 85 serves two purposes. First, it creates a duty on education authorities to discontinue a CSP, but only where the authority and the parent or young person agree that a CSP is no longer required. The bill is aspirational and one of its key principles is that all children should have their additional support needs identified and assessed, irrespective of whether they have a co-ordinated support plan. We are moving towards an inclusive society and a time when safeguards such as CSPs will not be required. The amendment is needed to take account of situations in which everyone is satisfied that support is being co-ordinated and delivered without the need for a piece of paper and the added bureaucracy that comes with it.

The second reason for amendment 85 is technical; it inserts the text of section 7(4), with some minor amendments, to allow the regulations on the CSP to prescribe notification under section 9(2). For example, Scottish ministers will be able to prescribe the form and content of the notification of the proposal to establish whether a CSP is needed, and that will also apply to reviews of the CSP.

Amendments 87, 88 and 89 are consequential to amendment 85 and they reflect the agreement between the parent and the education authority not to prepare a CSP. I will deal with the other amendments, which are not in my name, when I sum up.

I move amendment 81.

**The Convener:** I should point out that the debate would normally move to Ken Macintosh to sum up on the amendments to the amendments, but I propose to allow the minister to come back in at that point, as at the previous meeting. That seems to be a much more sensible arrangement than the one that I was supposed to follow last time round.

**Mr Macintosh:** I appreciate the minister's argument. I know from experience that there are many cases in which children have a record of needs and the system works absolutely fine for them and other cases in which children do not have a record of needs and still get the support that they need without, one might argue, unnecessary or cumbersome bureaucracy. However, there is undoubtedly a danger in going down that road because, at the very least, it opens the way for the needs of some children to be overlooked.

Amendment 81A seeks to address that situation by stipulating that all children who would qualify should be notified in writing if they are not going to receive a CSP. We have already debated the issue of notifying parents in writing. It is extremely good practice and communicating decisions in writing is a strong principle, because it means that there is less room for oversight, error or misinterpretation.

I was concerned by the minister's concluding remarks when we debated the matter earlier this morning that despite the fact that parents and families are obliged to submit a request and, indeed, conduct all their affairs in writing, there is no reciprocal obligation on the local authority. I am pretty sure that the minister said that it was unnecessary for the local authority to carry out its part of the obligation in writing and that he was not going to revisit the issue. I would welcome his comments on that. Whether or not that is the case, we would be failing in our duty if we did not insist that authorities that have recourse to the provision in amendment 81 should notify parents and families in writing.

I want to pick up a number of points that arise from that earlier debate. First, I hope that the minister will reflect on Elaine Murray's comments about the phrase

"the young person is incapable"

in amendment 81. Secondly, my own amendment 81A refers to a "decision in writing". However, we agreed earlier that any decision should be not only given in writing but contained in some form of permanent record. In that light, although I certainly want the principle behind amendment 81A to be accepted, I am not sure whether we should accept the exact wording of the amendment or reword it to reflect our earlier discussion about putting decisions in writing or in another form of permanent record.

Before I speak to amendment 85A, which is in the same grouping, I pay tribute to the National Autistic Society for drawing my attention to the matter that the amendment seeks to address. Through amendment 85, the minister seeks to shift to section 9 the duties outlined in section 7(4)(b) in the bill as introduced. I was surprised when the National Autistic Society pointed out that section 7(4)(b) and amendment 85 seek to create an annex to the co-ordinated support plan. Indeed, I found it quite extraordinary that I should have discovered that the CSP will have an annex only after our lengthy debate on the whole process. The society was also concerned to find out from the minister that the annex to the CSP will not be

appealable. To my mind, such a measure not only causes parents a great deal of anxiety, but undermines the whole principle of the CSP and the tribunal system. I am very unclear about what information will go into the annex and what will go into the CSP.

I have lodged amendment 85A as a probing amendment—we do not necessarily have to call the information that we are talking about an annex, but that is what we call it. The most important point is that we discuss what is contained in the annex and why on earth it should not be appealable before a tribunal.

I move amendment 81A.

**Ms Byrne:** In many ways, amendment 81B is quite similar to amendment 81A. Ken Macintosh raised the question of providing views and decisions in formats other than a written one. Amendment 81B addresses that issue. I am interested to hear what the minister has to say on both amendments, because they are similar.

It is important that we establish the principle that feedback should be provided in a format that people can understand and use if they need to appeal or whatever. Amendment 85B seeks to ensure that the reasons why a CSP has not been prepared for someone should be recorded in some way for future reference. After all, that happens at the moment with the record of needs. The amendment seeks to tighten up the provisions so that records are kept and paperwork is retained for future reference or re-examination. People might wish to use such records to further their pursuance of resources, for example, or to seek to re-open a case if they decide at a later date that they have made a mistake.

**Lord James Douglas-Hamilton:** Amendment 173, which was lodged on behalf of the parents' charity ISEA, is a strengthening provision. It proposes that an education authority must take into account the advice and information of other agencies and I commend it to the committee. I would be grateful if the minister could say whether the terms of section 10(2) are sufficient, whether amendment 173 is consistent with that section, or whether the amendment is necessary to put the matter beyond any possibility of doubt.

Ken Macintosh's amendment 81A is important and is echoed by other similar amendments. He said that we will fail in our duty if we do not ensure that parents are notified in writing when an education authority rejects an appeal or request made by them. That is an important provision, as parents need written notification for an appeal. If the minister accepts the important principle of amendment 81A, there will be a consequential effect on other parts of the bill and consequential amendments might have to be lodged at stage 3. I wish to concentrate on the principle of the amendments, rather than the way in which they are drafted. I look forward to hearing what the minister has to say.

**Dr Murray:** My reading of amendment 81 is that a decision not to prepare a CSP needs to be agreed by the education authority and the parents. I disagree with Ken Macintosh's and Rosemary Byrne's amendments, because the decision is not taken solely by the education authority—it is taken by the parents and the education authority together.

I do not think that amendment 81 is strong enough, because it does not provide for the reason why the decision was taken to be permanently recorded. As it stands, if an education authority says that the parents agreed that a plan should not be prepared, they have no way of proving that they did or did not agree to the decision. The amendment needs to be strengthened to give more rights to parents.

The amendment also raises issues, to which we can return, about the capacity or incapacity of the young person. I would make a similar argument in respect of amendment 85.

**Rhona Brankin:** I would like the minister to address specifically the great problem I have with amendment 81. One of the reasons for having a CSP—it was one of the reasons for having a record of needs in the past—is that when a young person with complex additional support needs that are likely to be long lasting moves to another authority, it is important to ensure that the CSP goes with him or her. In an ideal world, every authority would provide everything the child needed and everything would be perfect, but there can be differences between local authorities' approaches. I worry that amendment 81 will lead to a return of the differences between local authorities. There may have been an agreement with a local authority that a youngster does not require a CSP, but I am concerned that different arrangements might apply when he or she moves to another such authority. I have grave concerns about amendment 81.

**The Convener:** I agree with those who have said that there is a need to record in writing the provisions made in amendment 81, because the scope for confusion and misunderstanding is quite high. However, I am not sure that I agree with Ken Macintosh's view on amendment 85A, because under section 13(3)(d)(i) what is appealable to the tribunal is

"any of the information contained in the plan".

Unless I have misunderstood that, it does not matter if it is the annex to the plan or section 1 of the plan or whatever—it is the plan. However, I would appreciate the minister's confirmation that that is the correct interpretation.

**Euan Robson:** I understand the principle behind amendment 81A. However, as Elaine Murray rightly pointed out, it is not the education authority that decides; it is an agreement between the education authority and the parents. We intend to ask the draftsmen to consider for stage 3 requiring some form of notification of the joint decision not to prepare a co-ordinated support plan. I do not have a specific amendment in mind at the moment, but we will seek to prepare one. It will be lodged in time for members to see it. Therefore, I ask Ken Macintosh to withdraw amendment 81A.

Rhona Brankin makes an important point. If there has been an agreement not to have a CSP in one authority, and the child moves to another authority, the agreement not to have a CSP can continue or may not continue, because the parent might request one in the new authority. I will take away Rhona Brankin's point, because it is an important one that we want to consider further, but I do not think that amendment 81 would provoke the difference that she fears.

I hope that the assurances on amendment 81A are helpful. I understand the reasoning behind amendment 81B, but it is not clear whether Rosemary Byrne means that the views of the child or young person must be in writing or otherwise recorded or whether the agreement must be recorded. I assume that it is the latter but, as I have already said, we will consider the issue and the point that Rhona Brankin made and come back to them at stage 3.

The purpose of amendment 173 is to ensure that the information, advice and views that are obtained when establishing whether a CSP is required are taken into account when preparing the CSP. I fully appreciate and agree with what Lord James aims to achieve with amendment 173, but rather than amending section 7, we will seek to amend section 10, through amendment 194, which is on page 12 of the marshalled list. Amendment 194 has the same effect as Lord James's amendment 173, but the provisions are better placed in section 10.

I resist amendment 85B for the same reasons that I am resisting amendment 81B. I will consider whether provision should be made for recording an agreement to discontinue a CSP. In view of that, I ask Rosemary Byrne not to move amendment 85B.

I ask the committee to reject amendment 85A on the ground that it is not necessary. There are already provisions in the bill for Scottish ministers to make regulations specifying the form and content of the CSP, which includes the annex. Although the annex will not be appealable, it will still be part of the overall plan. I am aware from consultation with parents that they are concerned that education authorities will be able to use the annex to alter provision in some way or to change diagnoses. I state firmly that that is not the case.

Regulations will specify that the annex will form a means of noting progress throughout the year to help to inform the annual review of a CSP. It will not be possible to change the annex, because its purpose will be to note milestones, if you like. It is expected that all those involved in supporting the child or young person, including the parents, will be able to note comments on progress in the annex. Without the annex, those involved would probably still make notes on progress, so it is better for that to be facilitated within the CSP.

As I said, it is better for such a provision to be in regulations; further evidence on it can be given in the code of practice. I hope that those assurances are helpful. The committee will return to the question of regulations in the future. On that basis, I ask Ken Macintosh not to move amendment 85A.

I would be grateful if the committee would accept amendment 81, to allow for the requirement for a CSP to be disapplied when the parent, the child and the education authority are content with the arrangements that are in place. On that basis, I invite the committee to accept amendments 82 and 85, to enable CSPs to be discontinued.

**Mr Macintosh:** I thank the minister for his comments. Echoing my colleague Rhona Brankin's concerns about amendment 81, I am still slightly concerned about the possibility of amendment 81 being read wrongly by some local authorities to mean that its provisions offer them the opportunity to opt out of the CSP system. That conjures up an image that is akin to the variation that exists throughout the country in the current system of records of needs, whereby in some local authorities, 1.5 or 2 per cent of the school roll has a record of needs, whereas in other authorities, the figure is as high as 4 per cent.

I hope that it is not the minister's intention to allow amendment 81 to be interpreted as I have indicated. There is certainly a fear that it could be interpreted wrongly, so, at stage 3 or in the code of practice, we should seek guidance that ensures that local authorities cannot use the provisions to allow them a general opt-out. I agree that the Executive's intention with amendment 81 is to minimise bureaucracy and to avoid having unnecessary CSPs when the parent, the child and the local authority agree that a CSP is not in the child's best interest. I am pleased that the Executive proposes to lodge an amendment. I can see that there are problems with my amendment 81A and, on that basis, I seek to withdraw it.

I welcome the convener's comments on amendment 85A, about the importance of section 13(3)(d)(i), but I think that the minister contradicted

that point totally when he said that the annex was not appealable. I want to clarify that that is what he said. I will not move the amendment, which referred to an annex as a method of exploring the CSP issue, but we will return to that important issue when we discuss the rights of appeal before a tribunal, possibly under section 13. I am not convinced by the explanation that the annex is a transient document. Perhaps we need more information on the detail of what will be in the annex. It sounds to me that what the minister is describing is an IEP. I still have slight concerns about the annex, so I would welcome further information, if it can be provided, on the exact nature of the material that will go into the annex and why it should not be appealable. On the basis that amendment 85A was intended to probe the subject of the annex, I will not move it.

**The Convener:** To abuse my position as the chair, I say that I am not convinced that the annex is not appealable, but we can return to that matter.

*Amendment 81A, by agreement, withdrawn.*

**Ms Byrne:** I am happy not to move amendment 81B and to wait to see what the minister brings along.

*Amendment 81B not moved.*

*Amendment 81 agreed to.*

*Amendments 173 and 15 not moved.*

12:30

**The Convener:** Amendment 174, in the name of Lord James Douglas-Hamilton, is grouped with amendments 16 and 175.

**Lord James Douglas-Hamilton:** Amendment 174 has been lodged on behalf of ISEA. It is right that the type and amount of additional support should be made clear. Currently, in England, a child's statement, which is equivalent to our record of needs, states the type and amount of additional support that is required—for example, daily speech and language therapy. If we are serious about ensuring that the co-ordinated support plan is an effective document, services must be qualified and quantified in order to meet the child's needs. If we simply go back to the record of needs model of speech therapy as and when required, we will be back with the same scenario.

Amendment 16 has been lodged on behalf of Skill Scotland. It is clear that a young person who has needed co-ordinated support during their school career is likely to need co-ordinated support as they prepare to leave school. The co-ordinated support plan is the means to make that happen, but the bill currently disregards co-ordinated support plans during the transition stage. Putting transition plans in writing is important to provide clarity for disabled young persons and their parents.

I move amendment 174.

**The Convener:** I call Adam Ingram, who has been silent so far, to speak to amendment 175 and the other amendments in the group.

**Mr Adam Ingram (South of Scotland) (SNP):** Amendment 175 is primarily a probing amendment about contact details of people from the various agencies. The minister will be aware that we have had quite a debate about the extent to which other agencies and the education authority tie in together. Amendment 175 aims to establish and clarify that it is the responsibility of the education authority to inform children and families about the people from other agencies who are expected to provide support. I would welcome feedback from the minister on the matter.

**Fiona Hyslop:** I will be brief. I support Lord James Douglas-Hamilton's amendments, which are practical and sensible. It might seem that inserting the words "type and amount of" is merely a semantic matter, but parents of children with speech therapy needs in particular are greatly concerned that a limited amount of support can be seen as adequate. In certain cases, there can be 20 minutes of therapy a week. If the time that it takes for support to start, school holidays, the school year, in-service days and so on are taken into account, what can seem a reasonable amount of support becomes completely unreasonable. The amendment is practical and sensible.

**Mr Macintosh:** I am sympathetic to amendment 16, but I think that the matter is covered in the bill. I would welcome the minister's comments on that.

I am slightly more concerned about amendment 174, as I think that agreeing to it would mean that the mistakes of the record of needs system would be repeated, as we would end up being prescriptive about the type and amount of support. The plan would become something about which resources would constantly be disputed rather than a helpful document for parents that co-ordinated support; it could become an even more contentious document and a source of dispute.

**The Convener:** I think that Ken Macintosh is right. I, too, have concerns about amendment 16. I understand where Lord James is coming from, but the timing seems wrong. The amendment seems to say that when a co-ordinated support plan is drawn up, the statement must go in it. I am not sure that the amendment hits the nail on the head in that regard. However, it is important that such arrangements all link up by the time children leave school—the transition period is an issue about which we have had considerable concerns. Perhaps the minister could let us know his thoughts about that and whether the matter is

provided for in the bill or somewhere else. I do not think that the bill covers it, so perhaps appropriate phraseology could be used to tie the matter in at an appropriate time.

**Euan Robson:** We do not think that amendment 174 is necessary. The intention behind the bill is for CSPs to specify resources; where possible, specification should be linked to education objectives. The balance has to be struck between being over-prescriptive in a way that prevents those delivering services from responding to individual circumstances and being vague and unclear about what is to be provided. Ultimately, if parents are dissatisfied with the education authority's statement of the additional support that is required, they can appeal to the tribunal—that is the whole purpose of the tribunal. There is therefore a clear incentive, because of that appeal route, for the education authority to be as clear as possible when describing the additional support that is required. As I have said in relation to a number of amendments today, the code of practice will provide advice and guidance on how co-ordinated support plans should be completed.

We share some of the convener's reservations about amendment 16. Education authorities do not have a responsibility for the young person once he or she ceases to receive school education. The information obtained from other agencies under section 10(6)(a) is on the provision that the agency is likely to make for the young person once he or she leaves school. That is to give information on any additional support that the young person might need prior to their leaving school to help them to prepare for that eventuality. Additional support to prepare them for leaving school would be included in the CSP or IEP as appropriate. Amendment 16 seeks a statement in the CSP on post-school arrangements, without making any distinction in relation to when that might be appropriate. To use an extreme example, it would not be appropriate to have such a statement for a five-year-old child, although it could be inferred from the amendment that one was necessary. Moreover, the CSP will have no legitimacy once the young person has left school, so the statement urged by the amendment would be redundant.

I understand the intention behind amendment 16, but it is the responsibility of other agencies to make appropriate provision for young people who require extra support once they leave school. The provision in section 11 assists with that by ensuring that education authorities can pass on in good time relevant information to other agencies about the support that the young person needs post school. The responsibility of the education authority as defined by the bill is to involve at an early stage other relevant agencies in the transition planning. As members will have seen, section 10 provides for that. For that reason, and for the others that I have outlined, I ask Lord James to consider not moving amendment 16.

I consider amendment 175 to be unnecessary, because section 7(2)(a)(iv) already requires that the education authority states in the CSP the persons providing support—as one member stated, the provision is already in the bill. We do not necessarily always wish to name all the individuals in the plan, because there might be circumstances in which a child receives the same service from different individuals. For example, they might receive therapy from a team of therapists and not necessarily always from the same individual.

We have to allow for a certain amount of flexibility in order to take account of individual or local circumstances. The regulations and the code of practice will provide the detailed advice that is necessary to ensure that sufficient details about those who are providing additional support are available to parents. This is another situation in which the regulations and, I think, the code will provide what members seek. I ask Adam Ingram if he would be good enough not to move amendment 175.

**Lord James Douglas-Hamilton:** I am disappointed that the minister is not more sympathetic to the concepts behind the amendments to which I spoke. Amendment 174 is important. We are aiming not for prescription but for clarity. We think that it is necessary for the information that is provided to be clear. Incidentally, I understand that what I am proposing is already done in the statement of needs south of the border. Those documents are relied on and there does not seem to be any dispute about the process. There is therefore a precedent for the incorporation of the proposal in the bill.

As I said, amendment 16 was lodged on behalf of Skill Scotland, which has a thoroughly legitimate reason for proposing the measure. Skill Scotland believes that it is absolutely necessary to have clear transitional plans in writing in order to provide clarity for disabled young people and those young people with learning difficulties—children with what is more comprehensively termed "additional support needs"—and their parents. The minister's response did not meet the seriousness or significance of the arguments that have been made. I will press amendments 16 and 174.

**The Convener:** The question is, that amendment 174 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 174 disagreed to.*

*Amendment 16 moved—[Lord James Douglas-Hamilton].*

**The Convener:** The question is, that amendment 16 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 16 disagreed to.*

*Amendments 175 and 128 not moved.*

*Amendment 82 moved—[Euan Robson]—and agreed to.*

*Amendment 17 not moved.*

*Section 7, as amended, agreed to.*

### Section 8—Reviews of co-ordinated support plans

**The Convener:** Amendment 176, in the name of Lord James Douglas-Hamilton, is grouped with amendments 177 and 178.

**Lord James Douglas-Hamilton:** Amendments 176, 177 and 178 have been lodged on behalf of the parents' charity ISEA. The thinking behind amendment 176 is that the word "effectiveness" is better than the word "adequacy". If I remember correctly, the convener advanced that argument on a previous occasion. I believe the arguments in favour of amendment 176 to be sound. An authority should be able to measure the effectiveness of the co-ordinated support plan.

Amendment 177 aims to avoid an obvious get-out provision for local authorities. The word "expedient" is not worthy of use by a local authority when it is considering the needs of the most vulnerable in the community.

Amendment 178 states:

"Where subsection (3A) applies the education authority must carry out a review of the plan immediately."

That means that, in cases in which a reasoned request is made or in which there is a significant change in the child's circumstances, the plan may be reviewed. That is altogether reasonable and I look forward to the minister's reply.

I move amendment 176.

12:45

**The Convener:** I am sympathetic towards the point about adequacy and effectiveness, although I cannot remember what we did about it last time round.

**Euan Robson:** We do not accept that amendment 176 is necessary. It would require education authorities to keep under consideration not just the adequacy of a CSP, but its effectiveness. If the CSP and the support provided were not effective, the child would not be able to benefit from school education, which would mean that neither the support nor the plan could be considered to be adequate. Therefore, there is no need to keep under consideration a plan's effectiveness, because it must be effective to be adequate.

The effect of amendment 177 would be to remove from the education authority the discretion to determine whether it was necessary or expedient to carry out an earlier review of a CSP because of a change in the circumstances of the child or young person. Although I understand the desire to make decisions on such matters objective rather than subjective, I do not believe that that is appropriate here, because section 8(3) allows for two circumstances in which a CSP can be reviewed earlier. The first is when a request is made by parents; the second is when the authority itself decides to conduct such a review. As we have already discussed in relation to section 8(4), the decision in the first circumstance will not be subjective. Therefore, there is no reason for the decision in the second circumstance to be made objective. In our view, the provision on the second circumstance should remain as it is.

Following on from that, I also oppose amendment 178, which would place the education authority under a duty to review a CSP immediately when the circumstances of a child or young person have changed. The duty to conduct such a review immediately is unrealistic and unquantifiable. The main difficulty is that, if the education authority were not aware of the change

in the pupil's circumstances, by not reviewing the CSP immediately it would be in breach of its duty to review a CSP before the scheduled review date. In addition, timescales for the review of a CSP in such circumstances will be set by regulations, which will be prepared in due course. I emphasise the fact that we will consider the timescales, but the word "immediately" is the problem, because we cannot make a judgment on what that might mean—there could be adverse consequences.

For those reasons, I ask Lord James to withdraw amendment 176 and not to move amendments 177 and 178.

**Lord James Douglas-Hamilton:** I will have to study the terms of the minister's reply on amendments 177 and 178 but, on amendment 176, I feel that he has totally failed to advance any rational, persuasive or legitimate argument. Of course local authorities should have an effective plan. As I have said before, no one wishes to be accused of having delusions of adequacy. It is simply not good enough for a CSP to be adequate; it must be effective. If the Prime Minister were told that a speech that he had made in the House of Commons was adequate rather than effective, he would have the right to be very offended.

**The Convener:** I take it from that that you intend to press amendment 176.

**Lord James Douglas-Hamilton:** Yes.

**The Convener:** The question is, that amendment 176 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)

**AGAINST**

Alexander, Ms Wendy (Paisley North) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

**ABSTENTIONS**

Brown, Robert (Glasgow) (LD)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 1.

*Amendment 176 disagreed to.*

*Amendments 18 to 20, 177 and 178 not moved.*

*Amendment 83 moved—[Euan Robson]—and agreed to.*

*Amendment 21 not moved.*

*Amendment 22 moved—[Lord James Douglas-Hamilton]—and agreed to.*

*Amendments 23, 129 and 24 not moved.*

*Amendment 84 moved—[Euan Robson]—and agreed to.*

**The Convener:** Amendment 25 is in the name of Lord James Douglas-Hamilton.

**Lord James Douglas-Hamilton:** What about amendment 179?

**The Convener:** That amendment has been pre-empted.

*Amendment 25 not moved.*

*Section 8, as amended, agreed to.*

## Section 9—Co-ordinated support plans: further provision

*Amendment 26 not moved.*

**The Convener:** Amendment 180, in the name of Lord James Douglas-Hamilton, is grouped with amendment 181.

**Lord James Douglas-Hamilton:** Amendment 180 relates to the importance of giving information in writing. Parents will require information on support plans in writing if they wish to make sense of a decision and especially if they wish to challenge it.

Amendment 181 talks about giving

"a copy of the plan or amended plan … to such appropriate agencies … as the authority considers appropriate".

The amendment clarifies the position with regard to necessary information. I recommend both amendments to the committee. If other agencies are to be involved in co-ordinated support plans, they must have a copy in order to make certain that they uphold their commitment to supporting the child. At present, the record of needs is given only to the head teacher and the parent and is held in the education authority's office. Many professionals from other agencies do not know what is stated in the record of needs. I do not think that we can honourably let such a situation continue with co-ordinated support plans. Children with additional support needs, and their parents, require better.

I move amendment 180.

**Mr Macintosh:** We have already acknowledged the weakness in relation to the phrase "in writing" and again I press the minister on the need to be consistent throughout the bill in specifying the need to write to parents and notify them.

**Euan Robson:** We have already said that we will consider in more detail the issues to which amendment 180 relates. It is expected that, when education authorities respond on such a matter, they will do so in writing. We will consider amendment 180 and similar earlier amendments in that context.

On amendment 181, section 9(5)(e) of the bill already requires education authorities to inform those who are involved in providing additional support with appropriate details about what is contained in the plan. It is important that those who provide the support have access to the information that they need but, as it stands, the bill will ensure that that happens. There may be instances in which it is not appropriate for such persons to see all the details of the plan, as would happen if amendment 181 were agreed to. A copy of the whole plan should not necessarily be available on every occasion.

The supply of copies of the co-ordinated support plan is an issue that will be covered in regulations. It may also need to be referred to in the code of practice, but it is primarily a matter for regulations. On that basis, I ask Lord James not to move amendment 181.

**The Convener:** Does Lord James need to respond?

**Lord James Douglas-Hamilton:** I am afraid that I do. I thank the minister for agreeing to look at amendment 180. In a spirit of good will, I will not press that amendment.

Amendment 181 is a necessary safeguard. If it needs to be qualified, the minister could take it away and come back with a more comprehensive amendment. The safeguard needs to be on the face of the bill. I think that the vast majority of parents whose children currently have a record of needs would also believe that such a safeguard is necessary for their interests. I believe that they would also much prefer such a provision to be on the face of the bill rather than to be left to the code of practice. I will press amendment 181.

*Amendment 180, by agreement, withdrawn.*

*Amendments 130, 27 and 131 not moved.*

*Amendment 181 moved—[Lord James Douglas-Hamilton].*

**The Convener:** The question is, that amendment 181 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)
Ingram, Mr Adam (South of Scotland) (SNP)

**AGAINST**

Alexander, Ms Wendy (Paisley North) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Hyslop, Fiona (Lothians) (SNP)
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 181 disagreed to.*

**The Convener:** Amendment 182, in the name of Lord James Douglas-Hamilton, is grouped with amendment 183.

**Lord James Douglas-Hamilton:** Amendment 182 would leave out the words "seek to". It is important that we are seen to be positive about ensuring that additional support is provided.

Amendment 183 would delete several words that are unnecessary. In any case, the words are inappropriate, as they might be used as a get-out clause.

I move amendment 182.

**The Convener:** I confess that I have some sympathy with amendment 182, which would delete "seek to". However, the question, I suppose, is whether local authorities can ensure things that are beyond their control.

13:00

**Euan Robson:** I was going to make exactly that point. Amendment 182 would mean that an education authority would be in breach of its duty if another agency, over which it had no direct control, failed to provide the additional support that was stated in the CSP. That would simply not be appropriate.

Other agencies must be held accountable for the provision that they are required to make. As members may recall, Peter Peacock made it clear to the Parliament that ministers have sufficient powers to direct agencies to support children and that those powers will be used if other agencies fail to support children and young people as required by a CSP. In addition, the code of practice will foster co-operation among agencies. Amendment 182 is fundamentally flawed, so I ask members not to support it.

On amendment 183, co-ordinating the additional support provision that is required by a CSP is absolutely fundamental to the plan in helping the child to achieve his or her learning objectives. It must be recognised that additional support may have to be provided by a variety of organisations and individuals. For example, parents may be directly involved in providing additional support and may be included in the plan. The bill promotes partnership working in disciplinary teams, but it must also allow for the extent to which individuals, in particular, co-operate with the endeavours of the education authorities to achieve co-ordination. On those grounds, I ask Lord James not to move amendment 183.

*Amendment 182, by agreement, withdrawn.*

*Amendment 183 not moved.*

**Euan Robson:** With your leave, convener, I would like to say something about amendment 184, which was debated on 11 February. At the time, I said that we had some sympathy with the amendment and would like to consider it further. Having done that, I am minded to accept what the amendment proposes and I ask the committee to agree to the amendment.

*Amendment 184 moved—[Lord James Douglas-Hamilton]—and agreed to.*

*Amendment 85 moved—[Euan Robson].*

*Amendments 85B and 85A not moved.*

*Amendment 85 agreed to.*

*Section 9, as amended, agreed to.*

*Meeting closed at 13:02.*

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