EDUCATION COMMITTEE

Wednesday 3 March 2004
(*Morning*)

Session 2

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EDUCATION COMMITTEE
7th 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:

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 1

Scottish Parliament

Education Committee

Wednesday 3 March 2004

(*Morning*)

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

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

The Convener (Robert Brown): Good morning and welcome to this meeting of the Education Committee. We continue our consideration of the Education (Additional Support for Learning) (Scotland) Bill. I remind myself and others to switch off mobile phones and buzzing implements. Before we begin, I declare a possible interest in legal aid issues because of my consultancy with Ross Harper Solicitors of Glasgow and my membership of the Law Society of Scotland.

Section 10—Duties to seek and take account of views, advice and information

The Convener: Amendment 191, in the name of the minister, is grouped with amendments 192, 207, 208, 193, 209, 194, 195, 196 and 197. If amendment 197 is agreed to, amendment 30 is pre-empted.

The Deputy Minister for Education and Young People (Euan Robson): I shall address amendment 194, which is the substantial amendment to which amendments 191, 192, 193, 195 and 197 are consequential.

Amendment 194 places an explicit duty on education authorities to seek and take account of information that is provided by agencies and other persons and the views of the child, parent or young person at two further specific instances. Those two instances are when the education authority is determining the appropriate provision for the child or young person in meeting their additional support needs and when the education authority is preparing a co-ordinated support plan for the child or young person.

The amendment seeks to ensure that the education authority considers all appropriate information when it makes decisions in those areas. I note that other amendments along those lines, which we will come to in due course, have been lodged. That shows a degree of consensus. Appropriate information must be sought from other agencies and, when appropriate, from the children and young people. In that way, the education authority can come to an informed decision about the appropriate course of action in supporting the child's or young person's needs.

Amendments 192, 193, 195 and 197 are consequential to amendment 194.

I ask the committee to accept amendment 196 because there may be a limited number of instances in which it is right that an authority has the discretion to decide whether it is appropriate for the education authority to seek the views of the child or young person in determining the provision of additional support. Realistically, when the additional support needs are transient—as they can be—we would not want an unnecessarily bureaucratic process, which could ensue if the discretion that we propose in amendment 196 were not available.

I move amendment 191.

Lord James Douglas-Hamilton (Lothians) (Con): I should mention that I am a non-practising Queen's Counsel. That gives me a past interest, although it is not likely that it will be a future interest.

I welcome what the minister has said about imposing an explicit duty on local authorities to take account of information that is provided by agencies, as well as the views of the children. We can legitimately support his amendments.

Amendments 207 to 209 seek to strengthen duties. Basically, they spell out the nature of the duties and make the co-ordinated support plan more robust. Amendment 208 requires information for a plan to be specified. I would be interested to hear whether the minister believes that the amendments would be helpful.

Euan Robson: We believe that the intention behind amendments 207, 208 and 209 is covered by amendment 194. Section 10(2) places a duty on education authorities to

"seek and take account of"

a range of views for the purposes that are laid down in section 10(1). Those purposes include establishing whether any child or young person has additional support needs.

The purpose of amendment 207 is to expand the purpose in section 10(1) to say what the additional support needs are. I think that the intention is to link the section back to section 4(1)(b), which requires the education authority, in addition to identifying children with ASNs, to identify specific ASNs.

Effectively, the purpose behind the amendment will be achieved by the Executive's amendment 194, which seeks to add to the range of purposes in section 10(1) the task of determining the

additional support required to meet the ASNs of the child or young person. Advice and information that are sought on provision will naturally carry advice and information on the needs themselves. For those reasons, I contend that the intention of amendment 207 is covered by amendment 194.

We believe that amendment 208 is also covered by amendment 194. Section 10(2) places a duty on education authorities to

"seek and take account of"

a range of views for the purposes set out in section 10(1). As currently drafted, those purposes include establishing whether a CSP is required. Although they do not include the actual preparation of the CSP itself, amendment 208 seeks to require the education authority to

"seek and take account of"

a range of views and relevant information in establishing the information that the CSP should contain. As I have said, the effect of amendment 208 will be achieved by amendment 194, which seeks to extend the range of purposes under which there will be a duty to

"seek and take account of"

views and information when preparing a CSP. I think that we have also covered the intention behind amendment 209 in amendment 194.

With those assurances, I ask Lord James Douglas-Hamilton not to move his amendments and to accept amendment 194 and its consequentials.

Amendment 191 agreed to.

Amendment 192 moved—[Euan Robson]—and agreed to.

The Convener: I call Lord James Douglas-Hamilton to indicate whether he wishes to move amendment 207.

Lord James Douglas-Hamilton: In view of the minister's assurances that he has accepted and incorporated the principle in question in his own amendments, I will not move the three amendments in my name.

Amendments 207, 28 and 208 not moved.

Amendment 193 moved—[Euan Robson]—and agreed to.

Amendment 29 not moved.

The Convener: I call Lord James Douglas-Hamilton to indicate whether he wishes to move amendment 209. These numbers are getting a bit confusing.

Lord James Douglas-Hamilton: Perhaps at this point I should make it clear that I am grateful to the minister for accepting the principle behind my amendments.

Amendment 209 not moved.

Amendment 194 moved—[Euan Robson]—and agreed to.

The Convener: Amendment 210, in the name of Lord James Douglas-Hamilton, is grouped with amendments 211, 212, 213, 215, 198, 199, 216, 217, 200, 201, 202, 218, 32 and 233. I should tell members that if amendment 215 is agreed to, amendment 198 is pre-empted.

Lord James Douglas-Hamilton: The wording of amendment 210 seeks to strengthen the duty set out in section 10(2)(a), while amendment 211 seeks to remove the get-out clause for local authorities. Amendments 212 and 213 were lodged because we must be sure that, having obtained parents' views, local authorities take them fully into account. It is important that the legislation is acceptable to parents and that is what the amendments seek to ensure.

Amendment 215 seeks to remove local authorities from their role as gatekeepers and amendments 216 and 217 seek to strengthen certain duties. Amendment 216 seeks to stipulate that advice and information must be obtained if the child is to benefit and amendment 217 contains the change required to ensure section 10's continuity in strengthening the duty to provide advice for parents.

Amendment 218 inserts the words "and effectiveness" into section 10(6)(b). I recall that the convener lodged a similar amendment to an earlier section and this amendment might help in that respect.

Amendment 32, which was lodged on behalf of Skill Scotland, relates to the importance of taking into account young persons' views. It is essential that the planning for a young person leaving school is directly influenced by the young person's views and ambitions and reflects their right to determine their future and make independent choices. Disabled young persons, in particular, are not always given that right as often as they should be. The bill in its current form does not address that issue, so I recommend amendment 32, which seeks to do so. Amendment 32 is a very important amendment and I hope that, because it relates to disabled young people, the minister will not turn it down outright but will be prepared to consider it, taking it away to do so, if necessary. Skill Scotland has raised a valid and important point through amendment 32.

I move amendment 210.

10:00

Euan Robson: I ask the committee to accept amendments 198 and 233 because they clarify the bill's original policy intention that an education

authority should not be obliged to request or to provide information, respectively, where no appropriate agency is likely to make post-school provision. Amendments 198 and 233 will allow more flexibility for an education authority and will prevent the authority from being obliged to request or provide information where no such information can usefully be requested or provided.

The intention is that the duties in sections 10(6) and 11(2) should apply when an authority considers that an agency is likely to provide post-school provision. That has always been the policy intention, but on reconsideration of the wording of sections 10(6) and 11(2), it was thought that there could be ambiguity about the extent of the duty that might exist. Amendments 200 and 201 are consequential to amendment 198 and I recommend them to the committee.

I ask the committee to accept amendment 199 because its intention is to allow a child or young person and their parents to engage more fully in the process of an education authority fulfilling its duty under section 10(6). Under that section, an education authority must consider the adequacy of the additional support that is provided during the later stages of schooling when that may be impacted upon by agencies that are likely to offer post-school provision for the child or young person. As a matter of course, a child or young person will be given careers advice and will be supported when they consider their aspirations and plans for after they leave school. However, as the bill stands, an education authority is not specifically obliged to seek and take account of the views of a child or young person and their parents when the authority is planning the transition to post-school provision from appropriate agencies.

I want to make it explicit that an authority must consult and involve a child or young person and their parents in the authority's preparation of post-school provision during the later stages of an individual's school career and that the authority must take their views into account when planning the support that it provides. It is important that a child or young person feels fully enfranchised in that process. We have discussed the importance of ensuring that previously, so I recommend amendment 199, which seeks to ensure that such enfranchisement takes place. I also recommend amendment 202, which is consequential to amendment 199.

I lodged amendment 233 to make the wording of section 11(2)(a) consistent with that of section 11(2)(b)(i). The amendment recognises that there will be circumstances in which there may not be any appropriate agency or agencies that require to be contacted. If that is the case, the education authority would not be failing in its duty to provide information. I recommend amendment 233 to members.

Fiona Hyslop (Lothians) (SNP): I support amendment 32. It is important that we enshrine the right of the child or parent to have their views considered at the transition period. All the amendments in this group, from amendment 200 onwards, seek to do the same thing, which is to extend the duty to consult, and they are to be welcomed.

I would like to question Lord James Douglas-Hamilton about amendment 210, which intends to change

"seek and take account of"

to

"obtain and act upon".

What is the difference in law between those two wordings? If the advice that is obtained is conflicting, how can it be acted upon? Which advice should be acted upon? My understanding of the use of

"seek and take account of"

is that in this instance we must acknowledge that it is the lead agency—in the majority of cases, the education authority—that will have to take an arbitrary decision about which advice to act upon.

The other amendments strengthen the situation by saying that the advice of children, young people and parents should be sought. I am concerned about the practicalities of the amendments, and I seek clarification.

Mr Kenneth Macintosh (Eastwood) (Lab): I ask the minister's view of amendment 32. Would amendment 199 make amendment 32 redundant? I would welcome the minister's comments on that. I have sympathy with what Lord James Douglas-Hamilton is trying to establish with amendment 32. Much as I welcome amendment 199, it is expressed in language about which we have voiced reservations at previous meetings. I would hope that we can support the amendment, but with the view that the Executive should find a different form of words to "the child is incapable", and should talk instead about the child with capacity.

Dr Elaine Murray (Dumfries) (Lab): Like Kenneth Macintosh, I seek advice from the minister about whether amendment 199 would achieve the same outcome as amendment 32, which would render amendment 32 unnecessary.

The Convener: I call Lord James Douglas-Hamilton to wind up, and to indicate whether he wishes to press or withdraw amendment 210.

Lord James Douglas-Hamilton: I have to know in detail exactly what the minister feels. It is for the minister to reply before I have the chance to wind up.

The Convener: It is not, but if that would be helpful I am prepared to allow the minister to say something.

Euan Robson: I am sorry—I should have replied earlier. I seek the convener's guidance on that in future.

Amendment 210 is too prescriptive. It would require the education authority to "obtain and act upon" advice. The original wording was carefully chosen, and Fiona Hyslop has understood that clearly. I understand the consideration that has prompted the amendment. There are two presumptions here: first, that the education authority would not take sufficient steps to obtain such advice and information; and secondly, that the education authority would not take sufficient account of the advice and information offered by agencies.

However, I think that what is happening here is that the education authority's hands are being tied. The word "seek"—rather than "obtain"—has been used in the original drafting because the education authority can only really be responsible for seeking the information, not securing it. It is the responsibility of the appropriate agency to provide the relevant information. The words "take account of" rather than "act upon" have been used quite deliberately in the original drafting because it is possible that any information provided might not be complete and might not be wholly relevant. If we impose a duty to act upon something that is not entirely relevant or may have erroneous content, we are in difficulties.

It is really the responsibility of the education authority, in making adequate and efficient provision to meet the additional support needs, to ensure that it appropriately uses any information that it is offered. As I said, that may entail that it does not "act upon" the information that it receives in the straightforward manner that the amendment would require.

Amendment 210 is too prescriptive and I ask Lord James Douglas-Hamilton to seek to withdraw it because it makes the education authority responsible for obtaining information that falls within the remit of other agencies and because it fails to permit the education authority sufficient discretion in the way that I have described.

Amendment 211 in effect removes the qualifier

"as the education authority think appropriate".

The intention behind the amendment and the effect of the amendment are not clear. The wording "any appropriate agency" refers to agencies that are prescribed under section 19(2). The wording of the amendment seems to attempt to remove discretion from the education authority in considering which agencies in terms of section 19(2) are appropriate for the purposes of section 10(2)(a). However, amendment 211 may still admit a degree of subjectivity in that the education authority would still have to choose which agency from all those that are prescribed in section 19(2) it would have to consult. Alternatively, amendment 211 may imply that the education authority would be obliged to consult every appropriate agency that is defined by section 19(2), so admitting no degree of discretion at all. Finally, the amendment does not define what is meant by any "other person". I am afraid that our view is that amendment 211 adds no clarity whatever to the bill.

Amendment 212 places too onerous a duty on the education authority, which is not quite what Lord James Douglas-Hamilton intended. In requiring the education authority to "obtain" the views of the child and parent or young person, the amendment obliges the education authority to secure a view. What happens if the person has no view? The amendment requires that something be obtained when there is no view to be given. What should the education authority do in such circumstances?

The original drafting requires the education authority to seek the views of the child and parent or young person. In the event that the child, parent or young person has no view to give, an education authority may discharge its duty by discovering the very fact that there are no views to express. For no view to be given is quite acceptable. That one does not have to give a view if one does not want to is well established. It is extremely important for a view to be sought, but if a view is not there, it is not there. The original drafting would require the education authority to seek rather than secure a view, which is deliberate.

Amendment 213 is confused in its effect. Where a duty is placed on an education authority in the bill, it is placed on the local authority in its capacity as the education authority. By inserting the words "obtain and" into section 10(2)(d), the amendment would require the education authority, as the local authority, to obtain information from itself, which is clearly nonsensical.

The current drafting of the bill requires the education authority, as the local authority, to take account of relevant advice and information from other areas of the local authority. For example, the duty would require the education authority to take account of advice and information that is offered by the authority's social work services. It would not need to obtain that information because it would already be in the local authority's possession. I think that the intention that informs the amendment is in line with the policy intention that relevant information should be made available to the education authority. I contend that the bill, as it stands, reflects that policy intention.

Amendment 215 does not clarify the intention of the bill, but does quite the contrary. We think that it muddles. In its reference to appropriate agencies, it omits the qualifier

"as the education authority think fit"

and, in its reference to advice and information, it omits the word "relevant" from the original drafting, which is not helpful. The effect of those omissions is that the amendment is entirely ambiguous. The wording

"any appropriate agency or agencies"

may still admit a degree of subjectivity, as the education authority would still have to choose which agency—from all those that were prescribed in section 19(2)—it would have to consult. Alternatively, amendment 215 may imply that the education authority would be obliged to consult every appropriate agency, so admitting no degree of discretion. For those reasons, I would like Lord James Douglas-Hamilton not to move amendment 215.

10:15

We resist amendment 216 because it requires the education authority, in obtaining relevant information, to secure information that might be outwith its power to secure. It is expecting too much of an education authority to require it to guarantee that such information will be provided. Amendment 216 is confused in its application with regard to section 10(6)(b)(ii). The duty is currently to take account of any likely post-school provision that the education authority, as the local authority, is likely to make for the child or young person on their ceasing school. The effect of amendment 216 would be that the bill would require the authority to obtain that information. That does not appear to make sense. We ask Lord James Douglas-Hamilton not to move amendment 216.

The effect of amendment 217 is confused. As it is drafted, the bill requires the education authority to request information that it thinks is appropriate from appropriate agencies on their likely post-school provision and then to take account of that information to inform the additional support that is provided in the child or young person's final stages of schooling. Amendment 217 requires the education authority to take account of advice from other agencies regarding post-school provision, which advice may not be relevant to the task in hand. It is not clear on what matters other agencies could advise the education authority regarding post-school provision or what the purpose would be in their doing so.

The education authority's responsibility for a young person ceases on the day that that person leaves school. The bill is clear as it is currently drafted. The responsibility of the education authority is to take account only of information that is provided by other agencies regarding likely post-school provision. The education authority can profitably use that information to inform the planning and preparation process for the young person's transition. For those reasons, we would like Lord James Douglas-Hamilton not to move amendment 217.

We do not think that amendment 218 is necessary. It requires authorities to keep under consideration not just the adequacy of the additional support that is being provided, but its effectiveness. We have debated that already.

We agree with the points that were made by Ken Macintosh and Elaine Murray. Amendment 32 is redundant because of Executive amendments 199 and 202. However, we accept the point that Ken Macintosh made about the language in amendment 199: that will be altered at stage 3. The timing of the amendments' being lodged was such that we did not have a chance to alter the wording before amendment 32 was lodged; however, we undertake to do that. Because Lord James Douglas-Hamilton said that it was important, we will double check to ensure that we are quite clear that the intent and meaning of amendment 32 is incorporated in amendments 199 and 202. We think that it is, but we will double check that. If we have any reason to suspect that any extra wording might be helpful, we will add it at stage 3.

I am sorry to have gone on at length, but those were important points to put on the record.

Lord James Douglas-Hamilton: I thank the minister for his assurances with regard to amendment 32. Skill Scotland will be reassured. It would be as well to check with that organisation to ensure that there is no defect in the drafting. I will not move amendment 32.

On the question of adding the words "and effectiveness" after "adequacy", I still think that the reasoning of the convener was sound; therefore, I will move amendment 218 when the opportunity comes.

As for the other amendments, I wish to press only one of them: amendment 210, which was lodged on behalf of parents, as recommended by the charity, Independent Special Education Advice, which acts for parents. The answer to Fiona Hyslop's point is that the measures that it contains would impose a stronger duty to obtain, and act upon, relevant advice and information from appropriate agencies. If there was a dispute in a tribunal or court, that would mean that all the circumstances would have to be taken into account, and the test of reasonableness would apply.

The reason why it is important to have a stronger duty is that it requires the authority to

take a view. If an authority wanted to do nothing, it would need to make it quite clear why it had taken that decision. The authority in question would not simply be required to say that the matter had been noted; it would have to do something a little bit more positive than that. That would be a very welcome change for parents, and it would reassure them. Many of them are concerned that the bill gives too much discretion to local authorities and too little to parents.

The Convener: Before we move to the vote on amendment 210, it might be helpful to explain something about the procedure with regard to groupings. The member who moves the first amendment in the grouping has the right of reply to the debate on the group. However, I think that it is helpful occasionally to allow the minister back in to respond, as we have done before, but hopefully not at such length as was the case for this group. We will try to deal with that in a sensible way so as to advance the business of the committee.

The question is, that amendment 210 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 210 disagreed to.

Amendments 211 to 213 not moved.

Amendments 195 to 197 moved—[Euan Robson]—and agreed to.

The Convener: Amendment 30 has been pre-empted by amendment 197.

Amendment 132 is in the name of Donald Gorrie, and is grouped with amendments 31, 214, 133, 219 and 220. Donald Gorrie has given us his apologies: he is unable to be with us this morning because of the business of the Communities Committee. I will move the lead amendment in the group, although I do not agree with it. However, the point that it raises has been the subject of some debate in the committee, and it opens a debate on a relevant aspect of a young person's transition. If amendment 133 is agreed to, I cannot call amendment 219, which would be pre-empted.

I move amendment 132.

Lord James Douglas-Hamilton: I will speak to amendment 31, which was lodged on behalf of Skill Scotland. It is designed to provide adequate time for transition planning. Young people with complex needs require a long lead-in time in which to plan for leaving school, which emerged from evidence that we listened to at length. In the view of Skill Scotland, the proposed 12 months for transition planning is not long enough for those young people and represents a significant reduction from the current period.

Amendments 219 and 220 seek to extend the period that is prescribed in section 11(1) from six months to 12 months in order to maximise the effectiveness of the planning process. Amendment 132, in the name of Donald Gorrie, would change the period relating to transitional arrangements from 12 months to two years. I look forward to hearing what the minister has to say. In my view, the most important amendment in the group is amendment 31, which I lodged.

Dr Murray: In lodging amendment 214, my intention was to explore some of the issues that emerged from consultation on the draft bill. Considerable concern was expressed that the way the bill is drafted implies that an education authority will start the process only 12 months before a child ceases to receive school education. That concern was echoed in evidence to the committee. I appreciate that, in its response to the consultation, the Executive said that that was not its intention but, to my mind, the statement that,

"no later than 12 months before the date",

every education authority must comply with the duty in section 10(6) to

"request from such appropriate agency or agencies as the authority think fit such information as the authority consider appropriate"

suggests that questions will begin to be asked only 12 months before the child is due to leave school, not that they should have been asked 12 months before then.

I appreciate that the wording of amendment 214 might cause a problem in relation to the way the rest of the bill is drafted, but it is clear that we expect the questions to be asked 12 months before the child is due to leave school; the minister has said that in evidence. I seek the minister's view on whether an authority should be taking account of the views in question during that 12-month period or whether account should have been taken of them by the end of the 12 months. That will depend on the way in which the relevant sections are drafted.

I appreciate that education authorities could have some concern in the circumstances that are

outlined in section 10(5)(b), in which they

"become aware that the child or young person is to cease receiving school education less than 12 months before that date",

but I think that that concern is dealt with by the phrase,

"as soon as reasonably practicable after they become so aware".

Authorities would not be expected to comply with the duty immediately if they were not aware that the child was going to leave school 12 months before the date of leaving.

I think that the other amendments in the group would be over-prescriptive. To specify a two-year period would not take into account the fact that a child's needs might change in the last two years of their school education.

The Convener: That is a process issue, which we have talked about before.

Mr Macintosh: I echo the points that have been made by my colleague, Elaine Murray. We have established the importance of transition without being overly prescriptive in the bill. However, a point that was raised in our discussions is in danger of being overlooked altogether—the importance of the transition from secondary 2 to secondary 3, which is made at the age of 14. That is not a matter for legislation, but it might be a matter for good practice.

Fiona Hyslop: The committee should support moves to make it clear that we want the process to start at least two years before a child leaves school. Amendment 214 is very useful in that it seeks to clarify that authorities should comply by the specified time.

I am interested to hear the minister's response, because the committee's stage 1 report made it quite clear that we want the Executive to produce an amendment that would clarify what to most people who read the bill was obviously a misunderstanding of intent. I am slightly disappointed that the Executive has not lodged an amendment that would have helped the process. In the meantime, we are dependent on the amendments of Lord James Douglas-Hamilton and Donald Gorrie. At the very least, the committee should support amendment 214, because it makes some effort to clarify that the process should have started by the time specified and should not be just a final year run-in for transition.

Ms Rosemary Byrne (South of Scotland) (SSP): I support amendments 132 and 31. Many witnesses took the position that is proposed and I am disappointed that the Executive has not sought to amend the provision in question. The matter needs to be firmed up and the proposed timescale needs to be specified, so I hope that members will support the change.

10:30

Euan Robson: The planning duty that amendment 132 seeks to impose on education authorities might prove to be premature in relation to some young people. Although it has always been the bill's stated intention to encourage early preparations for young people's transition to beyond school, a prescriptive two-year period by which such preparations should be completed would in many cases not be appropriate. I think that the reasons for that are obvious.

As the bill stands, an education authority must have completed such arrangements no later than 12 months before the leaving date. Indeed, I would expect planning to begin much earlier in cases in which the young person's post-school destination is entirely clear. Good practice should ensure that that happens. We might consider putting that in the code of practice if it is necessary but, as I have said, we expect authorities to comply.

When a young person is still undecided about his or her destination, I would expect the education authority to offer to the young person every assistance in making an informed decision. It might be that the young person is quite understandably unable or unwilling to make up his or her mind at the age of 14. As a result, I am afraid that we are not minded to accept amendment 132 as it seeks to introduce to the process a certain rigidity that the bill has been developed specifically to avoid.

Similarly, although I entirely understand the intention behind amendment 31, it seeks to impose a planning duty on education authorities that might prove premature in relation to some young people with CSPs. It is right to say that many young people with CSPs will need extra support when they leave school. Indeed, it is right to say that planning should begin as early as possible; as I have said, that is only good practice. In some cases, that planning might begin two years before the young person leaves school. It is also right to say that the bill already makes provision for that. Its drafting allows for a degree of flexibility in instances in which it would not be appropriate to have completed transitional planning at such an early stage. Again, the code of practice will encourage education authorities to start that planning as early as possible for children with the most extensive needs. Indeed, we will make the appropriate references in the code itself. After all, there is already much good practice in this area and I would expect it to be implemented throughout the country. We are looking for that to happen and Her Majesty's Inspectorate of Education could carry out inspections on that basis.

That said, it is important to allow scope for transitional planning to begin when it is appropriate for the individual. In some cases, that might happen within the two years that amendment 31 would prescribe. Although the amendment aims to secure successfully well-prepared transitions for children with the most extensive needs, it would succeed only in constraining the process.

As far as amendment 214 is concerned, I wish that I had paid more attention to English grammar, particularly tenses, when I was at school. On the face of it, one might think that it would better to change "comply" in section 10(5) to "have complied". I should point out that we will take another look at the issue, because it has stimulated considerable debate. That said, the considered view is that the amendment is unnecessary and stems from the earlier misunderstanding that the duty in question does not need to begin until the final year of schooling.

Sections 10(5) and 10(6) are connected. The drafting is clear that under section 10(6) the authority must have acted on the information. The authority must,

"no later than 12 months before the … child or young person is expected to cease receiving school education,"

take the information into account

"in considering the adequacy of the additional support provided"

in the final stages of schooling. In effect, I am saying that the duty is not only to request information, but to take account of it. There is a definable outcome, which must be achieved at least 12 months before the child or young person leaves school. That is what section 10 means. I understand that that is exactly what amendment 214 is trying to achieve, as well. However, the issue comes down, in effect, to the legal interpretation of the drafting. Elaine Murray was correct to say that there are concerns about consistency. I will take amendment 214 away and have another look at it, but I think that the bill's policy intention and the amendment's policy intention are identical. On that basis, I would like Elaine Murray not to move amendment 214.

Amendment 133 would not secure better transitions for young people with additional support needs. It is not always the case that a young person's school leaving date is known at least two years in advance of his or her leaving school. Similarly, it would not always be the case that the transfer of information pertaining to a young person's additional support needs would be of use at such an early stage. Amendment 133 stresses that such information should be transferred at least 24 months before a young person leaves school. In the majority of cases, that would entail transferring information at an even earlier date. However, it is not the case that every young person with additional support needs will need to be involved in intensive transitional planning.

The bill deliberately states that joint planning and preparation between an education authority and post-school agencies should take place no later than 12 months before a young person leaves school. We believe that it would be far too early to do that 24 months before a young person leaves school. As members will know, as children change, their needs alter. It would be far too prescriptive to transfer information at least 24 months before a young person leaves school; it is likely that there would have to be changes to such information.

The bill specifies that an authority and an agency should exchange relevant information no later than six months before an individual's school leaving date. The bill's cumulative provisions allow for flexibility for young people who are not sure what their plans will be on leaving school. The bill's provisions also encourage constructive planning because discussions will be informed by relevant and up-to-date information. Therefore, we will resist amendment 133.

Amendment 219 would also deny the flexibility that the bill allows. Were information to be passed on no later than 12 months before an individual's school leaving date, as amendment 219 proposes, such information could be out of date and no longer relevant in many cases. In addition, such a timescale would not achieve the aim of providing information. The policy intention of passing information from an education authority to agencies that provide post-school provision is to alert the agencies to the imminent leaving date of a young person. Amendment 220 is consequential on amendment 219 and, for the reasons that I gave, I would be grateful if Lord James Douglas Hamilton would consider not moving amendments 219 and 220.

The Convener: It falls to me to wind up on behalf of Donald Gorrie. I will make one or two points about the debate. Section 10 is an important section because it deals with an important issue, about which the committee agonised at an earlier stage. However, most of us arrived at the view that the minister's reasoning on section 10 is valid because the section deals with a process rather than with an event, to quote a phrase used in other contexts. What is important is that we have procedures in place that ensure that everything happens and moves forward timeously. The minister said that the code of practice will deal with that.

Elaine Murray's amendment 214 is important. Perhaps the minister's officials have not taken

account of one small point, which is that the duty in section 10(6) is double-barrelled. It is a duty, first, to request information and, secondly, to take account of information. In that context, it seems to me—this is a grammar argument—that "have complied" would be more suitable than "comply". I thought at the beginning that it was a technical point, but it is in fact quite important, perhaps not in terms of meaning, but in terms of implication and message. The wording "have complied" feels right, if members see what I mean. It seems to fit more appropriately. "Comply" is present tense and, looking at other sections, it seems that "have complied" would—grammatically—be more satisfactory. I hope that the minister's officials will be prepared to consider that matter further and take it on board. The double-barrelled duty is the important issue here.

This bill is an education bill, so it does not handle things that happen at college, university or the work place. It is extremely important that facilities be put in place in those environments, however, and I took it upon myself to write to the Deputy First Minister on that point. I have received a reply, which I will circulate to members at some point after the meeting if I remember to do so. We cannot deal with that aspect of provision under the bill, but it is important that we are assured that things are happening in that area.

Having made those comments, and with Donald Gorrie's permission, I will not press amendment 132.

Amendment 132, by agreement, withdrawn.

Amendment 31 moved—[Lord James Douglas-Hamilton].

The Convener: The question is, that amendment 31 be agreed to. Are we all 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)
Brown, Robert (Glasgow) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

ABSTENTIONS

Ingram, Mr Adam (South of Scotland) (SNP)

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

Amendment 31 disagreed to.

Dr Murray: Given the minister's agreement to consider the matter again, I will not move amendment 214 at this time, although I may well lodge it again at stage 3 if I am not content that another suitable amendment makes clearer the intention behind the Executive's provisions.

The Convener: The minister is suitably threatened.

Amendments 214 and 215 not moved.

Amendments 198 and 199 moved—[Euan Robson]—and agreed to.

Amendments 216 and 217 not moved.

Amendments 200 to 202 moved—[Euan Robson]—and agreed to.

10:45

The Convener: Amendment 218 was debated with amendment 210. I ask Lord James Douglas-Hamilton whether he is pressing amendment 218.

Lord James Douglas-Hamilton: I believe that this is known as the chairman's amendment, so I beg to move it.

I move amendment 218.

The Convener: That is very cunning, but we had a debate on that issue previously and arrived at a resolution.

The question is, that amendment 218 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 218 disagreed to.

Amendment 32 not moved.

The Convener: Amendment 86 is in a group with amendment 223

Lord James Douglas-Hamilton: Amendment 86 was lodged on behalf of a constituent. To be frank, parents and young people should be made aware that mediation and tribunal services are available. If they are not told, they might be unaware that such services are readily available to them. It would be of great assistance to those

concerned to be informed about procedures, rights and entitlements because they might not be well informed about them.

Amendment 223 seeks to impose a duty on agencies to ensure that the best arrangements are delivered. An education authority must receive co-operation from agencies and amendment 223 is designed to ensure that education authorities have the full co-operation of other agencies. There was a worry expressed earlier during evidence taking that other agencies might not necessarily feel that they are under an obligation to comply with reasonable duties. Amendment 223 is in line with the bill's principles and aims to ensure that co-ordinated support is provided, where necessary.

I move amendment 86.

Fiona Hyslop: I seek clarification from Lord James Douglas-Hamilton. Section 19(3)—which we obviously have not got to yet—covers what appropriate agencies must do to comply with requests for information. Amendment 223 proposes that appropriate agencies must comply with such requests. My concern is about the extent of the duty that amendment 223 seeks. I want either the minister or Lord James Douglas-Hamilton, or both of them, to explain to what extent the provisions of amendment 223 are necessary and not covered by section 19(3).

Section 19(3) has the offensive subsections (a) and (b), which include the provision that an agency need not comply with a request if they feel it "unduly prejudices" its functions. I hope that we will change that provision, as we have changed previous similar provisions, when we deal with section 19(3).

Euan Robson: Essentially, Fiona Hyslop is correct. We believe that section 19(3) covers what amendment 86 proposes and that section 19 effectively deals with what amendment 223 proposes. I will happily double-check that, but we are convinced that that is the case and we can offer that assurance to Lord James Douglas-Hamilton's constituent.

Amendment 223 would add nothing; it would simply duplicate section 19's provision. Amendment 223 would also omit the important circumstances in which another agency should not realistically be expected to comply with a request. On that basis, and with my reassurances, I ask Lord James Douglas-Hamilton to seek to withdraw amendment 86.

Lord James Douglas-Hamilton: I want to clarify the situation. My understanding is that an education authority could ask for help from an appropriate outside agency only if the education authority could specify the help that it seeks from that agency.

The appropriate agency is not under a duty to specify what help it could provide to the education authority, so the purpose of amendment 223 is to make it clear that the appropriate agency must reply specifying the type of help that could be provided. That would allow the authority to frame its request for help competently. Can the minister confirm that that matter is effectively covered in the bill? If he can give me that assurance, I will not press amendment 223.

Can the minister also be clear in relation to amendment 86? Is he saying that the purpose of that amendment, which is to ensure that parents and young persons are properly informed of the mediation and tribunal services that are available, will be covered somewhere else?

The Convener: I will allow the minister back in. That is not the proper procedure, but I will let him reply to Lord James.

Euan Robson: We are quite clear that section 19 covers the points that Lord James Douglas-Hamilton has made. In fact, amendment 86 would confuse the position because section 19(3), as currently drafted, says that other agencies "must comply" with such a request from the education authority unless they consider that the request is

"incompatible with its own statutory or other duties"

or that it

"unduly prejudices the discharge of any of its functions."

Those are two legitimate reasons why another agency might not be able to comply with the request. I do not think that I can say any more, other than that we are clear that the intent of amendments 86 and 223 is covered by section 19. There are defects in the amendments that do not appear in section 19.

However, I assure Lord James that we will consider the issue afresh before stage 3 and if there is some flaw in section 19, we will come back with an amendment. His amendments are attempting to do what we are attempting to do in section 19, so we are agreed on what we must do, but we must be absolutely sure that section 19 achieves it.

Lord James Douglas-Hamilton: In view of that reassurance, I seek to withdraw amendment 86. I am grateful for the minister's response.

Amendment 86, by agreement, withdrawn.

The Convener: Amendment 203 is grouped with amendments 237, 239, 206, 204 and 205.

Euan Robson: Amendments 203, 204 and 205 are technical amendments that reflect the insertion of a new section before section 3 entitled

"Duties of education authority in relation to children and young persons for whom they are responsible".

Members will recall our debate on amendment 63, to which the committee agreed on 11 February.

Amendment 237 is a minor technical amendment that reflects the education authority's collective status. Amendment 239 is another minor technical amendment that will ensure consistency in the terminology that is used in section 14 of the bill, which deals with the powers of tribunals. Section 14 uses the term "reference" to a tribunal rather than the word "appeal", so amendment 239 will bring the terminology in section 16 into line with that which is used elsewhere in the bill.

I move amendment 203.

Amendment 203 agreed to.

Section 10, as amended, agreed to.

After section 10

Amendment 223 not moved.

Section 11—Provision of information etc on occurrence of certain events

Amendment 133 not moved.

Amendment 219 moved—[Lord James Douglas-Hamilton].

The Convener: The question is, that amendment 219 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 219 disagreed to.

The Convener: Amendment 220 has already been debated with amendment 132.

Lord James Douglas-Hamilton: We have just voted on the principle, which has not been accepted by a majority of members, so I do not think that it is necessary for me to move amendment 220.

Amendment 220 not moved.

Amendment 233 moved—[Euan Robson]—and agreed to.

Amendment 134 not moved.

Section 11, as amended, agreed to.

Section 12—Additional Support Needs Tribunals for Scotland

The Convener: Amendment 135, in the name of Donald Gorrie, is grouped with amendments 136, 224, 256, 234, and 250 to 252. In my impersonation of the missing Donald Gorrie, I shall speak to and move amendment 135.

Amendment 135 is designed to make compulsory the making of regulations with regard to the matters covered by section 12. That is certainly not the usual thing, and I personally would not support the amendment, but that appears to be Donald Gorrie's argument. Amendment 136 is, in my view, a more important amendment. It relates to the question of advocacy services, which we have talked about before. The amendment calls for the regulations to

"make provision for the provision of independent advocacy services"

to people who go to a tribunal—so it is specifically targeted—and to

"persons who appear before a Tribunal".

Amendment 136 is an important amendment, on which I await the minister's comments in due course.

I move amendment 135.

Ms Byrne: In lodging amendment 224 I was merely taking note of the views of witnesses, organisations and individuals who have contacted me—and, I am sure, many other members—about the inequality that would result from the lack of legal aid for tribunals. Amendment 224 seeks to even that out and to bring some equality back into that position. I hope that the rest of the committee will agree with the spirit of the amendment and that members will understand that there is a lot of pressure at tribunals and will support the amendment.

Mr Macintosh: In speaking to amendment 256, I do not intend to reopen our debate about legal aid. We came to a difficult decision on that and agreed that we wanted to avoid overly legalised proceedings. We also agreed that course of action because it would be consistent with the way in which people appear before other tribunals.

However, it has been brought to my attention by the Disability Rights Commission that the Executive has introduced support for certain potentially disadvantaged groups at various tribunal systems—for example, at employment tribunals in 2001, and at mental health tribunals and VAT tribunals in 2003. I believe that, to qualify for that aid, an applicant will be assessed not just

on the basis of means—although legal aid would be means tested—but on whether they are able to understand proceedings. The idea is to ensure that disadvantaged groups have the assistance that they need to support them through tribunal systems. People need such support at employment tribunals. We all know from experience that some children with additional needs come from families with additional needs and we can assume that there will be cases in which the applicant does not understand proceedings.

11:00

It might be thought that cost is a particular difficulty, but the DRC has told me that it has estimated that there would not be a great expense. For a start, as well as being means tested, legal aid would apply at a lower level than normal and would apply only to certain categories. The DRC's estimate—which is quite generous—is that costs could be up to £24,000. However, that assumes that there would be an application in all cases and that one in seven would qualify through being disabled. Moreover, it does not apply the means test. Given that the Executive has introduced a system of applying legal aid to certain categories to counter disadvantage at tribunal systems, it is only fair and consistent that it should do so for education tribunals.

Amendment 136 is on independent advocacy. I am not sure whether I understand the drafting of the amendment, but I certainly understand the principle behind it. I do not want to sound like a broken record, but advocacy is extremely important and it is extremely important that the bill reflects that. I understand the arguments and the anxiety on the part of the Executive that there is a danger of diverting limited resources away from direct support services for children to supporting parents in their fight to establish rights, for example, and I, too, would not wish to divert substantial resources from services into the process. I also understand the anxiety that, while we are trying to reduce confrontation and dispute in the system, it might be perverse to stimulate or create demand and encourage parents to be more assertive rather than local authorities to be more responsive. That said, the number of parents who have reported being outgunned, outnumbered and outmanoeuvred in their meetings with local authorities and others is legion. Even if we accept that the new system will greatly improve matters, it is naive and possibly disingenuous to suggest that all such disagreements will go away.

The Executive has already made its policy intention clear. I will read from Peter Peacock's recent letter—my copy of the letter is not dated, but it was written in February. He said:

"I agree that some parents may need support if their child is being assessed"

and that

"the Bill does nothing to prevent this—in fact, the policy intention has always been to allow for parents to bring a supporter of their choice to any meetings with the education authority."

How much of a step is it from translating that clear policy intention into a principle in the bill? Even though this right was not overly used, the record of needs system provided for a named person to be appointed. It seems to be a step backwards rather than forwards not to have such a right enshrined in the bill.

The Convener: Minister, in speaking to amendment 234 and the other amendments in the group, you should bear in mind the fact that you will not have an automatic right to reply at the end.

Euan Robson: I will deal with all of the amendments, in that case.

Amendment 234 is a technical amendment. It became apparent, on reconsideration of the wording, that there might be confusion over how the regulation-making power in section 12(5) and schedule 1 would operate. As drafted, the regulation-making power in section 12(5) is for matters over and above those already dealt with in the body of the bill, for example, those over and above the constitution and procedures of the tribunals and appointments and functions of the president and other administrative matters.

The regulations in schedule 1 relate to matters such as the functions of the president and tribunal procedures. The regulation-making powers flow from section 12(5), yet section 12(5) is to be used for matters over and above them. Therefore, the regulation-making powers in schedule 1 need to be made into stand-alone powers.

Amendments 250 to 252 give effect to the recommendation of the Subordinate Legislation Committee at stage 1 for any regulations made by Scottish ministers under section 12(5) to be subject to affirmative resolution in Parliament. I recommend those amendments to the committee.

Amendments 135 and 136 are important and we have given a great deal of consideration to this subject. However, we wish to resist them because they attempt to oblige Scottish ministers to make regulations providing for advocacy services for those referring matters to the tribunals. We are not clear that statutory provision for advocacy services should be made in the bill or the regulations, but I am mindful of the committee's general approach to the issue.

Ken Macintosh mentioned Peter Peacock's letter, which stated that the policy intention has always been for parents or young persons to be

able to take a supporter with them to tribunal hearings if they wish, and that supporter may be a representative of an advocacy organisation. It is intended that the rules of procedures for tribunals that Scottish ministers make under paragraph 11 of schedule 1 will make provision for that. There is nothing in the bill to prevent voluntary sector organisations from offering such a service. As the committee will recall from stage 1, between 2004 and 2007 we are funding two organisations to provide for advocacy through the unified voluntary sector fund. Further, we have set aside sums of £12 million and £14 million, some of which—bearing in mind the important point that Ken Macintosh made about the diversion of limited resources from front-line services to advocacy—we are prepared to earmark for further assistance to advocacy. However, I do not expect the services that I am talking about to be an obligatory or integral part of the tribunal hearing system.

Tribunal hearings will be as informal and unintimidating as possible. Tribunal members will be thoroughly trained to put parents at their ease and tease out the issues of the case. Decisions that are made on any case will be based on the facts of the case, not on the basis of the eloquence of its delivery.

I appreciate the concern that has given rise to these amendments, but I fully believe that, once the new tribunal system is in operation, fears that the system will not be fair to parents will be allayed. The fears that are being quite legitimately expressed today are based on the current system, in relation to which the lack of trust has become almost endemic. The challenge for everybody is to regain the trust of parents. I believe that the bill will achieve that.

Given the committee's obvious concern, I am minded to look again at section 12(4) to see whether we could include a reference to advocacy there. I do not promise that we can do that, but we might be able to amend section 12(4) by adding such a reference after the words

"constitution and procedures of the Tribunals".

I refer members to the rules of procedure in paragraph 11 of schedule 1. Subparagraph (1) says:

"The Scottish Ministers may make rules as to the practice and procedure of the Tribunals."

I cannot conceive of a situation where we would not make rules, so we will turn that "may" into a "shall", which will go some way to meeting amendment 135. We will also look at the wording

"Such rules may, in particular, include provision for or in connection with"

to see whether we might always want to incorporate such rules, although we do not want to lose flexibility. We might be able to pick out one or more of the rules, in particular paragraph 11(2)(f), on

"enabling specified persons other than the parties to appear or be represented in specified circumstances",

That is where advocacy appears in the bill. It is not a specific reference, but without giving members a clear assurance that we will be able to achieve it, we will look at whether we can develop the phraseology. I am attempting to move in the direction in which the committee wishes to go on the general area under discussion and in relation to the questions posed by amendments 135 and 136.

I turn to amendment 224. Legal assistance will be available to those who are eligible when matters are referred to the tribunal. It must be made clear that assistance provides access to legal advice and information prior to and after a tribunal hearing. The Executive does not believe that we need to make further provision. The way in which the tribunal hearings will be conducted will be as informal, family friendly and unintimidating as possible. Tribunal members will be trained to achieve that, to put parents at their ease and to get to the issues. Decisions will not be made on the way in which a case is presented; they will be made on the facts of a case. Training will focus on achieving that outcome. Parents and young people will be able to take along to the hearing representatives to speak on their behalf, as I made clear. That provision is made in the bill and I have said that we will try to clarify it further if we can. The aim of the tribunal is to be family friendly, so legal representation should not be encouraged. We do not want to over-legalise the process.

Ken Macintosh raised some interesting and important points and I will take a moment or two to concentrate on what he said. I am fully aware that there are representatives at other tribunals, but the position varies. I understand that legal aid is provided only when the tribunal is to determine civil rights and obligations under article 6 of the European convention on human rights and when the person meets the eligibility criteria for legal aid. I am advised that the additional support needs tribunal will not be determining civil rights per se or obligations that are covered by article 6 of the ECHR. Therefore, it will not be the same type of tribunal as those to which legal aid has been applied. It is probably better to explore legal aid regulations outwith the context of the bill, if members wish to do that. I do not think that what is being proposed is consistent with the Executive's approach to legal aid in relation to other tribunals.

I come back to the key point that the tribunal hearings are supposed to be informal, family friendly and non-intimidating. If, for example, any

of the parties had additional support needs themselves or a combination of difficulties that meant that they required an interpreter, provision for that would be made through the procedural rules, which members have seen and to which I alluded earlier.

11:15

Ken Macintosh said that the total potential cost of his amendment would be about £24,000, but we do not understand how that figure was arrived at. That is an important consideration. Earlier, in a different context, he rightly said that we must be careful about the way in which we allocate resources.

I stress again that parents and young people can be accompanied by a representative if they so wish—indeed, a representative might be legally qualified or from an advocacy organisation. Decisions on any case will be made on the basis of the facts, rather than the way in which the arguments are put across. I am confident that the provisions on tribunals in the bill are more than sufficient to ensure that parents and young people will be supported and will be able to have faith in the system without the need for legal representation.

I hope that I have explored these important issues. The debate has been interesting but, for the reasons that I have given, I ask Ken Macintosh not to move amendment 256 and I ask the convener to withdraw amendment 135 and not to move amendment 136.

The Convener: Will you clarify one matter? Does the Minister for Justice have powers under existing provisions to extend legal aid for tribunal representation if that is necessary?

Euan Robson: I do not want to venture a view that might mislead the committee. I will take that question away and then give the committee a response, if that would be satisfactory.

The Convener: It would be helpful for members to know whether such powers exist.

Euan Robson: Indeed. That is an important point and I will be happy to clarify the situation for the committee in writing.

The Convener: Do other members want to speak on the amendments?

Ms Byrne: I just—

The Convener: Sorry, Rosemary, but you have had a shot on this group.

Ms Byrne: Can I come back in?

The Convener: You are not really entitled to have another go.

Lord James Douglas-Hamilton: Amendment 136 is about the provision of independent advocacy services. Would such matters be covered in the code?

Euan Robson: We can consider doing that as well.

May I make a minor alteration to what I said earlier, for the purposes of accuracy? I am advised that I referred to paragraph 11(2)(f) of schedule 1, when I should have said paragraph 11(2)(e)—I apologise.

The Convener: It falls to me to wind up the debate on this group of amendments.

Section 12 is an important section. There is variable practice in different areas in relation to legal aid, as the minister said—I think that in employment tribunals the scope is a little wider than the minister suggested, but that is beside the point. I share his concern that the costs would be rather higher than Ken Macintosh suggested, although that would obviously depend very much on the numbers.

When the committee considered the matter, we had in mind an approach that would not be too formal or legalistic. I am sure that that approach is right. As the Scottish Committee of the Council of Tribunals said, the issue is less about legal representation than it is about the ability to be supported by advocacy or similar services. It is not entirely a question of one or the other, but the minister's assurances on advocacy seem to take away some of the urgency in relation to legal aid.

The thrust of our view, if I understood our reasoning correctly, was that we were not all that keen on moving in the direction of legal representation. It was also thought that there would be inequality of arms, if there was legal representation and lawyers were materialising all over the place for the authority. The minister has spoken about that in the past. The code may be able to nod in the direction of informality, although lawyers may occasionally be useful for giving advice to the tribunal and other things.

In response to Donald Gorrie's amendments, the minister indicated that he is prepared to examine the issue of advocacy again, to ensure that it is adequate. In that light, I am authorised to withdraw amendment 135 and not to move amendment 136.

Amendment 135, by agreement, withdrawn.

Amendment 136 not moved.

The Convener: I ask Rosemary Byrne to move or not move amendment 224. I do not know whether you had a crucial point to make earlier, but you can add something briefly if you wish.

Ms Byrne: I listened to what the minister said, but I would prefer to see advocacy in the bill.

Amendment 224 moved—[Ms Rosemary Byrne].

The Convener: The question is, that amendment 224 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Douglas-Hamilton, Lord James (Lothians) (Con)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 224 disagreed to.

Mr Macintosh: I warmly welcome the minister's words to the committee this morning on what we can expect to see at stage 3 on advocacy. When I lodged amendment 256, I did not want to introduce legal aid by the back door. I think we agreed that as a committee. I did not do justice to—

The Convener: Sorry, but I do not want you to go on at length. A sentence is fine, because we have had the debate.

Mr Macintosh: I will forward the Disability Rights Commission's calculations to the minister.

Amendment 256 not moved.

The Convener: The question is, that section 12 be agreed to. Are we agreed?

Ms Byrne: No.

The Convener: Unless there is an amendment to remove section 12, technically we cannot take a vote on it. It sounds a bit stupid when I have to ask members whether they agree to the section or not, but without an amendment we are not in a position to disagree to section 12. If you wish, you can comment on section 12, giving your reasons for not wishing it to be approved.

Ms Byrne: I do not wish it to be approved at the moment, because I want to be able to revisit tribunals and advocacy at stage 3.

The Convener: It is clear that you have the right to come back with amendments at stage 3 on those issues. We are aware of your position.

Section 12 agreed to.

The Convener: We will take a five-minute break at this point.

11:23

Meeting suspended.

11:36

On resuming—

Schedule 1

ADDITIONAL SUPPORT NEEDS TRIBUNALS FOR SCOTLAND

Amendment 234 moved—[Euan Robson]—and agreed to.

The Convener: Amendment 235, in the name of the minister, is grouped with amendment 236.

Euan Robson: The amendments are straightforward. They remove references in schedule 1 to age-related conditions that apply to the recruitment of tribunal panel members. That is in line with forthcoming changes in employment legislation under the European employment directive, which will make it unlawful to operate policies that may discriminate on the ground of age in the fields of employment or vocational training. The main criterion should be the appropriateness of the person to be a panel member in relation to experience and training. We already have sufficient safeguards in schedule 1 to ensure the effectiveness of panel members.

I move amendment 235.

Lord James Douglas-Hamilton: I strongly support the argument that we must take a principled stand against ageism. I recall when Lord Goddard was trying a murder case and the defence counsel said that the deceased's useful life had ceased because he was 70. That went down enormously badly, as Lord Goddard was 80. The amendments do no harm at all.

The Convener: I do not think that Euan Robson needs to respond to that.

Euan Robson: I could not respond to Lord James Douglas-Hamilton's anecdote.

Amendment 235 agreed to.

Amendment 236 moved—[Euan Robson]—and agreed to.

The Convener: Amendment 253, in the name of Rosemary Byrne, is grouped with amendments 262 and 255.

Ms Byrne: My aim in lodging amendments 253 and 255 is to establish independent monitoring of the tribunals. The motivation for the amendments has come from a number of organisations and individuals who have expressed concerns to me. A survey by the National Autistic Society on the tribunal system in England and Wales shows the number of returns to tribunal, the number of appeals registered and the number of cases that

were won—about 84 per cent overall. Many concerns have been expressed about those issues. The survey indicates that a huge number of people are going to tribunal who should not have had to go there in the first place. My other concern is to ensure that, given the current lack of legal aid, we consider the equality of the tribunal system.

I believe that amendment 255—amendment 253 is consequential to it—would embed in the bill the principle that the independent monitoring body must report back. We would have a complete overview of how the first year had worked and, subsequently, of whether the tribunal system was working fairly. I hope that the committee supports the amendments.

I move amendment 253.

Mr Adam Ingram (South of Scotland) (SNP): My comments will be very much in the same vein as those of Rosemary Byrne. I would like to hear from the minister how compliance with tribunal decisions will be reinforced—my amendment 262 is a probing amendment intended to elicit such a response. As we have heard this morning, there is a strong feeling that the balance of power is very much with the education authorities and against parents. Parents certainly feel at a disadvantage. To what extent can the minister reassure parents that education authorities will not drag their heels or spin out any disputes on which a tribunal has reached a decision? That is the type of issue that amendment 262 explores.

Mr Macintosh: I am sympathetic to the arguments that have been put forward by Rosemary Byrne. I saw the National Autistic Society's paper and I appreciate the concern that decisions made south of the border are not being implemented. That is a serious matter. However, to set up an independent body at this stage is almost to undermine the purpose of the bill, or to admit defeat before the bill has been enacted.

The minister has spoken about using HMIE to enforce the policy and we are expecting the tribunal, in conjunction with the provisions of the bill, to standardise policy for additional support across the country and between local authorities. I am not saying that the problems south of the border will definitely not be replicated here, but to assume that they will would be going too far. I would welcome the minister's comments on the matter, particularly on the role of HMIE. Establishing an independent body at this stage strikes me as a piece of bureaucracy too far.

Dr Murray: Earlier at stage 2, the minister made a couple of references to the use of section 70 of the Education (Scotland) Act 1980. He said:

"There are powers of direction in the bill and, of course, complaints can be made under section 70 of the 1980 act."

He later said:

"Section 70 of the Education (Scotland) Act 1980 is the route by which a complaint would be made to ministers."—[*Official Report, Education Committee*, 11 February 2004; c 890 and 902.]

He went on to refer to a number of complaints coming to ministers under that provision. Might the provisions in section 70 of the 1980 act offer a route by which local authorities could be brought to account should they not comply with a tribunal's decisions?

Lord James Douglas-Hamilton: Amendment 253 seems to offer a constructive way in which any failures on the part of education authorities could be addressed. Amendment 262 strengthens the duty on the education authority to comply with the decision of the tribunal. Both amendments should be regarded with sympathy.

The Convener: I will speak against the amendments. Paragraph 15 of schedule 1, which makes provision for an annual report to be laid before the Scottish Parliament by the president of the tribunal, seems to provide a mechanism for monitoring. I do not think that the slightly bureaucratic alternative suggestion offers the way forward. If the tribunal is not working, in the sense that a lot of applications come before it because of things that have not happened at the local authority level, that would be an issue not so much with the tribunal, but with what is happening at local authority level, which would need to be dealt with by administrative action by ministers—that would provide the ideal format for the matter to be debated by the Scottish Parliament if need be, or at least to be in the public domain if any issues emerge.

11:45

Euan Robson: I entirely understand the reasons behind the amendments in this group and I recognise the anxiety articulated by Adam Ingram and Rosemary Byrne. However, Ken Macintosh, Elaine Murray and the convener are essentially correct. Ken Macintosh referred to the important role of HMIE, Elaine Murray mentioned the section 70 route and the convener rightly spoke about the annual report.

I will go through the amendments in a little more detail. Amendment 253 would place a new duty on the president of the tribunal to follow up and to monitor each case heard by the tribunal. It is not the tribunal's role to engage in such a cumbersome and bureaucratic procedure. Amendment 253 seeks to extend the scope of the annual report beyond the outcome of cases considered by a tribunal to the implementation of such outcomes. That would mean that the president would have to monitor, at a local level, the actions taken after a tribunal case and, indeed,

for a considerable time thereafter, although that period is not specified in any shape or form. Frankly, I do not think that such a role is appropriate for the tribunals, which are there for a specific purpose.

HMIE will monitor the implementation of the new system, including the implementation of the tribunals' decisions. It is not necessary, therefore, for the president to monitor implementation and to be obliged to make recommendations on such matters. That is not to say that the president could not comment in the annual report, however. As the convener rightly said, the president will be able to comment on implementation matters if they are knowledgeable in that regard. The bill's annual report mechanism provides for discretion, but amendment 253 places a duty on the president to follow up each case, which is too cumbersome. I ask Rosemary Byrne to withdraw amendment 253 for the reasons that I have given, which I hope offer reassurance.

We do not think that amendment 262 is necessary because it suggests that education authorities and others will automatically choose to ignore a tribunal's directions. We just do not think that that will happen. We are well aware of the committee's concern to ensure that tribunals' orders are acted on. I refer again to the role of HMIE in that regard. It is expected that education authorities will comply with orders made by tribunals, given the nature of the role of tribunals in regulating the relationship between individuals and local government. That is what tribunals exist for. There are sufficient safeguards in the bill, in other education legislation and in the justice system overall to ensure that education authorities comply with tribunal orders.

As was said, section 23 of the bill provides that Scottish ministers have a power of direction over education authorities concerning the exercise of the authorities' functions under the bill. Section 23 is relevant, therefore, and sets out a duty to comply with such ministerial directions. Authorities in general, or a specific authority, can be directed to comply with a tribunal order. Where the duty is breached, there is scope for Scottish ministers to take action to ensure that the duty is discharged under section 70 of the Education (Scotland) Act 1980, as Elaine Murray pointed out. If an authority's failure to comply with a tribunal order impacts on the carrying out of a duty under the bill, a parent could seek a court order for the specific implementation of the statutory duty. The authority would then have to comply with the court order or face being in contempt of court. I believe that, cumulatively, those are strong safeguards. I appreciate the spirit in which Adam Ingram lodged amendment 262 as a probing amendment, but I hope that I have been able to reassure him about the provisions in the round.

I cannot add much about amendment 255. I really do not see any point in adding to HMIE's role by setting up another monitoring body. If members want further reassurance on that, I may be able to give it when I am back before the committee in due course when the draft School Education (Ministerial Powers and Independent Schools) (Scotland) Bill is discussed. There will be some adjustment to ministers' powers to ensure that authorities improve their functions, following recommendations from HMIE. We believe that, overall, we have a package that will give the committee sufficient assurance that its concerns will be dealt with. I therefore ask Rosemary Byrne to withdraw amendment 253

Ms Byrne: I am still not convinced that we have a system that will be transparent and fair enough and that will come under enough scrutiny. I will withdraw amendment 253 and not move amendment 255, but I suspect that I will return with similar amendments at stage 3.

Amendment 253, by agreement, withdrawn.

The Convener: Amendment 100, in the name of Fiona Hyslop, is grouped with amendment 101.

Fiona Hyslop: With amendments 100 and 101, we move on to completely different ground. The amendments refer to page 27 of the bill, which is part of schedule 1. The commissioner for children and young people in Scotland has now been appointed, which was welcomed by members from all parties in the Parliament. Throughout the bill's progress, it was recognised, particularly in our evidence taking at stage 1 and in the minister's comments in the stage 1 debate, that the Parliament and the Executive would return to the issue of additional support needs. Wider, deeper and longer-term policy issues will have to be considered, including the monitoring and experience of the additional support system as it is established.

The provisions on disclosure of information prescribe what the president of the tribunal must do in respect of providing information. Amendment 100 is a fairly simple amendment, as it would insert into the bill a reference to the role of the commissioner for children and young people—the bill would be one of the first pieces of legislation to include such a reference. Should the president for reasons of policy and responsibility want the commissioner to take up cases or understand the issues arising, he or she would be expected to advise the commissioner of any such matters. The amendment is straightforward and is meant as a constructive measure to include in the bill a reference to the establishment of the children's commissioner and to give backing in law to the president's ability to exchange information with the commissioner in the interests of meeting additional support needs.

Amendment 101 recognises that one of the key functions of the bill is, as we have already touched on, to place duties on other organisations to comply. The president of the tribunal will be in an ideal position to understand what is working, what is not working and which agencies are, under section 19, appropriate to be listed. We are in a state of flux in the development of children's services: many authorities are combining children's services and education services; we are embarking on a child protection inquiry; and we know from announcements that were made yesterday that the minister is considering issues around social work and criminal justice. There are a range of responsibilities and the designation of appropriate authorities dealing with children will be in a state of flux and change. It would be helpful if the president could advise ministers on the appropriate agencies to comply with specific requests under the bill. I hope that that is a straightforward explanation.

I move amendment 100.

Mr Macintosh: I query whether the powers are necessary. It strikes me that they almost encourage the president of a tribunal to take on a policy development role. As part of the tribunal's role will certainly involve implementing policy evenly and maintaining standards throughout Scotland, I think that the president will already have the powers that the amendments set out and that therefore those powers do not need to be put in legislation. However, by seeking to put them in legislation, Fiona Hyslop is placing greater emphasis on the matter and is encouraging the president to do the things that she has suggested. The amendments seek to develop the president's role in a way that I would not welcome, because that role is the job of democratically accountable representatives.

The Convener: I agree with that.

Euan Robson: There is nothing to prevent the president from bringing something to the attention of the commissioner for children and young people or, indeed, ministers. However, Ken Macintosh is right to say that putting such powers in statute elevates them and perhaps invests them with a purpose that might be unclear or even unnecessary. If at any time the president felt that the commissioner should be regularly advised on matters concerning tribunals, the regulations mentioned in paragraph 16 of schedule 1 could be used. In any case, the commissioner is concerned with the promotion and safeguarding of children's rights and has no role in investigating or supporting individual cases.

As for amendment 101, the president is concerned with the proper operation of tribunals and will not offer Scottish ministers advice about the appropriateness or otherwise of agencies that may assist education authorities. I do not think that the president would have a full picture in that respect. However, as I have said, there is nothing to prevent him or her from, for example, sending a letter in either circumstance. Again, putting that in legislation would elevate its purpose unnecessarily.

Fiona Hyslop: Given that the annual report should give the president the opportunity to comment on matters if he so wishes and in light of the minister's comments that the president can advise the commissioner for children and young people on any aspect, I will not press amendments 100 and 101. We recognise that the president might have such a role, which is not about policy development, but about implementation and the useful exchange of information.

Amendment 100, by agreement, withdrawn.

Amendment 101 not moved.

Schedule 1, as amended, agreed to.

Section 13—References to Tribunal in relation to co-ordinated support plan

The Convener: I call Fiona Hyslop to indicate whether she will move amendment 137.

Fiona Hyslop: Have we already debated amendment 137?

The Convener: Yes.

Fiona Hyslop: Amendment 137 was grouped with amendment 117, in the name of Scott Barrie, which concerned the capacity of children. When we debated amendment 117, the minister said that he would revisit those issues at stage 3. Even though he did not give a definite commitment or guarantee that he would do so, he said that he would take steps in that direction. In light of that, I will not move amendment 137.

Amendment 137 not moved.

The Convener: Amendment 102 is grouped with amendments 103 to 106, 227, 138 and 41.

12:00

Fiona Hyslop: The issue of tribunals is central to the bill. Many commented at stage 1 that the need to develop a system of trust is at the heart of the legislation; indeed, the minister has said as much today. Ideally, we do not want every case to go to tribunal; we want people to pursue other methods such as mediation and so on. However, the question of who will be able to access the tribunal is at the heart of the matter.

It is interesting to note that, in the bill, the Executive has named the tribunal the additional support needs tribunal; it is not referred to as the co-ordinated support plan tribunal, even though

the majority of references are to CSPs and access to the tribunal is on the ground of whether or not someone is eligible for a CSP. I have lodged a series of amendments, some of which the committee might be sympathetic towards. I request that members consider each amendment in isolation rather than as a package, because they might feel more comfortable with some of the amendments than with others.

Amendment 102 seeks to expand the power to allow a decision of the education authority on whether a child has support needs to be referred to the tribunal. It would have the effect of allowing consideration of whether a child has additional support needs to be a ground for referral.

We have had a great deal of debate on assessments, and many amendments have been lodged on their role. Ken Macintosh has identified that one of the greatest concerns is that issues around assessment are sometimes the most contentious and of most concern. Amendment 103 seeks to expand the power to refer to a tribunal a decision to refuse an assessment request. One of the weaknesses that we identified in the bill was the capacity for the local authority to refuse to have an assessment carried out.

Amendment 104 would allow the findings of an assessment to be referred to a tribunal. That is important, because it would allow the decision to be challenged. A concern about the current system is parents' disagreements with the content of an assessment; amendment 104 would allow the tribunal to assess that. It is important to recognise that, through the tribunal's work, tribunal case law will be built up, which will be helpful.

Amendment 105 would allow a parent or young person to ask the tribunal to rule on the reasonableness of a refusal by the education authority to carry out a review. That accepts the point that, even if just having a CSP were to be the ground for access to a tribunal, issues about reviews would have to be addressed.

Amendment 106 would allow a parent or young person to ask the tribunal to rule on the appropriateness of the support that is offered. That would give greater support to the parents and children involved, would allow the tribunal to have greater scope and would make the system more flexible.

In considering these amendments, we should view the tribunal as underpinning the heart of the bill. We all agree that, where possible, we want to avoid a confrontational system. We want to build trust into the system. If, as it has said, the Executive is convinced that children who are not eligible for a CSP will have their additional support needs met by local authorities—an issue that has been dealt with in the important amendments 63 and 64—it has nothing to fear in expanding referrals to the tribunal system in such a way. If the Executive's view of what will happen with the system turns out to be the case, there will be few referrals. In practice, that will become clear early on.

Concerns have been expressed about the volume of referrals but, when we took evidence from people who are involved in tribunals, they told us that the tribunal will be able to expand to meet demand. Perhaps it was more the case that the committee was concerned about the volume of referrals than that there would necessarily be insufficient provision to meet that. I ask members to consider my amendments individually and to decide whether they would be prepared to support any of them. I commend my amendments to the committee, but will leave other members who have similar amendments to address their points.

That said, amendment 41 is very important, because it goes to the heart of the issue of whether the tribunal will be able to direct other agencies to comply, to which we have returned repeatedly. Much reference has been made to the fact that the bill is an education bill. We are meant to live in a world in which we have joined-up government and holistic approaches to issues. Although the free personal care legislation might be considered a health act, it has certainly put many burdens and requirements on local authorities. If we are to take a child-centred view of legislation, to hide behind the rationale that the fact that the bill is an education bill means that we cannot allow it to include powers to direct other agencies is neither practical nor sensible in this day and age. Amendment 41 should be supported in that light.

I move amendment 102.

Ms Byrne: Amendments 227 and 138 seek to broaden access and tighten up one or two areas. I looked at the convener's amendment 257, which is not in this group, but which seeks to amend the same area that amendment 227 seeks to amend. Similar points are raised in both those amendments. I am of a mind to not move amendment 227 in favour of amendment 257, and to move amendment 138.

Mr Macintosh: Convener, could Rosemary Byrne be allowed to speak to amendment 138, because she has not had the chance to do so?

The Convener: Do you have any comments on amendment 138?

Ms Byrne: No—it speaks for itself.

Lord James Douglas-Hamilton: Fiona Hyslop referred to amendment 41 as being very important. It was lodged on behalf of the Scottish Child Law Centre and seeks to tighten up the

duties on other agencies that are involved in co-ordinated support plans. It would allow the tribunal to require the other agencies that are identified in the co-ordinated support plan to take such action as the tribunal considers appropriate. Without amendment 41, the powers of the tribunal would be inconsistent and insufficient. I believe strongly that the Scottish Child Law Centre should be supported in this regard.

Dr Murray: I understand what members are trying to achieve by lodging the amendments in the group. We all recognise that parents whose children do not hold a co-ordinated support plan may be concerned that there might be nowhere to go to enforce their right to have their children's needs met. We have discussed that in relation to other aspects of the bill. It is crucial to people's perception of the bill that parents are assured that no rights will be lost, that there will be places to which they can go, and that there will be people who will uphold their rights. The way in which that is done will determine whether the bill works effectively or not.

My problem with the amendments in the group is that they would place a great deal of work at the door of the tribunal, such that the tribunal might be unable to get on with the important work of ensuring that the most vulnerable children who have co-ordinated support plans have the services provided for them that they need. Although I appreciate the rationale behind the amendments, what they seek to achieve is not necessarily the best way of providing reassurance, because they will increase the work load of the tribunal to such an extent. In addition, the submission from the Convention of Scottish Local Authorities suggested that 15 to 20 per cent of children have additional support needs. The amendments in the group will have significant financial consequences, which ought to be reflected in the financial memorandum.

Mr Macintosh: I echo Elaine Murray's comments. The amendments seek to extend the grounds upon which a dispute can be referred to the tribunal. I will not pretend that I am not sympathetic to the intent—each amendment has been well argued for and can be supported.

People who have appealed under the record of needs system have experienced the benefits of statutory rights. Many people believe that only the tribunal will replicate those rights, but, although I appreciate their anxiety, that is not the case. The Executive has already introduced dispute resolution procedures to help to allay at least some of those fears. Even if it were possible to agree to the amendments without undermining the purpose of the bill, which is to reduce bureaucracy and unnecessary confrontation, I would still wish there to be one system of appeal—the tribunal.

We will come on to the amendments towards which I am more sympathetic later. Many of the amendments in this group, particularly amendments 102 to 106, seek to grant an automatic right to appeal given certain criteria, but without the statutory paperwork—the CSP—to back up that right. That is not an insurmountable obstacle, but it is an additional complication.

We have drawn a line at a certain point. We are confident that we are capturing the most vulnerable and complex cases, although other complex cases could be included. However, I am not sure that singling out individual examples is necessarily the best or fairest way of addressing the total body of additional support needs. There are difficulties with amendments 102 to 106.

I am supportive of amendment 138 in principle, as it suggests that information that is included in the annex to a CSP should be appealable. I would like Rosemary Byrne to clarify whether that is what she is suggesting. Section 7(4)(b) describes an annex to a CSP. The minister has said that that should not be appealable, but I think that it should be. However, I am slightly confused because the bill has been changed by amendment 85. I thought that we were going to wait for the bill as amended at stage 2 to see how the provisions make sense. Nevertheless, I am sympathetic to the idea that the annex should be appealable.

I would welcome the minister's views on amendment 41. We debated at length the powers of the tribunal over other agencies and came to an agreement that it would not be appropriate for the bill to increase those powers, although I can think of examples of that happening for other bodies, such as children's panels. I would also welcome the minister's comments on how the tribunal will work in practice, such that increased powers are not required.

The Convener: This is one of the most important debates that we will have on the bill; to a degree, it is entwined with the definitional issues. Fiona Hyslop mentioned that the name of the tribunal is odd, if nothing else, and there is also the issue of co-ordination being singled out as an area of difficulty, which Lord James Douglas-Hamilton has gone on about.

Although the ministers have explained their reasoning on all those matters before, there remain a number of areas of concern. There are perception problems arising from difficulties under the previous regime, which we will have to deal with as well. Serious consideration must be given to whether the tribunal's jurisdiction should be extended either immediately or over time and how things fit together. However, the proposed provisions in the amendments to section 13 are too wide. I take on board the minister's comments, which were made in evidence previously, about

the fear of overwhelming the tribunal. We must ensure that the resources that are available in this area are not taken up with a lot of appeals on relatively minor issues. The amendments would widen the provisions too much. As we stand, with the knowledge that we have of the position, we cannot extend the jurisdiction of the tribunal to cover all additional support needs issues. Nevertheless, we need a mechanism that covers those issues and we must get it right.

Fiona Hyslop's plea that the issues be considered separately is right; however, we must also look toward the overall view of where we are going. I am not prepared to support the amendments to this section, although I think that they deal with important issues, and I look forward to hearing the minister's comments.

Euan Robson: You make some relevant points in relation to this group of amendments. It is perfectly fair of Elaine Murray to draw attention to the financial memorandum to the bill and to what the consequences would be for that if the amendments were agreed to. There are several good reasons why the remit of the tribunal should not be extended to include all cases relating to additional support needs.

Amendment 102 would allow the parent or young person to refer to the tribunal the education authority's decision as to whether the child or young person has additional support needs. That is clear enough. However, the amendment gives no recognition to the spectrum of additional support needs. It would, in effect, offer the same means for resolving a matter relating to extensive and complex needs as it would for resolving a matter relating to lesser and more straightforward needs. That is exactly the point that Elaine Murray homed in on. There could be a severe risk of great additional work for the tribunal.

12:15

As we know, additional support needs can be transitory. By the time that a formal appeal process is under way, the additional support needs may have changed, diminished or disappeared altogether; nevertheless, amendment 102 would require the process to proceed as if they had not. It would use a sledgehammer to crack a nut, and other provisions in the bill are better placed to deal with any disputes about a child's additional support needs. When parents wish to take issue with a decision by the education authority in such circumstances, they would do better to go through independent mediation or local dispute resolution procedures. There is also—as we have just discussed—the complaints procedure under section 70 of the 1980 act, which is why it was important to agree to amendment 63.

Additionally, amendment 102 would require all additional support needs to be documented in a statutory way. I appreciate the fact that that is not the intention behind the amendment, but that is what it would do. We would have more paper and bureaucracy. It would create a very bureaucratic system if every decision by the education authority about additional support needs could be referred to a national tribunal. We developed the bill to create a more streamlined process, but I do not think that amendment 102 is the way in which to achieve that. Although I understand the motivation behind the amendment, I ask Fiona Hyslop to withdraw it.

Amendment 103 is not appropriate. Education authorities will be under a duty to make adequate and efficient provision for the additional support needs of each child. They will, therefore, be obliged to investigate thoroughly the needs of the child using the arrangements under section 4, which we have discussed. A request for a certain type of assessment can be refused by the education authority only if the request is unreasonable. The education authority would have to have very clear grounds for stating that the request was unreasonable; for example, the request would have to be vexatious or a duplication of another request. In reaching a decision, the authority will have to consider the reasons that parents give for such requests. Parents are at liberty to arrange their own assessments if they so wish. Under section 10, the authority will have to consider any information that is provided by parents.

The education authority will have to be satisfied that the process of assessment and examination that it has undertaken is sufficient to establish the child's needs. I do not consider a refusal of a request for a certain type of assessment to be an appropriate matter for the tribunal to adjudicate. When a CSP is involved, the tribunal will be able to consider any referral on the conclusions of the authority from the assessment process; otherwise parents will be able to refer such matters to the dispute resolution service. We need to guard against the tribunal being used to adjudicate on every decision by an education authority—that is not what it is there for. On that basis, I ask Fiona Hyslop not to move amendment 103.

I resist amendment 104 because it is unnecessary. It is also confusing in its intent, as it is not clear whether it relates to findings only from any specific type of assessment that is requested under section 6 or to findings from the general process of assessment or examination. The information that is gained from the assessment process will help to inform the conclusions that education authorities reach and the actions that they require to take.

The bill provides several routes for further scrutiny of such conclusions and actions, whether that is part of evidence led before the tribunal or raised in the course of mediation or dispute resolution. Parents can also submit their own reports under section 10 and the education authority must take them into consideration. Amendment 104 fails to recognise that it is what the education authority does with the information that is important, not just the information itself.

I also do not believe that it is appropriate to ask a national tribunal to adjudicate on what are effectively professional matters, such as determining whether the findings of a consultant paediatrician or an educational psychologist are right or wrong. I therefore ask Fiona Hyslop not to move amendment 104.

Amendment 105 is totally unnecessary. It aims to provide for decisions by an education authority not to give an early review to a CSP to be referred to the tribunal. That is already provided for under section 13(3)(d)(iv)—we have covered the proposals that are in amendment 105.

I resist amendment 106 for all the reasons that I gave for resisting amendment 102. That amendment concerned referring to the tribunal a decision by the education authority on whether or not a child has individual support needs. Amendment 106 attempts to extend the jurisdiction of the tribunal to hear all cases relating to the nature of an individual's additional support needs. Again, there is no recognition of the spectrum of additional support needs and the amendment offers the same means for resolving matters that relate to extensive and complex needs as for resolving matters that relate to lesser and more straightforward needs. That would lead us back again to the problems of bureaucracy and overloading. It would also require additional documentation; I covered that when I spoke to amendment 102.

I understand that amendment 227 will not be moved, so I will not discuss it.

Although amendment 138 is unnecessary, I understand the intention behind it. The amendment aims to ensure that any information added to the format of a CSP by way of regulation should be open to appeal to the tribunal. However, the main intention of such regulations is to accommodate standard factual information, such as the name and date of birth of the child and the name and contact details of the parents. It is not really necessary or appropriate to appeal such information, which is either right or wrong. I do not see a need for people to be able to appeal that type of information or its quality. The regulations are not intended to—indeed, they could not—be used to insert other information that should be open to appeal.

Last week, we discussed the possibility of an annex to the CSP to record notes to help and inform reviews of the CSP. Such an annex to a CSP would really consist of working notes and would not be something that could be appealed. We will come back to that debate. The annex is simply intended to bring together the plan and any notes on progress, so that they will all be accommodated in one place. Everyone will keep such notes anyway and if we do not have the annex arrangement, they will probably get scattered about the place. It seems more appropriate to pull notes together in an annex to the CSP. The important point about such notes is that they will monitor progress—they will simply indicate milestones for the statements that have been made. I therefore ask Rosemary Byrne not to move amendment 138.

I hear and understand what the committee has said about amendment 41, but the amendment is not necessary and serves no purpose. I am not sure that what amendment 41 proposes is what was originally intended. I need to ask Lord James Douglas-Hamilton about that. Amendment 41 seems to seek to allow the tribunal, when it overturns certain decisions, to require other providers of additional support in a CSP to take action as determined by the tribunal. By "certain decisions", I mean a decision that a CSP is required, a decision that one is not required, or a decision not to comply with a request for an early review of a CSP. Those are all education authority decisions and the provision of support is not an issue in any of them. Therefore, it is difficult to envisage what action the tribunal would require of support providers at that juncture.

If Lord James Douglas-Hamilton can explain to me what action he envisages would be required of the providers, I will be happy to look at the matter again in more detail. However, we cannot envisage what such action would be. On that basis, I believe that amendment 41 is unnecessary and ask Lord James Douglas-Hamilton not to move it.

Lord James Douglas-Hamilton: Basically, parents' doubts about the bill are that outside agencies will not necessarily always comply with an education authority's common-sense arrangements and requirements. Amendment 41 fits in with the bill's principles and seeks to insert a compliance duty on outside agencies; it would require agencies that are identified in a CSP to take the action that the tribunal considered appropriate. If the minister would like to take amendment 41 away and consider it, I will not press it. However, the amendment was proposed by the Scottish Child Law Centre and I have no doubt that it would not have proposed it unless it had extremely good grounds for doing so.

The Convener: It seems to me that the minister's point is that the appeals process would not give the tribunal the powers to communicate with other agencies, because such communication would be for the local authority. However, I do not want to go round in circles on the matter.

Lord James Douglas-Hamilton: In that case, perhaps there is an added need for the minister to consider amendment 41 to ensure that the tribunal would have the necessary powers to communicate with other agencies.

The Convener: I call Fiona Hyslop to wind up. She can deal with the point that we have just been discussing, and she should state whether she wants to press or withdraw amendment 102.

Fiona Hyslop: There is recognition that section 13 is a key part of the bill and that this debate is similarly important. The bill will enable powers of compliance to apply to outside agencies and the central point about amendment 41 is that it would enable the appeal system to embrace that. I believe that we will return to that issue.

A key point is that parents are concerned that they will have fewer legal rights to appeal under the bill than they have at present. The minister said that parents who want to appeal decisions about general additional support needs, rather than CSPs, would have rights under the provisions of section 70 of the 1980 act. I put on record my belief that, not only because of ECHR requirements but for other reasons, it will be extremely difficult to run two appeal systems: one through education authority appeal bodies and the other through the tribunal. I believe that we will return to that issue, not necessarily only during our debates on the bill but because running two appeal systems is unsustainable.

All committee members received a letter from one of my constituents who is, I believe, the only parent who has had a successful judicial review on additional support needs. Under the bill's proposed new system, her child would not be eligible for a CSP. The minister's advice is that dispute resolution and mediation will suffice; frankly, they would not have sufficed in my constituent's case. The bill will introduce extra barriers.

The minister said that amendment 102 would necessarily generate more paperwork. However, he wants every child to have a personal learning plan, and we know that the system may evolve so that, for example, one child may have a PLP that is a third of a page long while another may have a more extensive one that embraces a CSP.

The minister said that the point of amendment 103 is to test unreasonableness. That is exactly what it would do—it would find an appeal mechanism to test whether a council had been unreasonable in refusing an assessment.

In the minister's response to the question raised in amendment 104, he wondered whether information should be subject to appeal. Although we are discussing a record on a child, it might contain information about the parents. It is perfectly justifiable in law that parents should be able to make appeals about information that is held on them. An assessment is a hurdle to a CSP; therefore people should be able to make appeals in relation to that hurdle.

The minister made a valid point about amendment 105—that the provision should be covered by section 13(3)(d)(iv)—so I will not press it.

In relation to amendment 106, the argument about the general rights to appeal have already been made.

We have an opportunity to reassure parents who are convinced that they will have fewer rights under the bill when enacted than they would have otherwise. The appeal mechanism in the form of the tribunal is the only way in which we can provide that reassurance and trust. Therefore, I will press amendment 102.

12:30

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

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 102 disagreed to.

The Convener: With a sense of inconclusion, we move on. Amendment 225, in the name of Rosemary Byrne, is grouped with amendments 226, 254, 228, 107, 139, 108, 53 and 140.

Ms Byrne: I am slightly confused. Amendments 225 and 226 seek to amend the same area, although amendment 226 is more expansive, so with the committee's agreement, I will withdraw amendment 225.

The Convener: There is nothing in the procedure to stop you progressing with both amendments. I offer no opinion on whether that makes sense.

Ms Byrne: I will speak to amendment 226 and I will withdraw amendment 225 later. My amendments seek to broaden access and to put more fairness into the system. Everyone is aware that I am not particularly happy with the system and my amendments seek to improve it. I would prefer to have a much flatter system that is accessible to everybody. Where someone has additional support needs and does not require a co-ordinated support plan, and the education authority does not fulfil its duty under section 3(1)(b), that person should have the right to go to a tribunal. I hope that that will be taken on board.

Amendment 228 seeks to tighten up provisions to appoint a nominated person. If the young person requires a co-ordinated support plan, I would like the bill to make it the responsibility of the education authority to nominate such a person.

Amendment 107 also seeks to tighten up existing provisions. It refers to

"failure by the education authority, any person identified in the plan as a person by whom additional support should be provided, or a combination of these persons, to provide the additional support".

That brings in other agencies and is straightforward.

I move amendment 225.

The Convener: Amendment 254 is perhaps off to one side of the general debate about the tribunals because it returns to the point that we have already heard about the Disability Discrimination Act 1995. As members will recall, the background is that, under English legislation, a tribunal would be able to deal with such failures under the DDA. However, because the DDA is reserved and education is devolved, it is possible that we will end up with two different tribunals, which would be a messy arrangement. The committee was concerned about that issue, which a number of members have mentioned at different times.

It has always seemed to me that the issue could be resolved in several different ways. One way would be for the bill to duplicate the effect of the DDA. The DDA is reserved, so we cannot amend it, but its substance could be straightforwardly applied to education material. Therefore, there should be no great difficulty in incorporating such provisions in the bill by specifying, as amendment 254 does, that the design of school premises and the provision of auxiliary aids and services for those with additional support needs are matters that can be dealt with by the additional support needs tribunal. In that way, we would not need a separate tribunal or some complex procedure at Westminster to sort out the issues. Amendment 254 is an attempt to deal with the situation.

I know that the minister has been advised that all such matters might be reserved, but I am pretty clear in my own mind that that is not the case. The substance of amendment 254 deals with education issues, which are entirely within the authority that has been devolved to this Parliament. It seems to me that amendment 254 would be a convenient mechanism for sorting out the issue. When the committee previously gave its attention to the matter, we all agreed that the fact that the procedure in the bill should operate in a different way from the equivalent procedure in England is an anomaly.

That is all I want to say on amendment 254, which seems to me to be a common-sense and reasonable way of dealing with the matter.

Fiona Hyslop: Amendment 107 concerns the operation of the tribunal in relation to CSPs. It seems strange that the bill currently provides for cases to be referred to the tribunal if there is a question mark over whether a child requires a CSP, but does not provide for the tribunal to consider cases in which the education authority or other identified provider of additional support has failed to provide that additional support once the CSP is in place. Although the bill provides for appeal to be made to the tribunal for failure to review a CSP and for other matters, failure to provide the support specified in the CSP, which is the essential issue, is not a ground for referral to the tribunal for resolution. That seems an obvious failing in the bill.

If the minister cannot come up with a good reason why the bill does not provide for that—although I am sure that he will—I will seek the agreement of committee colleagues and the minister to ensure that this potential loophole is closed. It is essential that people are able to challenge any failure of an authority to provide support. Amendment 107, which would allow for referral to the tribunal of the failure of an authority to implement a CSP, would provide for the gaping hole that currently exists in the bill to be filled.

Amendment 108 would ensure that the reference in section 14(3) is consistent with the rest of the bill. The amendment would include in section 14(3) a reference to the referral of an education authority's decision not to review a CSP. From the minister's previous comments, I understand that section 13(3)(d)(ii) provides for a referral to be made if the education authority has failed to review a CSP. Therefore, I do not understand why that subparagraph is not referred to here. However, there may be a technical reason why the minister cannot support amendment 108.

Amendment 53 is the major argument. It is similar to amendment 41, which we debated in the previous group. Amendment 53 would empower the tribunal, when it has received the referral specified, to require action not just by the education authority but by any other person

identified in the plan as a person by whom additional support should be provided. Amendment 53 would empower the tribunal to direct other agencies to act. Again, that goes to the heart of the debates that we have had. As we heard in evidence, parents and other professional bodies are concerned that the bill will be fundamentally flawed if it does not give the tribunal powers to direct other authorities. Those are the arguments for amendment 53, which are similar to the arguments that we heard for amendment 41.

The Convener: I will speak briefly to amendment 139, in the name of Donald Gorrie, which tries to tackle the issue about how the different agencies should be included in the scope of the tribunal in another way.

Amendment 139 refers to

"failure by an appropriate agency to comply with section 19(3)".

Section 19(3) is the requirement on other agencies, such as health boards, to comply with requests by the education authority unless that

"(a) is incompatible with its own statutory or other duties, or

(b) unduly prejudices the discharge of any of its functions."

It seems that the intention of amendment 139 is to bring that within the remit of the tribunal—I merely explain that without making particular comment at the moment. There is an issue here, which the committee has had concerns about, but I am not 100 per cent certain whether amendment 139 is the right way to tackle it.

Mr Macintosh: On the point raised in Fiona Hyslop's argument and in part of Rosemary Byrne's argument, it would be interesting to know by what mechanism parents and local authorities agree what additional support should be in place. If that support is not put in place, what recourse do parents have and how is the decision enforced? I am intrigued by the proposals, but I am not entirely sure that the amendments will resolve the problem, without widening the jurisdiction of the tribunal in a way that we would not necessarily welcome.

On amendment 254, I am slightly concerned that we have got to this stage and are still not clear about exactly how we will resolve that difficulty, which has been flagged up repeatedly in evidence and throughout stage 2. I could be wrong, but I believe that evidence has been submitted to the Joint Committee on the Draft Disability Discrimination Bill in the Westminster Parliament on amending the legislation and resolving the issue. The problem has certainly been highlighted. Whether or not the Government will agree to resolve it, I do not know, but I would certainly welcome a reassurance from the minister that either the vehicle that is currently before Westminster or the vehicle that the bill we are currently considering provides will be used to close the loophole, which we all want to do.

Euan Robson: We are considering quite a formidable group of amendments. On amendment 225, I do not think that it is necessary to refer such matters to tribunals. In effect, what would happen if Rosemary Byrne's amendment were agreed to would be a fundamental change to the role of the tribunals to include monitoring the delivery of services. We went over all that when we discussed the role of HMIE and I would not want the tribunals to cut across or to duplicate what HMIE will be doing.

Again, we go back to the argument about the broad range of circumstances that might give rise to additional support needs, many of which will be transient. We have been through that in our discussions on previous amendments. In individual cases, if parents thought that the authority was failing in its duty to provide adequate and efficient support, they could go to mediation or dispute resolution, or, as we have already said, use the provisions in section 70 of the Education (Scotland) Act 1980.

There is also a technical problem with amendment 225. It is ineffective because it does not really define what amounts to a failure in the context of the amendment. Does that mean a failure to provide additional support on one day, or for one week, one month or longer? It would also mean that all provision to meet each child's additional support needs would have to be formally recorded, which takes us back to all the arguments about paperwork and bureaucracy. Therefore, I resist amendment 225.

Amendment 226 appears to be linked to amendment 225, in that it aims to allow parents and young people to refer to the tribunals a failure by the education authority to make arrangements to keep under consideration the needs of the individual and the adequacy of the support provided. Again, that is a wide provision and the arrangements would have to be documented, so it takes us back to the arguments that we have just been through.

12:45

I entirely understand the intention behind amendment 254, but I cannot answer Ken Macintosh's specific point about what is in the Westminster legislation. I think that I will have to write to the committee on that point. However, I need to make other points about this matter.

Amendment 254 seeks to widen the remit of the tribunal to include a failure to remove or alter a physical feature within a school premises and a failure to provide auxiliary aids and services for

those with additional support needs for whom the education authority is responsible. That much is clear, but the convener must accept that there is no corresponding duty on an authority to remove or alter a physical feature. Therefore, there is no definition of the circumstances in which that should be done. That is quite an important technical point. Similarly, there is no specific duty to provide auxiliary aids or services and no definition of what that means in the context. Again, that is an important point about the text of the amendment.

As the convener said, the wording of amendment 254 has been imported from the Disability Discrimination Act 1995 and makes provision to protect a disabled pupil from discrimination in relation to the education he or she receives when compared with his or her peers. It specifically excludes the necessity to alter or remove physical features or the provision of auxiliary services. Those matters are supposed to be covered by accessibility strategies, which those responsible for schools are obliged to draw up—members might recall the debate that surrounded the Education (Disability Strategies and Pupils' Education Records) (Scotland) Act 2002.

Such strategies show the steps that authorities intend to take over time to improve access for disabled pupils and prospective pupils to the physical environment of the school, to improve communication, to increase the accessibility of the curriculum to all pupils and to ensure that such pupils are not disadvantaged in their ability to take advantage of education and associated services. Responsible bodies have a duty to implement those strategies and to revise them on a cyclical basis.

I think that that description of the 2002 act offers some reassurance about the policy intent and should reassure members that the intention behind the amendment is already covered in the 2002 act.

If the amendment is intended to cover disabled pupils, I point out that it is framed in relation to a wider group of children and young persons and that there might be an overlap between the groups. The amendment does not focus on those with disabilities, as the committee will agree if it examines the amendment closely. The amendment is at odds with the DDA and cuts across provision that is made in the 2002 act. If the amendment is aimed at the wider group, I point out that it is not clear what criteria are intended to apply. There is a level of technical difficulty with the amendment.

On the part of the amendment that relates to referral to the tribunal of the failure of the education authority to provide auxiliary aids and services, we believe that the duty on education authorities to identify and make adequate and effective provision for the additional support needs of each child or young person for whom they are responsible will encompass the provision of any auxiliary aids and services that are necessary in that context. Rights are already provided to resolve any disagreement about provision through mediation, dispute resolution or complaints under section 70.

In the light of those arguments, I ask the convener to consider not moving amendment 254. However, it is important that I write to the committee on the point that Ken Macintosh made, as that might be a relevant consideration for members ahead of stage 3.

The Convener: Before the minister leaves that point, I seek clarification on it. All members—and, indeed, ministers, if I understand their position—accept the principle and the aim of amendment 254. You have given various technical reasons why the amendment should not be accepted, which is fine, but in the event that the aim cannot be achieved through the Westminster route that Ken Macintosh identified—although that route would be perfectly adequate and satisfactory—will you consider returning at stage 3 with a properly worded amendment that will deal with the point in the bill? Do you accept that it is competent for the Scottish Parliament to deal with the issue in the bill? I accept that there might be problems with that route, but are you prepared to consider it?

Euan Robson: We are certainly prepared to consider the issue afresh because, as I mentioned, it is complicated and involves overlaps and requirements in other statutes. In view of the complexity of the issue, I will write to the committee to explain it in more detail and to deal with the point that Ken Macintosh raised. In so doing, we will assess the necessity or desirability of an amendment at stage 3. I do not think that such an amendment will be necessary because the committee's concerns, which the Executive shares, are, I think, covered in existing legislation. If they are not and we find on further consideration that a difficulty exists, we will consider a means of tackling it. I am not clear whether it would be competent to deal with the issue in the bill; I do not think that it would be. We will send the committee a letter to clarify the issues.

The Convener: That is helpful. I am sorry that I abused the convener's position a little, but it is useful for the committee to know that.

Euan Robson: Amendment 228 is not necessary because, under sections 9(5)(d) and 9(6), education authorities will be required to do what amendment 228 would require. I will not go on about the issue, but I hope that Rosemary Byrne is prepared to accept our clear assurance that the intent of amendment 228 is covered.

I resist amendment 107 for similar reasons to those for which I resisted the earlier amendments in the group. Amendment 108 is consequential to amendment 107.

Fiona Hyslop: No, they are separate.

Euan Robson: Fine, that is my misunderstanding. I will deal with both of them.

Amendment 107 aims to allow a failure to deliver the support that is set out in a CSP to be referred to the tribunals. Again, that matter concerns the delivery of services, which means that the amendment would change fundamentally the tribunals' role, which, as I have already made clear, we do not want to do. One technical problem is that amendment 107 contains no definition of what marks a failure. Even if we accepted the necessity of the amendment, which we do not, that important point would make it difficult to accept the amendment today.

Amendment 107 would extend the tribunals' jurisdiction beyond matters concerning the education authority to matters concerning other agencies. As with other amendments in the group, we really must focus on the fact that the role of monitoring and delivery will be in the hands of HMIE. I do not want to labour that point because I have stressed it on several occasions. In addition, amendment 107 fails to accommodate the other provisions in the bill and elsewhere in legislation that provide avenues through which parents can seek resolution if they feel that education authorities are not meeting their obligations.

Amendment 108 would extend the powers of tribunals to allow them to deal with referrals based on a failure to deliver the additional support as set out in the CSP. I am in danger of repeating myself several times, but my argument is that that would extend the tribunals' role miles beyond that which we had envisaged and would intrude into the work of HMIE.

I will move on to address briefly amendment 139. The amendment aims to enable parents or young persons to refer to the tribunals any failure by another agency to help the education authority in its functions under the bill, which in general an agency should do under section 19. The same reasons apply to amendment 139 as apply to the other amendments in the group.

Furthermore, the provisions in the amendment would be difficult to implement. The duties of other agencies under section 19 are made in response to a request from the education authority. Amendment 139 provides for parents or young person to refer a failure on such a matter to the tribunals, yet they are not necessarily the originators of the request that an agency might have failed to fulfil. That begs the question whether parents and young persons will necessarily always know or be fully aware of the circumstances in which an agency might have failed to comply with section 19(3). That, I think, is a substantial reason for not accepting amendment 139.

Amendment 53 appears to be partly consequential to amendments 107 and 108 and to be similar in effect to amendment 41. It aims to provide for a tribunal to require anyone to take any action that results from the tribunal's consideration of a referral on a failure to deliver support in a CSP. That would also apply in cases in which the tribunal had considered a failure to meet the timescales to prepare a CSP or to carry out or complete a review of a CSP. I do not want to repeat myself, but we resist the amendment for the same reasons that we resisted amendments 107 and 108.

We resist amendment 140 because we think that it is consequential to amendment 139.

I am sorry to have laboured through that, convener, but the issue that you raised was an important one. I hope that we have disposed of it.

The Convener: That was very helpful.

I call Rosemary Byrne to wind up and to say whether she will press or seek to withdraw amendment 225.

Ms Byrne: I seek to withdraw amendment 225. I intend to press amendment 226, as I am not reassured by what the minister said. I feel that the broadening out of access to the tribunals is important. Having listened to what the minister said on amendment 228, I will not move it. Because of the concerns that I continue to have on the matter, I will press amendment 140. I want to move things on in that regard.

The Convener: I say to Rosemary Byrne that, in winding up the debate on the group, she is if she wishes entitled to say things in summation about other points that were made. I mention that in case there is anything else that she wants to say.

Ms Byrne: No, that is okay.

Amendment 225, by agreement, withdrawn.

Amendment 226 moved—[Ms Rosemary Byrne.]

The Convener: The question is, that amendment 226 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 226 disagreed to.

Amendments 254 and 33 not moved.

Amendment 103 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 103 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 103 disagreed to.

Amendment 104 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 104 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 104 disagreed to.

Amendment 105 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 105 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 105 disagreed to.

Fiona Hyslop: I apologise to the committee: I had said earlier that I would not move amendment 105.

Amendment 106 moved—[Fiona Hyslop].

The Convener: The question is, that amendment 106 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. There is a touch of groundhog day here.

Amendment 106 disagreed to.

Amendment 227 moved—[Ms Rosemary Byrne].

The Convener: The question is, that amendment 227 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 227 disagreed to.

13:00

The Convener: I propose to break now in view of the time, as the judges say. However, I seek the committee's guidance on one point. We still have quite a lot to finish, although many of the amendments still to come are consequential to others, so things might not be as bad as they look. We can either have an extra meeting to deal with them, in addition to next week's scheduled meeting, or we can make that scheduled meeting a very long one. I am inclined to suggest that we have one long meeting.

The clerks suggest that we could start at 9 o'clock, although I am not sure that that will be convenient for those who travel.

Ms Wendy Alexander (Paisley North) (Lab): Why are we proposing an extra meeting?

The Convener: Because we still have quite a lot to do. It is difficult to predict how long it will take.

Ms Alexander: But is there no business on the agenda other than the remainder of our consideration of the bill?

The Convener: That is right, although there will be one or two substantial debates. We might finish more quickly than we expect but it is important that we give ourselves enough time to finish. Is 9 o'clock too early a start for people who travel great distances to get here?

Mr Macintosh: Would 9.15 be acceptable? Fifteen minutes make a bit of difference.

The Convener: I am sympathetic to that idea. We will carry on as we need to; if we get into a crisis, we will have to consider how to deal with it.

Fiona Hyslop: I want to raise a procedural point. The Parliamentary Bureau has always been ready to allow committees extra time. Having looked at the timetable for coming business, I do not think that the stage 3 debate has been scheduled yet. We should perhaps let the bureau know that we are under pressure and that, although every attempt is being made to deal with all the amendments by next week, there might be a need for latitude, depending on how we get on.

The Convener: The clerks will attend to that. Thank you for that helpful suggestion.

Lord James Douglas-Hamilton: I will put this as briefly as I can. I understand that the Procedures Committee is examining the procedures for considering groupings of amendments in advance of committee meetings. The committee might want to take a view on whether it would make for better debates if there were a little bit of extra time between the final selection of the amendments and the meeting the following morning. That would be in the interests of the Executive and the supporting parties, the civil service, the public servants who work for the Parliament and the Opposition. I understand that civil servants have had to work until 2 o'clock in the morning and that the clerks have had to work until midnight—the rest of us have had to do quite a lot of work as well.

It will make for better legislation if the process is not rushed too much. If ministers had a bit more time to consider amendments, there is a chance that they would accept one or two that they would not otherwise accept. I make the point that the convener made: the bill should be effective rather than adequate.

The Convener: Lord James Douglas-Hamilton asked to raise that issue and it is appropriate that he did so, because I am aware of the pressures on the clerks.

Lord James Douglas-Hamilton: With the committee's agreement, could the convener send a letter about the matter to the Procedures Committee?

The Convener: I am happy to arrange that, providing that the committee agrees. Is that agreed?

Members *indicated agreement*.

Meeting closed at 13:06.

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