

# **MEETING OF THE PARLIAMENT**

Wednesday 28 January 2004  
(*Afternoon*)

Session 2

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## Scottish Parliament

*Wednesday 28 January 2004*

*(Afternoon)*

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

### Time for Reflection

**The Presiding Officer (Mr George Reid):** Good afternoon. The first item of business is time for reflection. Our time for reflection leader today is Rabbi Moshe Rubin of the Giffnock and Newlands Hebrew Congregation.

**Rabbi Moshe Rubin (Giffnock and Newlands Hebrew Congregation):** Reflection can be a risky business. King Solomon expounds in the book of Proverbs:

"As water reflects a face back to a face, so one's heart is reflected back to him by another."

When we reflect on society, we are in danger of reflecting our own faults and weaknesses back on to society. We see only what has gone wrong and find it difficult to see what is right.

As a leader in a community, I find that I have to look for and believe in other people's goodness and uniqueness. It is always easy to find fault and problems; it is more of a challenge to find the goodness and the positive attributes in other people. Perhaps that is where we share a common goal. You, the right and honourable members of Parliament, and me, a religious leader: we share a goal of finding the goodness and uniqueness in other people. We have to trust in other people's capabilities and reflect on each and every one's goodness and capabilities.

Yesterday, the country commemorated Holocaust memorial day—a day on which all communities reflect on atrocities committed around the world; a day when we remember what can happen when people do not see the goodness in others and look only for differences and divisions. One of the logos that was used at the Scottish memorial service was a white rose. A rose—you can either reflect and focus on the thorns that pierce your skin, or you can focus on the flower that starts off as a small bud and continues to grow into a beautiful, fragrant flower.

As we all continue to do the work that we do—which is sometimes a thankless job—let us always try to find the goodness in society, focus on the positive points and forget the times when we are hurt or upset by others.

I conclude with a prayer that is said immediately before morning prayers:

Lord, may it be Your will and may I have Your assistance, that I have the courage to see the uniqueness of Your creations. Put into our hearts the ability to view the positive attributes in everyone and not the negative. And that each person should guide his fellow man in the upright and fitting way before You.

Amen.

## Point of Order

14:33

**The Presiding Officer (Mr George Reid):** Ms Leckie gave me notice of a point of order.

**Carolyn Leckie (Central Scotland) (SSP):** On a point of order, Presiding Officer. Rule 17.2.1 of standing orders, on the suspension of standing orders, states:

"The Parliament may, on the motion of any member or of the Parliamentary Bureau, suspend any of these Rules for the purpose of a meeting of the Parliament".

I wish to move such a motion to suspend standing orders in order to hear a debate on whether it is appropriate, or an affront to the Parliament, to welcome to the Parliament Prince Turki Al-Faisal of Saudi Arabia, a totalitarian regime. That regime, according even to the United States Department of State, detains women for such things as riding in taxis with unrelated men and appearing with their heads uncovered. It sometimes detains women for weeks without informing their families; it also beheads people for adultery. I move that we debate whether we should welcome the representative of that regime into this Parliament and into our public gallery, or whether we regard that as an affront and do not welcome him.

**The Presiding Officer:** You have made your point, which was political. Your proposal was about changing the business programme, and I do not judge the rule to be appropriate.

**Carolyn Leckie:** I beg your pardon, Presiding Officer, but I have already quoted from rule 17.2.1. I will read it out in full:

"The Parliament may, on the motion of any member"—

and this is the motion that I am moving—

"suspend any of these Rules for the purpose of a meeting of the Parliament or of a committee or sub-committee except any Rule which makes provision which the Act requires to be made by standing orders or which reflects a provision of the Act. Such a suspension shall apply only for the purposes of that meeting or of part of that meeting."

Moving such a motion is not just the role of the Parliamentary Bureau; any member may move such a motion.

**The Presiding Officer:** This is new territory for us, so I will consult for a couple of minutes.

I am advised firmly that the rule is about changing procedures, whereas the appropriate way to do what you ask is by changing the business programme. We will proceed. You have made your point on the record.

**Carolyn Leckie:** On a point of order, Presiding Officer. I wish the Parliament to take a view. My reading of the standing orders is that the matter should be put to the vote.

**The Presiding Officer:** Yes, you have made your point and laboured it. I am working on good advice here and I am attempting to meet your needs. I am advised firmly that you are raising this without notice, and it is not proper procedure. We will now proceed.

**Carolyn Leckie:** I did inform—

**The Presiding Officer:** Order. I have made my judgment. I have given you three cuts at it.

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

**The Presiding Officer (Mr George Reid):** The next item of business is a debate on motion S2M-529, in the name of Peter Peacock, on the general principles of the Education (Additional Support for Learning) (Scotland) Bill, and one amendment to that motion.

14:36

**The Minister for Education and Young People (Peter Peacock):** This debate marks a significant stage in a long process of consideration of the current system for supporting children's learning needs and the ways in which that system can be improved.

The former Education, Culture and Sport Committee of the Parliament made recommendations on the issue back in February 2001. The committee's report underlined the need to review the current record of needs system. It suggested that the options of either replacing the system or revising it substantially should be considered. Those recommendations precipitated a public consultation process that began in May 2001, and resulted in a draft bill being published in January 2003 and introduced to Parliament in October 2003.

The significance of the proposals in the Education (Additional Support for Learning) (Scotland) Bill reflects a changing educational environment that has progressed a great deal in the past 20 years, since the Education (Scotland) Act 1980. Twenty years ago, the specific needs of children with learning difficulties were just beginning to be recognised and those needs often separated children from their mainstream peers. Today, we want a system that fully enfranchises children who need additional support for learning. We want a system that allows those children to benefit fully from education services.

The bill has been developed to make a real difference to children's lives; to focus on delivering support where and when it is needed; to improve effective joined-up working among education, health and social work services; to ensure that staff who work in education, social work and health services work with parents, and seek to gain their trust; to encourage the involvement of children and young people in decisions affecting their education; and to provide safeguards for the rights of those with the most extensive needs who need help for learning from other agencies.

**Mrs Margaret Ewing (Moray) (SNP):** Which will be the lead organisation in relation to the suggested co-ordinated support plan?

**Peter Peacock:** The local authority education department will be the lead authority. I will say a number of things about the co-ordinated support plan as I progress.

I am aware that there has been disquiet in some quarters about the proportion of the bill that is devoted to co-ordinated support plans and related appeal routes. I make no apology for seeking to ensure that children with the most extensive needs are protected within any new system. The bill seeks to do just that, but it also seeks to do much more. It is important not to lose sight of the provisions that the bill makes for the wider school population.

The significance of the bill is that it places a new duty on education authorities to identify the additional support needs of all children for whom they are responsible. Once those needs are identified, they must be addressed. Once they are addressed, the adequacy of the provision that is made for them must be kept under review. Those duties are at the heart of the bill and they are owed to every child in our school system and beyond.

I am grateful for the Education Committee's thorough and detailed scrutiny of the bill in the past few weeks. I have been following closely the evidence that has been given to the committee and I have studied in detail the committee's recommendations and findings.

I have said throughout this process that I would listen to representations, and I will spend most of the rest of my speech signalling further changes that we are considering in response to all that we have heard from the committee and others who have taken part in the consultation process. I will write to the committee prior to stage 2 on the range of points that I will not cover today and on which the committee has asked for more information or comment.

**Mr John Swinney (North Tayside) (SNP):** I am interested in what the minister is saying about the applicability of co-ordinated support plans for young people who might be affected by the bill. Paragraph 78 of the committee's report says, with validity, that some children who currently have a record of needs will not be eligible for a CSP in the future. The report notes the minister's assurances that any child in such a category will not lose any support services for the duration of their needs.

Will the minister reinforce that assurance today, on the record, in the Parliament? What reassurance can he give to the parents of such children that the system that is being proposed in the bill will adequately take account of all the

needs of children who might not qualify for a CSP? That issue causes enormous unease to many families who deal with local authorities.

**Peter Peacock:** I recognise those points and I will deal with them in a few moments. The points reflect those that Lord James Douglas-Hamilton makes in his amendment and which members of the committee and the public have made to me.

One issue that caused concern, particularly to the Convention of Scottish Local Authorities, was the eligibility criteria for a CSP. We have spent considerable time with COSLA to clarify our policy intentions and the impact of the criteria. We have provided substantial reassurance and clarified legal interpretations, the effect of which COSLA had misunderstood. The committee should be reassured that COSLA has reconciled its position on the matter.

Until implementation, when each and every child with a record of needs will be considered for a CSP, the exact number of those who currently have a record of needs but who will not receive a CSP cannot be determined in an exact way. Each child will have their needs and circumstances individually assessed and, of course, there will be a right of appeal to the tribunal. I cannot prejudice the detailed consideration of individual cases.

As our financial memorandum makes clear, we have made certain assumptions about the number of children whom we expect to obtain a CSP. We have been open and transparent about that. However, as I stated during my evidence to the committee, even though we are confident about our figures, if numbers exceed the projected figures, I am confident that I have adequate resources to cover any such increase.

The new system must be child centred, with each child's individual needs being assessed and met. However, the key point concerns the rights of children in transition from the existing system to the new system and the protection of their services. I believe that that point relates to the views that were expressed by John Swinney and to Lord James Douglas-Hamilton's amendment.

The committee seeks an assurance that there will be no lessening of the rights of any child to have their additional support needs met and that, in practice, rights will not be diminished. I am happy to give the reassurance that the committee seeks. The purpose of the bill is to extend the rights of children.

In relation to John Swinney's second point, I would say that, at the heart of the bill is the new duty on councils to assess and address the needs of every child with barriers to learning. I have written to council chief executives to make it clear that there is nothing in the bill that will remove services from young people who have records of

needs today but who may not have a CSP. I repeat that position to the Parliament today. Further, I propose to give Her Majesty's Inspectorate of Education a role in monitoring the implementation of the transition to ensure that services are not lost by individuals through, or beyond, transition. I shall keep the committee informed of the procedure that I plan as we move through stage 2.

In the light of that assurance, I hope that Lord James Douglas-Hamilton will consider not moving his amendment.

**Mr Swinney:** I welcome the minister's comments. Will he consider extending the role that he envisages for HM Inspectorate of Education to the much wider provision, which is the implementation of the duty of education authorities to assess the needs of individual children as a result of the changes that are implicit in the bill? My concern is that local authorities, who are under financial pressure and trying to make ends meet, do not have the resources to fulfil the legitimate aspirations that the minister is setting out to the Parliament today.

**Peter Peacock:** I will deal with the question of resources later.

My officials are in discussion with HMIE on my behalf. I am happy to make it known to the Parliament today that I have discussed with my officials the fact that I am considering asking HMIE to do a staged report, after the implementation process, to check on exactly the points that John Swinney raises, as well as on the process of monitoring transition.

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** Will the member take an intervention?

**Peter Peacock:** I will give way to Brian Monteith, but I want to cover a lot of detail for the benefit of the Parliament and the committee, so I will not take many more interventions.

**Mr Monteith:** I appreciate the minister giving way in those circumstances.

There are two points that must be teased out from the minister's attempt to satisfy members' concerns. First, on the minister having adequate funds if costs run over what has been predicted by the Executive—[*Interruption.*]

**Tommy Sheridan (Glasgow) (SSP)** *rose—*

**Frances Curran (West of Scotland) (SSP)** *rose—*

**Carolyn Leckie (Central Scotland) (SSP)** *rose—*

**Ms Rosemary Byrne (South of Scotland) (SSP)** *rose—*



**The Presiding Officer:** Order. Please sit down. I will not have demonstrations in this Parliament. Please sit down, Mr Sheridan.

Please continue, Mr Monteith.

**Mr Monteith:** A thoroughly disgusted Mr Monteith, may I add, Presiding Officer.

Given the difficulties that we had with the Standards in Scotland's Schools etc Act 2000 and with ensuring that funding was available—the minister was Deputy Minister for Children and Education at the time and he will be well aware of the Auditor General for Scotland's report on that matter—can we be assured that money will actually reach the local authorities? It is not enough for the money just to be available in the Executive.

Secondly, the minister gave an assurance that those children who currently get additional support under the record of needs system will continue to receive that support whatever bill passes through the chamber. What about children who might have been able to receive a record of needs in the future? What assurances can the minister give about their needs?

**Peter Peacock:** On the second point, the fundamental principle at the heart of the bill is that a local authority is under a duty to assess every child's needs and to provide for them, with the support of other agencies. We seek to give additional protection to those with the most complex, multiple and enduring needs, and that requires specific co-ordination. At one level, the system is universal but it seeks to build in practical protection at another level.

I will deal with the finance points quite fully, if not now then during the debate that I understand we will have on the financial resolution.

Related to the question of eligibility for a CSP is that of access to the tribunal. I have given much thought to widening access, but I have come to the conclusion that that is not the right general approach. It is because I listened to concerns on the issue that I added provisions for local dispute resolution to the draft bill. We are working with stakeholders to develop a robust system for resolving disputes that is satisfactory to all. I will keep the committee informed as the bill progresses.

There has been much discussion about the availability of legal aid for legal representation at the tribunal. The committee is right to point to the anomaly that arises, given the availability of legal aid for appeals on refused placing requests that are taken to the sheriff court. I have endeavoured to square that circle, but it is far from easy to do so and so far I have not been able to find any satisfactory solution to that apparent anomaly.

I agree whole-heartedly with the committee's suggestion that education authorities should be strongly discouraged from taking lawyers to tribunal hearings and it is my intention that the code of practice will set that out, to discourage a highly legalistic approach to tribunals and to discourage the need for legal representation to be felt by parents. Of course, parents and young people will be able to be accompanied at hearings by a supporter.

I have listened carefully to the evidence that supports advocacy services and I have looked closely at the committee's recommendations on that matter. I am not convinced that it is necessary to provide for advocacy in the bill. However, I have been persuaded that I need to go further to make provision for advocacy services. Euan Robson announced earlier today our support, through the unified voluntary sector fund, for two organisations to provide advocacy services for children and families. I shall look beyond even those announcements at the scope for supporting advocacy services further. Again, I shall notify the committee of my intentions as the bill moves through Parliament.

I am aware of the need to ensure that other agencies work with the education authority to support children's learning. I have made it clear that I am satisfied that ministers have sufficient powers—not just in education, but in other areas, such as health—to direct agencies to work together to support children, if necessary. The code of practice, which will be key to fostering that co-operation, must have a multidisciplinary application and use, and it will set standards and help to ensure consistency throughout the new system.

I note the committee's point about ensuring that other agencies comply with their obligations under the bill, and I am looking into how the obligations that flow from the legislation can be strengthened through the operation of the code. My officials are looking at a possible amendment at stage 2 to achieve that. Although I cannot commit to that until I have seen the outcome of the further work that is being undertaken, I will keep the committee advised.

Interagency working is vital is for children under the age of three. I have received representations on that and I take on board the committee's concerns on the issue. I am looking to see whether I can make clearer in the bill my expectations of the application of the power to support children under the age of three who have significant needs.

I am aware that the code of practice will be the key to delivering much of what is in the bill. The code will be a substantial document and will need to be flexible enough to respond to change over

time. I have made it clear to stakeholders that they will be involved in developing the code and, of course, there will be wider consultation. The committee has noted the need for parliamentary scrutiny of the code. I make a clear commitment today that Parliament will be consulted on the draft code prior to ministers signing off the code or any significant changes to it that may be prepared from time to time. I hope that that clear commitment to involve the Parliament in consultation on the code will be helpful and will strike the right balance between the interests of Parliament and the flexibility that is required to respond quickly to changing circumstances.

I turn to resources. I am conscious of the time, so I shall move through this quite quickly. Naturally, concerns about resources have been expressed during the consultation process. I emphasise once again that the bill does not stand alone. It has been introduced into a context of considerable investment in improving children's services, including education—for example, through the changing children's services fund and the national priorities action fund, as well as through the many other funds that we have had at our disposal. In addition to that, I am pleased to announce that I have set aside £14 million a year to support the bill's implementation from 2005 to 2006. I am keenly aware of the importance of getting this right from the start, so I have also set aside £12 million for 2004-05 to help to prepare for the implementation of the bill.

The aim of the bill is to create a stronger, better system for supporting children's learning needs. I have listened carefully to the evidence that was given at stage 1, and I will listen carefully to this debate and consider any further changes that we can reasonably make to improve the bill as we progress. I commend the bill to the Parliament.

I move,

That the Parliament agrees to the general principles of the Education (Additional Support for Learning) (Scotland) Bill.

[*Interruption.*]

**The Presiding Officer:** Order. Clear that man from the gallery, please.

14:53

**Lord James Douglas-Hamilton (Lothians) (Con):** In speaking to the report on the Education (Additional Support for Learning) (Scotland) Bill, I pay tribute to the work of the Education Committee convener, Robert Brown, who has acted with professionalism and ability and has helped to take us through a labyrinth of problems and complexities. At the end of the process, we have come up with a document that indicates a measure of common ground.

This subject needs to be addressed with humility by all concerned, because we are dealing with the most vulnerable in the community and, depending upon the vulnerability or the learning difficulty, the additional need may require a different solution. There is a great deal to be said for weighing the merits of each case on the best interests and needs of the individual child. One of the most important paragraphs in the committee's report is paragraph 36, which reads:

"The Committee recognises that the legislation makes certain changes to existing rights, but the Committee is of the view that any changes to legal rights must not represent any lessening of the rights of any child to have their additional support needs met."

I have no doubt that there will be substantial debates in committee during stage 2 to ensure a satisfactory outcome.

The key weakness in the bill is clear. As John Swinney pointed out in his intervention, many thousands of those who have records of needs are unlikely to have co-ordinated support plans. As a result, many of the parents involved might be seriously concerned that the record of needs for which many of them had to fight will no longer be recognised and that they will have no comparable document on which to rely in the event of an intense dispute or legal proceedings.

Paragraph 37 of the report states:

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

I invite the Minister to respond to that point, in order to avoid distress to parents and friction between parents and local authorities. Otherwise, I fear that many parents might be dissatisfied and discontented with the proposed new procedures.

The great fear that accompanies this bill in the minds of some parents is that some pupils with additional support needs could fall through the net. For example, the Scottish Child Law Centre stated:

"The bill casts its net widely to bring in all children with additional support needs. That could pose specific problems, because the wider the scope, the less the focus is on children who need specific support in the education system."—[*Official Report, Education Committee*, 9 December 2003; c 416.]

Similarly, the National Autistic Society was concerned that children with autistic spectrum disorder may not be assessed properly as their needs are often hidden.

Although I do not pretend that it will be an easy matter to obtain the best possible form of words in the bill, I think that we are under a strong moral obligation to try to do so rather than to leave everything to a code of practice that might or might not deal with this matter to our satisfaction. The

premise is that all children with additional support needs should have those needs met adequately and that, as much as possible, the legal rights of parents should not be diminished or disadvantaged.

I wish to highlight a further item that the Disability Rights Commission has raised. The commission recommended that the Disability Discrimination Act 1995 be amended to bring Scotland into line with the rest of Britain. I will be glad for the minister's assurances that inquiries will be made on that point and that he will ensure that the education authority has a duty to identify and address the need for additional support in relation to auxiliary aids and adaptations.

I should also highlight the need to strengthen the bill's duties. In her evidence, Lorraine Dilworth stated:

"Our attempt to ensure that all the services pull together in a co-ordinated way is not helped by the fact that health services, social work services and so on have in effect been given opt-out clauses; if they do not have the necessary staff, they do not have to provide services and are not accountable to anyone under the tribunal system."—[*Official Report, Education Committee*, 9 December 2003; c 448.]

We must address that matter. People are worried that recognising many more categories of additional support needs will lead to a call for greater resources than are likely to be made available.

After setting out many of our concerns about the bill, I come back to paragraph 37 of the report, which says:

"Subject to this and subject to the qualifications and recommendations set out in the remainder of this report, the Committee approves the general principles of the bill."

I welcome the constructive spirit with which the minister has approached this matter and addressed Parliament; I welcome, in particular, his comments about the inspectorate becoming deeply involved. The committee will wish to learn more about the detail of that. In the light of the minister's assurances, I will not move my amendment. However, I will reserve our position with regard to stage 3, depending on the changes that are made to the bill at stage 2.

With that in mind, the bill will proceed to stage 2. However, ministers should not take our willingness to approach this subject in a constructive frame of mind as a blank cheque. There is a great deal of hard work to be done and we will warm to our task.

**The Presiding Officer:** Before I call the next speaker, I welcome to the gallery, as is our custom, His Royal Highness Prince Turki Al-Faisal, who is the Saudi Arabian ambassador to the United Kingdom.

**Carolyn Leckie:** On a point of order, Presiding Officer.

**The Presiding Officer:** When I am finished.

His Excellency is in Scotland in view of his own country's forthcoming elections to study our democratic structures and in particular the participation of women. [*Applause.*]

**Carolyn Leckie:** On a point of order, Presiding Officer.

**The Presiding Officer:** I hope that Carolyn Leckie has a fresh point of order rather than the one that she made earlier.

**Carolyn Leckie:** My point of order, of which I gave advance notice, is to request a suspension of standing orders under rule 17.2.1, which allows any member to move a motion to do that. I ask for the Parliament to take a view on the issue. The decision is within the remit of the Parliament, not the Presiding Officer.

**The Presiding Officer:** I am afraid that you have misread the rule. Rule 17.2.1 allows the suspension of a rule, but you have not stated which rule that should be. You are trying to change the business programme quite improperly. I have ruled on that, so I propose that we proceed.

15:00

**Fiona Hyslop (Lothians) (SNP):** The way in which the Government and the Parliament legislate to provide support needs for children is one of the most important and sensitive issues with which we deal. For some time it has been recognised that—as was highlighted in the Education, Culture and Sport Committee report to which the minister referred—the current system is far from ideal and improvements need to be made. We all have constituency cases of parents' having approached us because they are concerned about how they engage in a system that frequently becomes adversarial when there is dispute about access to assessment, the assessment itself and the provision of services. Indeed, we must recognise that the energy that is needed to deal with the system, and the distress that that causes, frequently bear heavily on the families concerned.

The bill has been some time in gestation; indeed, it was delayed so that the Executive could take into account the wider views of parents. The Education Committee has also taken a long time to take evidence from many witnesses before producing a thoughtful report on this important and sensitive subject.

At the heart of today's debate, however, is the fact that there are two interpretations of the approach that the bill takes. I note that when the minister appeared before the committee, he

acknowledged that he would be comfortable with either interpretation. One interpretation is that the bill will bring fundamental change and introduce a whole new system. The other interpretation is that the bill will change only the administration of additional support needs. The perspective that people take lies at the core of the debate and affects what the public might expect from the bill.

The bill concentrates on the operation of the new CSPs that are to come into force. The Executive says that only 2 per cent of children will have a CSP compared with the 4 per cent of children who currently have records of needs, which will be abolished by the bill. Those figures are disputed, but even if we take the Executive's position, there are serious concerns about the bill's financial memorandum.

The financial memorandum focuses simply on the costs associated with the operation of the tribunal system, which is associated with CSPs. On that analysis, the bill should be viewed simply as an administrative change. However, a different perspective was presented to the committee by a number of witnesses, who said that the bill will introduce a fundamental change to the system because the new definition of additional support needs will introduce a wider inclusive approach. The concentration on co-ordination of support provision, which will replace the dependence on a medical model of assessment, will bring a new and welcome change.

Another fundamental change is the new general duty that the bill will place on education authorities to provide support so that the needs of all those who have support needs are met. The minister confirmed to the Education Committee that he expects those services to be improved. The problem is the level of resources that will be provided if the bill is to introduce that fundamental change, which will mean that so much will depend on the general duty of local authorities. In its latest correspondence, the Convention of Scottish Local Authorities said that it has continuing concerns that the bill could generate expectations among, and pressures on, parents at levels that will exceed resourcing provision.

The problem is that if the new system is meant to embed current best practice—as we know it is—the unmet need that currently exists must be recognised. In particular, there is unmet need for child therapy services, on which we had a members' business debate only recently. There are serious concerns that if the all-important general duty is to be fulfilled, the bill will need to provide the resources to support that. The financial memorandum does not mention that.

In his correspondence, the minister has indicated that a list of other mainstream education budgets can be expected to support provision to

meet additional support needs. Those should be mentioned in a revised financial memorandum, which the committee has recommended as a possibility. On a point of process and procedure, although I welcome the minister's announcement that there will be £14 million in the future and £12 million immediately to support the introduction of the bill as enacted, surely that means that we need a revised financial memorandum before we proceed further to stage 2.

A new three-tier system will be introduced, which will consist of co-ordinated support plans, individualised educational plans and personal learning plans. There will be great reliance on the latter two kinds of plan, but they are not even in the bill. Indeed, PLPs are currently only being piloted. The SNP is greatly sympathetic to the need to pursue in policy, in legislation and—most important—in operation a single universal system that does not have the problems that are associated with a three-tier system. The minister acknowledges that a universal system would be the ideal, but thinks that in the short term a different approach is required. The SNP is disappointed that the Executive has not taken the opportunity to introduce a single universal system.

The bill will leave us with a three-tier system. Some people will argue that that is right, because the bill should concentrate on the administration and, importantly, the co-ordination that is needed to deal with children who have the most complex needs and who need services from different agencies. That is where co-ordination frequently breaks down and there are problems. However, unless the recommendations and qualifications that the Education Committee makes in its report are taken on board, we will be left with a system in which the CSP may be the passport to services and in which possession of a CSP carries with it legal rights of access to the tribunal. In that case, the CSP will become the vehicle for accessing much-needed services, which many people fear will be rationed. If that happens, the bill will have failed.

The committee has frequently heard concerns that trust has broken down under the current system. The bill is right to support dispute resolution and mediation, but I hope that the minister will take on board the concerns that have been expressed about advocacy; he says that he wants to support such services, but perhaps that should be in the bill.

To build parents' trust in the new system, we need to do two things. First, we need to shift the balance of power back to parents from the hands and—importantly, under the bill—from the discretion of education and other authorities. Secondly, we need to build in safety nets to ensure that children other than those who have

CSPs will be able to access tribunals, so that assessments of children who do not qualify for CSPs can be appealed. If the Executive is right—the good will is that it is—and the new general duty is sufficient to ensure that all support needs will be met, it should have no worries about extending the tribunal function and other legal recourses to other parents. That measure would do a great deal to reassure worried parents.

I want to address the amendment in the name of Lord James Douglas-Hamilton, because it reflects the Education Committee's view. The committee wants to ensure that rights are respected and that support needs are met. It is important that that be acknowledged—I heard what the minister said on that issue.

Integrated working is essential. We must ensure that authorities do not use the general opt-outs in the bill in order not to take on their responsibilities. When dealing with a bill such as this, the rights of the child should be enshrined in law, so if the bill is deficient in that regard, as it may be, that problem must be addressed.

As the committee discovered when taking evidence, the code of practice is absolutely essential. I recommend to the minister that he have the confidence to bring a code of practice to the chamber under the affirmative procedure.

As other members may mention, tribunals are critical. The issue of transitions is also important. There are two aspects to consider in relation to transitions: what happens to those who are leaving school and, importantly, what happens to those who are currently in the system. I wonder how many records of needs have been opened since October. The minister may be able to do some research into that question before the winding-up speeches. If he can reassure us that, in operation, there has been no diminution in services and in the number of records of needs that are being opened, that would be helpful.

**Peter Peacock:** I cannot give Fiona Hyslop the precise number that she seeks, because I do not have access to that detailed information. I suspect that the Executive does not have access to it. However, I make it absolutely clear that under the existing law a record of needs should be opened when one is required. I expect local authorities to do what the law says.

**Fiona Hyslop:** We take on board the minister's reassurance and his instruction that there should be no diminution in current services. We accept that Her Majesty's Inspectorate of Education will monitor the new system. However, it would be helpful for us to find out what the situation is and how many records of needs have been opened since October.

I welcome the minister's comments about under-threes and I expect him to address some of the issues relating to three and four-year-olds in nurseries, especially in respect of there being no state provision. Some useful comments have been made on that issue.

As the minister will see from the committee's report, a sensible approach should be taken to aids and adaptations.

**Mr Monteith:** Will the member give way?

**Fiona Hyslop:** No. I need to watch my time.

The minister knows that I have expressed good will towards the bill and that the SNP can deal with its passage sensibly and co-operatively. However, the more evidence the Education Committee took and the more I heard from witnesses from all sides, the more concerned I became that the children who would not qualify for a CSP and who were on the margins and, more important, children who have hidden disabilities, will not be helped by the bill and will find their path to support more difficult. The bill should be changed and should be judged on what appears at stages 2 and 3. The bill must meet the needs of all children who have additional support needs. That is why the section in the bill and the part of the committee report that mention those legal needs are important.

The SNP is disappointed at the lost opportunity to introduce a single universal system, but we will work constructively at stage 2 to promote amendments that support many of the committee report's recommendations, because all children with support needs—not just some—deserve that.

15:11

**Robert Brown (Glasgow) (LD):** I may deal with legal aid issues in due course, so I declare an interest in that I have a consultancy with Ross Harper Solicitors and I am a member of the Law Society of Scotland.

I welcome the minister's attitude to the bill and the concessions that he made to the Education Committee this morning. I thank Lord James Douglas-Hamilton for his kind comments about me and I also thank the other members of the Education Committee for their non-partisan attitude to the bill, which has helped to make what I hope is a consensual and useful contribution—the stage 1 report.

It seems only a short time ago that the Education Committee began its pre-legislative scrutiny of the Education (Additional Support for Learning) (Scotland) Bill, which is an important bill. I thank the many people who gave evidence to the committee and who accommodated us on committee or personal visits throughout Scotland. More than that, it is appropriate to note and

appreciate the work that was done by many people—parents, teachers, therapists, support staff and volunteers—in helping to ensure that children, some of whom have significant disabilities or restricted lifestyles, have the opportunity for greater fulfilment of their potential in order that they can lead full lives and contribute to society.

Committee members could describe many little cameos to members, which were often inspiring and certainly illuminating. For example, there were the bright and enthusiastic young people who came to Edinburgh to take part in our civic participation events here; the patient and life-giving education and therapy that is carried out at the Craighalbert Centre with children who have motor impairments; and there are the children in the duplex primary school in East Kilbride—which contains a mainstream school and a special needs school—where we could not separate out the two types of children from conversation with them or from what was going on in a class. Conversely, there were the two delightful girls from the Royal Blind School, for whom life at a national special school had been so much better than at their previous schools. A huge amount of work in all kinds of settings is carried out with children who have additional support needs.

Those examples are testimony to the fact that no one situation or system suits everybody and that good practice and dedicated staff and parents make a real and major difference to matters. That is the background to the bill that we are considering today.

I found the bill to be a difficult one to get my head round. Part of that difficulty was in the fact that so much will be delegated to the code of practice. I have no quarrel with that as such: I think that it is the proper thing to do, but I hope that the code will be subject to the full consultation that the minister assured us about earlier. The code of practice is an important technical issue and I hope that the minister will agree to introduce the code by a statutory instrument that will be subject to the affirmative procedure. When so many important aspects are delegated, the rights of Parliament should be affirmed in arrangements in the bill.

Apart from the code, many of the bill's key issues related to transitions, such as those to nursery and primary school, to tertiary education and to the world of work. There is also the transition from the current record-of-needs system to the new additional support needs system, which Lord James Douglas-Hamilton talked about. The committee report identified issues in all those areas, but I stress in particular the links between school and post-school. Generally, there should be flexibility and age-suitable arrangements.

Young people should be allowed the flexibility, as was pointed out in evidence, to stay on at school after 18 if necessary. Sometimes there are no suitable post-school facilities and tertiary education facilities are not geared up for and do not know, or have not been told, what is required. We cannot deal with all those issues in the bill, but I hope that the minister can assure us that he has been, and is, talking to ministerial colleagues, particularly in the Enterprise, Transport and Lifelong Learning Department, about them.

Lord James Douglas-Hamilton talked about the perceptions of those who will lose a record of needs but will not gain a co-ordinated support plan. That worry was shared by the whole committee and, in fairness, by the ministerial team. The point that the Education Committee made was that there is a need to seek reassurance from the minister that the framework of legal rights, albeit that it will be changed, will not be diminished in practice. Subject to that, the committee approves the general principles of the bill. I hope that the minister will re-examine the issue of legislative reassurance on that important matter, either today or at stage 2. There is a difference between duties that are imposed, administered and monitored by bureaucratic arrangements such as the HMIE and things that are given as rights to people and which can be enforced through courts and tribunals or in some other way.

It is important to recognise, as the Education Committee did, that section 3 of the bill is, in many ways, the ruling section. It will impose on education authorities the general duty to take account of the additional support needs of children and young people. Qualified by some limitations as to power and reasonable practicability of cost—the definitions of which the committee was not entirely satisfied by—that is a duty that applies across the board, and rightly so, as the minister has stressed. The bill focuses on the area in which the minister believes there are most difficulties in practice and where co-ordination with other agencies is needed, and will put in place the arrangements for co-ordinated support plans.

**Mr Swinney:** I reinforce the comments made by Lord James Douglas-Hamilton about the effectiveness and quality of the Education Committee's work on the bill.

On Robert Brown's point about the need to co-ordinate the work of different agencies, did the committee accept that a lot of concern focuses on situations in which perhaps only one agency is involved, so that a co-ordinated support plan would not be applicable to an individual? Does he agree that young people in those circumstances require a particularly focused amount of support, and does he believe that the bill measures up to

that task and that obligation? Does the committee support any ways in which that can be strengthened?

**Robert Brown:** John Swinney makes a good point, which the committee has been dealing with. Just before he intervened, I was going to say that it is important to focus on children who have the specific extra and most extensive needs that the minister talked about. It is important that we do not lose sight of that as we move down the hierarchy a little, as it were, towards the sort of situation that Mr Swinney described.

Quite a lot of the cases that we have had problems with under records of needs have been those that were somewhat on the margin and in which there may have been difficulty in accessing resources; in which there may have been fights or difficulties with the school and in which many parents have felt that, in fighting for resources, they were battering their heads against a brick wall. It is important that paperwork is put in place in the right way and that the machinery for dispute resolution is also in place. That is the final point that I wanted to make in that regard.

The committee suggested that the bill's sections should be reordered to stress the importance of mediation and of sorting out problems at the beginning. It is also important to say that the tribunal issue is one that the minister should consider further. If a mechanism for a more generalised right of appeal to the tribunal could be found—perhaps with a sift by the chairman over a period of time, or something of that sort, to control the flow—that would get rid of a lot of the problems to do with the record of needs that John Swinney touched on. It could also help people in similar situations in the future. I hope that it is possible for the minister to consider whether a power should be taken—as opposed to a decision's being taken, as is currently proposed—to extend the tribunal jurisdiction over time.

There is also a legal aid point and a solution needs to be found to that. However, I shall finish by saying that the bill is important. It will, along with other legislation and other resources—and, importantly, with administrative arrangements in place—make considerable improvements in people's lives and in the quality of the educational experience for parents and children. With that in mind, I support the principles of the bill and look forward to the stage 2 debates on some of the remaining issues.

15:19

**Ms Wendy Alexander (Paisley North) (Lab):** I am delighted to speak in support of the bill. As we have heard, all members of the Education Committee realise that it represents real progress

in delivering better education and in having education being increasingly delivered in a mainstream environment.

The committee considered the bill in great depth, which gave many of us an opportunity to learn more about the education of children who have additional needs of whatever kind. There were times when the committee struggled with the fact that legislation, in and of itself, can never substitute for good practice on the ground. In that context, I want to start by welcoming the extra resources that the Executive will provide to support the whole schools community in delivering the aspirations of the bill.

I thank the minister for the way in which he has co-operated with the committee and for the timely way in which he has responded to our many queries. That record of timeliness is not always matched by all his ministerial colleagues—I am thinking of the finance debate tomorrow afternoon.

The bill is a vital step in creating an education system that responds to the needs of all children. For those who have concerns about whether we are creating a framework for all children, it is clear from what the minister said that the evolving framework of personal learning plans for all children is the way forward, but only once that process has been properly piloted. It is clear that to rush to legislation in advance of piloting the PLP framework would be a mistake.

**Robert Brown:** Does Wendy Alexander agree, as I think the committee did, that it is important that the bureaucracy be minimised and that a simplified version of the documents be produced so as not to place a huge burden on teachers?

**Ms Alexander:** I agree with the convener of the Education Committee. I will perhaps touch on that point later.

As this is a stage 1 debate that should be about the principles of the bill, I will touch upon a couple of the areas that I think we wanted in particular to welcome.

First, the centrepiece of the bill is obviously that it will widen support to all those who have additional support needs. In particular, it takes account of the emotional and behavioural needs of children. Many members of the committee—myself included—were struck, when we went to visit schools, by the evidence that teachers throughout Scotland gave us about how significant emotional and behavioural issues are in the classroom. Those issues had not hitherto been recognised—or, rather, sufficiently recognised—within the legislative framework.

Secondly, a broad welcome has also been given to the duty to assess. That duty is in keeping with the strengthening of parental rights and opportunities within the bill.

Thirdly, I will mention the progress that has been made, which has already been mentioned, towards compelling other agencies to work in partnership with education authorities in order to meet the needs of children who have additional needs. The CSP will not be a one-off event, like the record of needs; rather, it will provide the opportunity for an annual review. The reality is that the needs of children change through their educational experience and the bill moves us forward significantly in acknowledging that.

I also welcome, as have other members, the role of mediation and the support for advocacy services that the minister has announced today. I would like to reinforce one of the points that the committee makes in its report, which is that the success of mediation will depend upon whether those who use the mediation service feel that it is truly independent in its *modus operandi*. Therefore, it is essential that there are sufficient firewalls within a local authority so that people do not feel that a mediation service that is provided by a local authority is simply the plaything of the education department of that authority. The code of practice could play a useful role in that matter.

I was very encouraged by the minister's remarks that we should discourage people, particularly the authorities, from dragging lawyers in at the early stages and that they should try to take the mediation and early-intervention route.

My final general point is to welcome the fact that the bill will allow parents who have children with additional support needs to make placing requests to independent specialist schools. That is also a step forward.

I will address the outstanding issues on which I think there are concerns. As we have heard, parents have expressed fears about the transition arrangements from the record of needs. I welcome the comments that the minister made in that regard and I think that that is a matter that it will be appropriate for us to return to at stage 2.

The other outstanding issue that I will touch on is the commitment from the minister that, because the code of practice might not be sufficient in requiring other agencies to work in partnership with local authorities, that is a matter that he is willing to examine again.

The committee was very encouraged that so many matters of concern were addressed by the minister in a constructive spirit through the iterative process of our consideration of the bill at stage 1. I will welcome the bill's proceeding to stage 2.

15:24

**Brian Adam (Aberdeen North) (SNP):** I, too, congratulate the Education Committee on its

report. The committee's convener rightly said that the issue is not an easy one to address. I am a parent of five children and I am most grateful that I have not had to face such challenges, but I am very aware that others, including some of my constituents, have had to do so. It is not at all surprising that parents fight for the rights that they believe their children should have and that they try to ensure that their children's needs are met. The concern that has been expressed by many individuals and organisations, about the changes to the system and potential deficiencies in the new system, is understandable.

The bill presents a good example of how the Parliament can work well. It is to the Executive's credit that it took a little more time during its consultation process. The Education Committee did not immediately endorse everything in the bill, but produced a range of suggestions and recommendations for the Executive. Indeed, the amendment in Lord James Douglas-Hamilton's name, which has not been moved, demonstrates that Parliament engaged properly in the process.

Sometimes, accusations are made that only the usual suspects are consulted—indeed, one might say that that is true in some ways in relation to the bill. However, there is nothing wrong with that in this case. I commend the work that was done by the many professional and voluntary sector groups who engaged in the process, not just in the initial consultation, but in the production of a considerable amount of written and oral evidence for the Education Committee.

I have concerns about some aspects of the bill, many of which have been articulated by other members. The minister has recognised, to some extent, the depth of concern about the appeals process and access to tribunals. Although I am more than happy, given the minister's assurances, to endorse the general principles of the bill today, that is no guarantee of my continuing support if some of the issues that have been raised today—which will continue to be raised—are not satisfactorily addressed. Many people outside Parliament, who are happy that the process is in place, want a successful conclusion, but we are several steps away from that. However, I am delighted with the openness with which the minister has addressed at least some of the concerns today and I look forward with interest to hearing his specific proposals.

On the direction that is given to other agencies, it is difficult to have confidence in the proposed new system's ability to produce a co-ordinated support plan, because the bill will place no duty on any service other than the education service to deliver support. There will be significant financial implications for the health service and in particular for social work services. Much concern has been



expressed about the numbers of social workers who are available to deal with children's issues. Indeed, I recently secured a members' business debate on the shortage of social workers. The bill could impose more burdens on social work services and we can have no confidence in a system that cannot deliver services.

I welcome the minister's announcement that he has set aside specific sums of money for the coming and successive financial years and I hope that he will impress upon the Minister for Finance and Public Services that those moneys reflect the new burdens that will be placed on local authorities, rather than just some sort of benevolence towards them. When we debate the financial memorandum, we must ensure that the situation is not presented in a way that makes it appear as if local authorities will have lots of money, when in fact they will have new burdens. The minister will forgive me for saying that; we have crossed swords on the issue in the past and will undoubtedly do so again.

My concern is that, if we allow local authorities to make decisions on the basis of what is reasonable in relation to costs, we will produce a recipe for rationing and we will not get the kind of services that are required for individual children's needs. We might even end up with some sort of postcode lottery. Some local authorities might consider that they have had a generous settlement—ministers always tell us that they provide generous settlements—and that they are therefore in a position fully to implement the bill.

For whatever reason, however, other authorities might consider that their settlement is not so generous and might say that they will have to provide a poorer standard of service to children in their areas. Indeed, those authorities might make internal political choices on the basis that they do not think that the settlement is reasonable and they might use it on other matters. I do not think that the money is ring fenced—unless, that is, the minister tells me that it is. He is shaking his head: I thought that it was not.

Other members have spoken about transitional arrangements and timeframes. I am sure that many members have heard those issues raised by constituents. I hope that the minister will also address those concerns.

15:31

**Mary Scanlon (Highlands and Islands) (Con):**

I also welcome the conciliatory tone that the minister took in speaking to the motion on the bill. Naturally, the Conservatives support additional learning support. We would always support something that Lord James Douglas-Hamilton supported. If it passes the Lord James test, it is good enough for our group.

I commend the excellent work that was carried out by the Education Committee. It is always difficult for someone who was not involved in a committee's work at stage 1 to come to the debate at this point and speak to a report. That is particularly true because I understand that the minister gave other concessions to the Education Committee this morning. I can only say that, if I raise an issue that the minister has negotiated and compromised on, I apologise for doing so. I had to attend a meeting of the Communities Committee this morning.

Although I was not involved in drafting the bill, I spent 20 years in classrooms and lecture theatres. Anyone with that sort of commitment to education has a clear interest in the bill. I am especially interested when I think of people in their 20s and 30s who get into further and higher education before being diagnosed with Asperger's syndrome and dyslexia. Anything that can help to diagnose such conditions earlier has to be a great advantage.

I want to alert the minister to the following points in the committee report. First, paragraph 27 says:

"Lorraine Dilworth from Record of Needs Alert (RONA) expressed the view that the new Bill was essentially the same as the current system".

If the current system had been policed and enforced as it should have been, we would have had a workable system by now. The Parliament needs not only to pass legislation but to ensure that local government implements legislation and that it is accountable to us for implementation.

Lord James Douglas-Hamilton highlighted paragraph 36 of the report in which the committee states:

"any changes to legal rights must not represent any lessening of the rights of any child".

I was also concerned to read under paragraph 71 that

"The Committee expects education authorities and other agencies to comply with their duties under the Bill".

Having spent many years on the Health and Community Care Committee, I do not think that the word "expects" is strong enough, especially given the absolute necessity for every child who deserves additional learning support to have it.

Under paragraph 80, I note that

"The Committee further calls on the Executive to ensure that local authorities continue to operate the Record of Needs".

I have never heard so many complaints about a matter as I have heard about the record of needs: I had four fresh cases last week. For many people the record of needs is just that. It is only a record of needs and not an educational support plan. I hope—

**Dr Elaine Murray (Dumfries) (Lab):** Will the member give way?

**Mary Scanlon:** Perhaps I could just finish this. Elaine Murray will probably correct me on something that was perhaps negotiated this morning. I hope that I made it clear earlier that that might happen.

I hope that the bill goes some way towards ensuring that that problem is sorted.

Under paragraph 88, I note that

"Others, such as the Educational Institute of Scotland (EIS) and the Association of Support for Learning Officers (ASLO) expressed concern".

Further on in that paragraph a representative of one of those organisations states:

"We estimated ... that it was taking 10 teaching weeks to do the administration"

for an individualised educational programme. If it takes teachers and professionals 10 weeks to do that, we have to look for a much simpler bureaucracy, because that is 10 weeks that are lost in addressing a child's needs.

Paragraph 111 of the report states that the committee

"seeks clarification from the Executive on the rights of an education authority to refuse to conduct an assessment and notes the need for the Code of Practice to clearly identify valid reasons for a request to be refused."

I hope that that has been negotiated, because far too many parents are unsure of their rights or their children's rights. Time moves on and, before they know it, it is too late.

I notice that Adam Ingram is in the chamber. When I was reading the report, I kept thinking about Ritalin and the need for health, social work and other authorities to work together. Adam Ingram is the convener of the cross-party group in the Scottish Parliament on mental health. The number of children who are being given Ritalin is a matter of serious concern. That drug obviously has never been tested on children. I realise that I am digressing, but that drug is often referred to as the zombie drug, which is not flattering. Everyone in Parliament should be concerned about that issue.

It is not clear to me whether every child will have a right to advocacy. I was on the Health and Community Care Committee when it dealt with the Mental Health (Scotland) Bill, which sought to place on councils a duty to provide advocacy, but it did not give children or parents the right to advocacy. It is quite a different thing to say that the council has a duty to provide advocacy. In addition, there is a great shortage of advocates.

As an MSP for the Highlands, I am happy to pass to the minister a letter from Dyslexia Scotland, which highlights that it can take up to

two years in the Highlands to get a diagnosis of dyslexia. Brian Adam made an excellent point about joint working. The shortage of social workers and occupational therapists is crucial. I am happy to pass the minister a letter from a lady in Inverness, whose child was sent home last week because there was no learning support teacher.

15:37

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** We are seeing the extremes of behaviour in the chamber this afternoon, with displays of maturity and immaturity. The element of maturity is that we welcome the general principles of the bill and the opportunity to debate them.

One of the principles is that local authorities and other agencies will have a duty to co-ordinate their services in providing additional support to children who need it to enable them to achieve the most that they can from their education. An unwritten general principle of the bill must be that, when that is put into practice, the interests of the child are to the fore. The role of parents must be central, too. One can point to strong measures in the bill that have a direct regard to those principles.

We have to consider the most effective ways of determining the best interests of the child. Peter Peacock said that the bill is child centred, but deciding on such measures in Parliament is difficult. As the bill must ensure that the needs of the child are recognised in legislation, members have to strike the right balance between the argument that mainstreaming is the best vehicle for providing support and the argument that support is best provided by specialisation.

Constituents who have been in touch with me and attended my advice surgeries—I met some of those constituents outside and some are in the public gallery—have highlighted for me the difficulties that we face in striking a balance. One constituent—the mother of a child who has a record of needs and who requires additional support—told me that she opposes the bill because it

"divides our children into categories and will lead to a new set of labels."

Of course, mainstreaming is not just about the duties on local authorities; it is about educational opportunities and life experiences. She believes that the bill gives different educational rights and different school appeal routes to different groups of children.

Another constituent who got in touch with me and attended an advice surgery told me of her concerns that mainstreaming in England puts at risk the education and well-being of her son, who

is in a specialist school, the funding of which is under threat because of the reduced intake of children who require less support than her son. No school in Scotland is appropriate for her son, who is 12 and has considerable educational and psychological needs. He has been at the school for 18 months and is making progress, but it took two and a half years for him to get his needs adequately met.

There must be a way forward to balance the different arguments and needs and to protect the best of both types of provision. Education of any kind should not be reduced to the lowest common denominator of provision. I seek the minister's assurance—which I am sure he will offer—that the Executive is continuously and rigorously pursuing excellence in all areas of Scotland, so that where services are excellent and co-operation among agencies works well, those are supported, and where there is not as much integration of services, which members have touched on, and those services are not as good, they are a focus for improvement.

The Education Committee received evidence from parents that showed stark divergences across Scotland in the quality of co-operation and the provision of services. Brian Adam mentioned the potential for postcode care for many children. I fear that postcode care is already a reality in too many areas. The Government must focus on that matter.

Members have spoken about the practical workings of the bill. The Finance Committee discussed in detail concerns about the robustness of the statistical basis of the financial memorandum's assumptions on uptake of co-ordinated support plans, mediation and tribunals. Paragraph 8 of the committee's report mentions concerns relating

"not only to the accuracy of the Financial Memorandum but also to the feasibility of tracking costs under the policy proposed."

The conclusions in paragraphs 37 to 41 are robust, especially in the context of recent developments.

The bill may change during its passage through the parliamentary process. I appeal to ministers to be as robust as they can in their work on the financial implications of the bill. As the minister said, it is inevitable that those implications will change over time. There is an opportunity for parliamentary scrutiny and for parents to understand the real financial implications.

Like other members, I stress the importance of the code, which will be about the quality of the bill's implementation. My appeal is that parents should have a key role in putting together the code, which must be as strong as we can make it.

The issue is about quality of co-operation, quality of education and what all of us want from the bill—a good quality of life for all children.

15:43

**Cathy Peattie (Falkirk East) (Lab):** I welcome the bill and the Executive's commitment to bringing additional support systems up to date. The minister will be aware that many parents of children with support needs face a daily battle to ensure that their children have appropriate educational support. He will also be aware that many parents are concerned about the loss of records of needs. It is vital that their views on what replaces records of needs are reflected in the bill.

The Equal Opportunities Committee took evidence on the bill and I am grateful to the Education Committee for taking so many of the points that we made on board. I will highlight some of the major issues that arose from our deliberations.

The Equal Opportunities Committee had concerns about those who currently have a record of needs but will not fall within the remit of co-ordinated support plans. We recommended that the lead committee call on the Executive to make a commitment to outlining and supporting transitional arrangements for all young people who currently hold a record of needs, to ensure that those young people do not face a reduction in support services. The Education Committee endorsed that view and called on the Executive to report back to it.

The Equal Opportunities Committee also raised concerns about the fact that the tribunal system will have jurisdiction only over education authorities. We recommended that the lead committee call on the Executive to extend the jurisdiction to cover health and social work authorities. The Education Committee has not taken a view on that point, but further clarification is being sought from the minister.

We were concerned that legal aid would not be available to children and parents. We felt that, one way or another, councils would have legal supports, but that parents deserved support, too. We hope that the Executive will fund advocacy services. I welcome what the minister said in his speech and I look forward to stage 2 of the bill.

The Equal Opportunities Committee would like assurances that the dispute resolution procedure, as provided for by the bill, will be an independent service.

**Mr Monteith:** It has been put to me that some officials in the Scottish Executive believe that, although the new arrangements may be called a dispute resolution procedure, they are little more

than a complaints route. Would the member care to take up that issue in future discussions in her committee?

**Cathy Peattie:** Wendy Alexander spoke earlier about mediation and the way in which people are brought together to work out particular problems. A system has to be in place so that there is a vehicle for mediation. I welcome the idea of mediation and advocacy to deal with problems. It does not matter that the heading is dispute resolution procedure; there simply has to be a hook and some way of moving things forward. Mediation is a good way of doing that and the Equal Opportunities Committee will want to consider how the system operates.

The Education Committee has shared our concern that the Executive should ensure the adequacy of staff resources. I welcome what the minister said about additional funding.

The Equal Opportunities Committee was greatly concerned that children and young people with disabilities who do not have a co-ordinated support plan will have no rights to auxiliary aids and equipment under the bill. In its report, the Education Committee supported that view and called on the Executive to introduce an amendment at stage 2 to provide for those rights.

Section 23 of the bill requires ministers to issue a code of practice, about which we have heard a lot already. The code will provide guidance to education authorities on the proposed duties. The Equal Opportunities Committee welcomed the Executive's moves to encourage and support good practice via a code of practice. However, we suggested that the lead committee ask the Executive how it planned to consult on the code's design and implementation. In oral evidence to the Education Committee, the minister said that he wanted the process of drawing up the code to be open and inclusive; he repeated that point in his speech today. However, the Education Committee asked that, to permit effective parliamentary scrutiny, the duty to issue a code of practice should be made by statutory instrument under the affirmative procedure. We look to the minister to ensure that there is a statutory code of practice. The Equal Opportunities Committee also asked for detail on the procedures to be used when it is clear that there has been a failure to adhere to the code.

It is important that the bill should make life easier for children and parents and provide local authorities with clear obligations. It should do so by opening up the system and creating greater transparency and inclusion in the decision-making process. Parents must know what is happening and they must have a real say in their children's education. I look forward to stage 2 of the bill.

15:48

**Robin Harper (Lothians) (Green):** Section 2(1) of the Standards in Scotland's Schools etc Act 2000, echoing the United Nations Convention on the Rights of the Child, says that our education system should develop

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

Support for learning is a key to reducing inequality and promoting social justice. Only last week—or was it the week before?—I referred to the seven intelligences and said that our education system concentrates on only two of those and is not doing enough for the other five. I hope that the spirit of the bill will be to consider the full potential of all the children that the legislation will cover.

Like Jeremy Purvis, I have been listening to quite a few lobbyists over the past couple of weeks. Some of them, from Equity in Education, are in the gallery today. They have expressed a clear view that the bill could be improved right at its very beginning, in its title. The bill should simply be about support for learning and should ensure that every child entering education at every school has a learning plan. I would like to add to that: I think that every child should have a learning and development plan, which would be updated annually. The co-ordinated support plan would, where needed, form part of the overall plan.

**Rhona Brankin (Midlothian) (Lab):** If the co-ordinated support plan were an extension to such a universal system, would Robin Harper accept that it should have additional statutory duties attached to it?

**Robin Harper:** I take no exception whatever to the spirit of the bill or to the statutory duties that are required under it. In fact, I back the bill absolutely. I was just saying that the next step forward in educational thinking and in our attitudes could be to include the co-ordinated support plan within an overall system, rather than having it as an add-on. That would address what is a very real problem.

I have also been lobbied by Children in Scotland, which backs much of what Cathy Peattie has been saying. It is concerned that the eligibility criteria could mean that some children and young people who require co-ordinated support will not qualify for a CSP. The situation is a bit like the poverty gap in the benefits system: there are children who are in between and who will fall through the cracks in the system. Whenever I see the phrase "reasonable cost", I immediately think of rationing. The Executive should explain the meaning of that phrase as clearly as possible. We should be assured that the provision of additional support will always be based on need, not on estimates of cost.

I echo what Cathy Peattie said on children's rights. Children with legal capacity should, as under other legislation, have a right of appeal and should share other rights that the bill provides for young people and parents. Concern has been expressed over the additional support needs tribunals, which do not seem to have a clear legal jurisdiction over agencies that provide support from outwith the education sector, specifically the health care and social work sectors. It is not clear from the bill what the tribunals' powers will be. Tribunals may well come to decisions that they have no power to enforce over social work or health departments. Children in Scotland stressed that advocacy should be available for children, young people and parents who require support.

The bill seeks to help children to access additional learning support and we absolutely support that overall aim. However, there are problems with the bill as it stands, many of which I hope can be dealt with through amendments at stage 2. We should, where possible, be supporting children irrespective of diagnosis. I am concerned that, unless the improvements that have been hinted at in the debate are made, the bill could in fact diminish education authorities' requirements to help children with learning and behavioural difficulties, instead of strengthening them. However, I commend the bill and we shall be voting to support its general principles.

15:54

**Christine Grahame (South of Scotland) (SNP):** Parents who have children with what used to be known as special needs often feel that they are Davids against the Goliath of the education authority. Many of those parents are vulnerable and have felt themselves to be at a considerable disadvantage when in conflict over decisions that the local authority has taken. The bill's developments in mediation, advocacy and the tribunal system are therefore very welcome. As well as discussing those subjects, I wish to touch on schedule 2, which I do not quite understand.

The bill is vague on the subject of mediation, as the Education Committee commented, although I note that the minister has developed the subject. There are still problems, however, with firewalls or Chinese walls within local authorities, which will be the mediators and which will be seen to be mediators in their own cause, to an extent.

I was fortunate enough to go to Maryland in the spring of last year to observe mediation in a range of settings, such as neighbourhood disputes, education and criminal activities. Mediation there is carried out in a professional manner. Although mediation services in Scotland are developing, we should be looking to develop them further. Mediation brings the great advantage that nobody

wins and nobody loses; both parties concede and agree to the decision that is made, which reinforces that decision.

That is only part of the issue, however. I agree with Robert Brown that it seems daft to have mediation coming after tribunal conflict. I do not follow why only parents of children who have co-ordinated support plans can access the tribunal. I understand that the Executive is developing a code of practice, which will be essential to the way in which the tribunal is run. I am concerned by the fact that the minister seemed to suggest that the Executive would dissuade education authorities from having lawyers present at the tribunal—that would be awful hard for local authorities. Moreover, the lack of legal representation for parents at the tribunal might even be subject to a challenge under the article of the European convention on human rights that provides for the right to a fair hearing. If there was legal representation for an authority but not for some parents, that would create an imbalance.

Perhaps that is linked to advocacy, an issue that ought to be made clear in the bill. The bill is not redressing the balance for parents in the manner that they deserve. The provision of independent advocacy services would perhaps do that. If local authorities cannot be compelled not to have legal representation present at a tribunal, there would at least be advocacy for the parents. The minister said that two organisations might provide services, but I do not know which organisations they would be.

**The Deputy Minister for Education and Young People (Euan Robson):** The two organisations are Enable and Partners in Advocacy.

**Christine Grahame:** Perhaps in winding up the minister will explain how the services will operate and under what circumstances parents would be able to access those advocates for their cause.

My final point—I do not need to say terribly much on it—is about something that I do not really understand, as a result of my ignorance and the fact that I am not a member of the Education Committee. Schedule 2 is on placing requests for children and young persons with additional support needs. I do not see anything about it in the committee's report. The schedule replaces sections of the Education (Scotland) Act 1980. It provides that, where a local authority refuses a placing request, a parent may appeal the decision to an appeal committee. Under the current system, the appeal committee sometimes comprises a councillor other than one from the education committee that turned down the placing request in the first place and other parties.

I am asking for clarification on the issue.

Previously, the parent would turn up with representatives of that wonderful organisation Independent Special Education Advice—Lorraine Dilworth has been mentioned—which represented parents all over Scotland, because the local authority education committee had lawyers present. Will the system still operate in that way? How will it interact with tribunals? The minister looks poised to intervene. I might be out of touch, but I do not think that legal aid is available for parents at education appeal committees. If that is the case, the proposals could breach the European convention on human rights. It cannot be right, given the right to a fair hearing, that the education appeal committee will have lawyers present, or perhaps advocates or even a Queen's counsel if a test case is being heard, whereas the parent who cannot afford to pay—

**The Deputy Presiding Officer (Murray Tosh):** You have one minute.

**Mr Monteith** rose—

**Christine Grahame:** I am quite happy to take an intervention. I will stop within my time.

**The Deputy Presiding Officer:** If you take the intervention within your time, that is quite all right.

**Christine Grahame:** As long as the intervention is short.

**Mr Monteith:** I thank the Presiding Officer and the member. Is the member aware that the ISEA has had to make one member of staff redundant and is down to a final member of staff, who will become redundant next week?

**Christine Grahame:** Yes, I am aware of that and I could say a lot about the underfunding and under-supporting of that organisation. I am glad that the member made the point. I do not think that legal aid is available for parents in the circumstances that I outlined. Will the minister clarify that and explain how the proposals meet ECHR requirements and how the appeal committee interacts with the tribunal.

16:00

**Dr Elaine Murray (Dumfries) (Lab):** Like others, I am disappointed that the discussion of this important bill was interrupted by a somewhat infantile display of gesture politics. I am glad that we have managed to recover and get back to matters that are important to many young people and their parents.

Like Robert Brown, I thank the clerks for their work and the witnesses, institutions and organisations that have invited members of the committee to visit them. We have all learned a lot from the visits and from speaking to the witnesses in the committee.

The provisions of the bill have generally been welcomed by witnesses, but there are many questions about how the system will work in practice. I disagree with something that Mary Scanlon said. The system proposed in the bill is not the same as the current system. The bill is not about replacing records of needs with co-ordinated support plans; it establishes a new system to abolish the record of needs and introduces the co-ordinated support plan as a statutory document to safeguard the interests of those young people who need support from an external agency. More generally, it places on local authorities a new duty in their role as education authorities to take account of the additional support that a much wider category of children or young people might require—possibly temporarily—to achieve their educational potential. Furthermore, it requires local authorities to make adequate and efficient provision for that additional support. The bill is about giving new rights to many children and young people who did not have such rights before.

I recall a conversation that I had with a constituent whose child has a record of needs. Although the child has severe dyslexia, he has that record of needs because he has mild Asperger's; he would not have been entitled to a record of needs on the basis of his dyslexia.

The bill follows on from the Standards in Scotland's Schools etc Act 2000, which established the right of every child to be provided with a school education by a local authority. In relation to Robin Harper's point, I point out that the act also placed a duty on education authorities to ensure that education is directed to the development of each child's

"personality, talents and mental and physical abilities ... to their fullest potential."

The bill recognises that attempts to meet the requirements of a child with multiple or complex needs are most likely to fail when some of the additional support that is needed is provided by external agencies or by the education authority when it is exercising any of its functions other than education.

There are always concerns when systems change. Brian Monteith referred to concerns among Tory members about the changes, but I say to him that there are concerns among members from all parties. We have all heard the concerns of parents. The minister has recognised that reassurance is required for parents of children who currently have records of needs but who will not qualify for CSPs. What can those children do if their local authority ceases to provide the additional support that they currently receive? I acknowledge what the minister said about the letter that he has written to chief executives of local authorities, but I think that parents need to be

told explicitly how they can raise concerns if they feel that their child's needs are not being met. Indeed, that also applies to the young person who did not have a record of needs but who has additional support needs. How do they make progress? I know that that is provided for in the bill, but I suggest that it needs to be made more explicit in order to reassure people.

I am absolutely clear that the Executive's intention is that all children who require additional support are entitled to have their needs met and I welcome the announcement of additional funding to meet unmet need. The letter to which Fiona Hyslop referred was written by COSLA before it was aware of that funding and I hope that COSLA finds that some of its concerns have been addressed, too.

The bill does not propose a universal system. Some witnesses from whom we took evidence felt that the bill represented a lost opportunity to introduce a single system of personal learning plans for all children. The ministers have indicated a desire to develop a system that identifies learning and development pathways for each child. Eventually, we will move towards a system in which each child is entitled to have a PLP and in which children with additional support needs will also have an individualised educational programme in order to identify those needs.

Some people say that that is enough, but I recognise that Robin Harper is not saying that. There are those who say that a CSP will stigmatise people, but they are not taking account of the fact that a new universal system would require a level of resources and training that would be difficult to put in place in one tranche. That has to happen over a period of time, with resources being fed in; it cannot be delivered at the moment. Those people also fail to recognise that the most vulnerable children and young people require the protection of a CSP because, sadly, we do not live in an ideal world in which all agencies collaborate willingly and holistically. Members who think that the CSP will stigmatise children and young people are, in my view, opposed to the bill's general principles and should vote against the motion.

The bill's long title makes it clear that the bill is about making

"provision for additional support in connection with the school education of children and young persons".

The bill is about meeting the needs of those children who would not achieve their full potential without additional support. It is not about introducing a universal system of documentation—it is important for us to keep that in mind.

I conclude by saying that considering the bill has been an extremely interesting experience. I have become more reassured as we have taken

evidence and I hope that ministers can provide the further reassurance that parents need to be sure that the bill is the right measure.

16:06

**Mrs Nanette Milne (North East Scotland) (Con):** Like previous speakers, I have some concerns about the bill's impact on the level of support for children and young people with additional support needs, from the relatively minor to the more complex.

If my understanding is right, to qualify for a co-ordinated support plan, a child must have complex or multiple needs and be in receipt of significant services outwith the education service. Undoubtedly, many children who have records of needs will not have co-ordinated support plans because their educational support needs are met only in the education service. Naturally, parents who have had to fight hard to achieve a record of needs for their child are worried that they will lose out under the bill. That must not be allowed to happen; children must retain the legal entitlement to have their additional support needs met. I am pleased that the minister has given some reassurance on that point today.

Unanswered questions that have been highlighted by the Education Committee, the Finance Committee and the Equal Opportunities Committee include the cost implications of the bill, the number of staff who will be required, and the number of children who are likely to be eligible for a co-ordinated support plan. The bill will classify many more children as having additional support needs, including gifted children, children whose education has been disrupted because of illness and children with social, emotional and behavioural difficulties. It seems clear that significant resources will be required to cope with those children's needs in addition to the current funding for those with complex support needs.

What worries me most is that, because of a serious shortage of therapists and other professionals, the expectations of some of the most vulnerable young people in the community might not be met. In the few months during which I have been in the Parliament, I have heard about those shortages time and again—not enough speech therapists; long waits for physiotherapy; splints and other appliances outgrown within weeks of acquisition. Parents are reaching extremes of anxiety and emotional exhaustion because their children cannot access the facilities that they need in education, health and social services.

The recent members' business debate on children's therapy services in the north-east highlighted those problems graphically and the

north-east is by no means unique in Scotland. Even when the minister knows how many children will require additional support under the new system, how will he provide support for those with complex needs? Even with funding made available, how will he find the human resources to meet the needs, given the serious shortage of trained personnel throughout the country?

Auxiliary aids and equipment for the disabled are not dealt with under the bill, so there is a need for the current duty on local authorities to provide those items to disabled children to be continued. Another concern is about the time that is proposed for transitional arrangements for older children who are preparing to leave school. Many witnesses and committee members think that the 12 months that the bill proposes is well short of the time that is needed to put appropriate support in place to ensure a smooth transition from school to the adult world. I ask Euan Robson to confirm that that will be addressed further.

**Euan Robson** *indicated agreement.*

**Mrs Milne:** Thank you. I have described my concerns and I am glad that some of them will be considered again. The general aims and principles of the bill are admirable, but it is clear that a great deal of work still has to be done if those aspirations are to be achieved in the interests of all children.

16:10

**Ms Rosemary Byrne (South of Scotland) (SSP):** I welcome the opportunity to take part in the debate on this important bill. I acknowledge the hard work that has been done by the Education Committee in trying to reach consensus on many areas of the bill.

I think that all members will agree that the record of needs has served its purpose, and that there is a need to move on to a new system for the 21<sup>st</sup> century. Over the past few years, the opening of records of needs has been inconsistent, in that the needs of many pupils without records are more complex than those of some pupils who have records. There have also been differences between local authorities in the number of records that have been opened. However, where there has been good practice, whether a record of needs has been opened or not has not affected the appropriate planning, allocation of resources, co-ordination of support or access to on-going review.

Although I welcome the intentions that underlie the bill, my concerns relate to the creation of a three-tier system while current good practice proves that a universal system that is properly resourced can work. I am concerned that, with all the right intentions, we are still not quite getting it right; we are rewriting the record of needs and adding on a few extras.

I welcome the broadening out of the definition of additional support needs, and I will go into that later. Individualised educational programmes have been piloted in many local authorities and are used as planning tools for the setting of targets, the co-ordination of support and the reviewing of progress. IEP targets are set with the involvement of all the personnel who are involved with the child or young person, including the parents and the young person. A universal system for all children in Scotland, providing the same standard, quality and level of input in their education, should be the goal.

That would have been a courageous move on the part of the Executive, which would have removed the focus from a child deficit model and prevented children and young people from being labelled. Under such a system, the development of personal learning plans could be continued, taking into practice the good work that is already carried out in the development of IEPs. Ultimately, under the current plan, all children and young people will have a PLP. A universal system would also, quite sensibly, require a single tribunal system that would be available to all children. Those measures would simplify the system and provide equal rights for all. They would also remove the real concerns about the eligibility for a CSP and the fear—which many members have expressed in the debate, and which many witnesses expressed—that the opening of a CSP will become a route for chasing resources, as happened with the record of needs. That is a concern that many of us still hold, and it gives rise to an adversarial position.

The new system must be adequately resourced if it is to meet the additional support needs of all. I welcome the broadening of the definition of additional support needs to include young people with social, emotional and behavioural difficulties, but I warn the Executive that there will be an overwhelming requirement for more support. We need only look to the recent report from the Educational Institute of Scotland on attacks on teachers to realise the difficulties that are being experienced in many of our schools. Staff from child and family mental health teams and other agencies, including social work services, would have to be there to support the young people and work in conjunction with the education authorities. We know, from many witnesses who appeared before the committee, that there are shortages in all those fields. I would like reassurance from the minister that that will be taken on board.

We have much evidence to point out the shortages in speech and language therapists and occupational therapists as well as concerns about auxiliary aids and equipment. If the system is to be improved, assurances must be given that all resources and services will follow. We do not want a scenario in which a young person arrives in



school to find that the equipment has not yet arrived for them and, three or four months down the road, the school is still chasing it—as happens at present. I have personally waited about a year to have domestic science labs altered for a child with a wheelchair, who had no access until the alterations were made. If that situation continues, we will do those children no service. As a result, I want some assurances in that respect.

I am also concerned about assessment and examinations. As Lord James Douglas-Hamilton pointed out, that area raises real concerns, particularly for those who have autistic spectrum disorder. As a former professional who worked with young people with additional support needs, I have no great confidence that the bill will improve the situation. After considering the bill's provisions on assessment again and again, I cannot see how it will improve a situation in which a parent has to wait for seven years before their child can be labelled or identified as, for example, dyspraxic and the correct means of helping him or her can be put in place. We must carefully scrutinise that area, because it is important that we identify young people with autistic spectrum disorder, dyspraxia and communication disorders as early as possible and ensure that we implement the proper plans and programmes.

I am sorry that I do not have more time, because I have much more to say. It is unfortunate that I was given only five minutes.

**The Deputy Presiding Officer:** Actually, you received the same six minutes as every other speaker in the open debate.

16:16

**Mr Kenneth Macintosh (Eastwood) (Lab):** Like all committee members, I welcomed the opportunity afforded by the inquiry to hear from people and organisations around Scotland about the excellent work that is going on. After visiting schools and hearing so many people give their experiences, we were all impressed by the good practice that is out there.

Like most MSPs, I was introduced to additional support for learning—or special educational needs, as it was called—through the experience of families who were in dispute and had to battle with their school or local authority to secure the support that they thought that their child needed. They felt that they were poorly armed for such a struggle. For some—though not all—of those families, the record of needs has been at the centre of the dispute. I do not think that any committee members are either unaware of or unsympathetic to the anxiety felt by families who have fought for a record of needs and who feel that only a similar statutory document can provide the protection that they seek.

I think that we are in danger of losing sight of the fact that, although the bill extends new rights and powers to all families of children who have additional support needs, families for whom that trust has broken down are still fearful that they are losing out. I welcome the minister's reassurance that young people will not lose any services and that local authorities should not stop drawing up records of needs until the bill is enacted. I also welcome the reassurances that we have received today about HMIE's extended role in monitoring the situation. However, the minister cannot repeat that message often enough. Although the bill marks a huge step forward, we will not be doing families any favours if we do not take them with us and give them the reassurances that they seek.

Although the committee has wrestled—as indeed has the Executive—with the question of whether any further action can be taken or whether particular areas of the bill can be framed differently, no obvious or simple solution is at hand. However, I have a suggestion in that respect. We could issue each individual pupil with some kind of letter of comfort. After all, that system has been of benefit in other areas and might address concerns in a practical and comprehensive manner. I welcome any comments on my proposal, although they do not have to be made this afternoon.

I want to say a few words about the importance of developing advocacy. In that regard, I welcome the minister's initial comments and hope to hear more about this matter at stage 2. For several reasons, it is essential that we develop advocacy services to accompany the bill's provisions. I remember the original special educational needs inquiry in the first parliamentary session—indeed, Cathy Peattie sat through it with me. During that inquiry, parents told us of their experiences of battling for services. They would attend a series of meetings in which they would sit alone surrounded by groups of professionals, and I remember one parent saying that they soon learned to travel in pairs. Parents need support and advocacy.

During the stage 1 evidence taking on the bill, we received a very strong message from young people who had additional support needs that they value support more than anything. Indeed, as I recall, Robert Brown was present at that particular session, and I thank Children in Scotland for its work on that matter. It does not matter whether that support helps them to make choices, express feelings or reach decisions—it is valued when it is given.

Finally, one of the big issues that we wrestled with—Rosemary Byrne was also concerned about this issue—was the lack of legal aid at tribunals. We do not want a system that advantages the privileged and disadvantages the already

disadvantaged and poorer members of our society. We do not want a legalistic system, but we think that advocacy services would be the best way forward.

I thank the Presiding Officer for giving me time for my speech. A number of elements about the code of practice need to be clarified, including reasonable cost, the transitional arrangements and assessment. I look forward to the Executive continuing its constructive approach during stage 2.

16:20

**Rhona Brankin (Midlothian) (Lab):** Like my committee colleagues, I very much welcome the bill. It is important to point out at the outset that the vast majority of respondents and witnesses to the committee welcomed the general thrust of the bill. Indeed, the bill follows on from extensive consultation with a wide range of stakeholders throughout the country.

It is true to say that all witnesses agreed that the existing system, which was set up under the Education (Scotland) Act 1980, has faults and problems. Many witnesses said that the system has outlived its usefulness, as it was based on a deficit model and there are huge discrepancies in the way in which the record of needs legislation is applied in different local authorities throughout Scotland. There have also been different interpretations of the term “special educational needs” and, as we have heard, many of those interpretations have excluded pupils with social, emotional and behavioural difficulties from the services that they need. I very much welcome the inclusion of that excluded group under the definition of additional support needs.

The bill also addresses a fatal flaw in the way in which the current legislation has worked in practice. Many youngsters with complex and long-term additional support needs require services from agencies other than education. Frankly, I think that there have been huge difficulties in co-ordinating agencies such as social work and health. An important point is that it is not enough just to get those agencies to sit round a table. Action is what counts. I can give an example of that because I am a parent of a child—who is now 25 years old—who has ability impairments. When she was a youngster at school, she had a record of needs. The provision in school was wonderful, but the one main gap in provision was the failure of the local health services to provide the therapy services that she needed. I welcome the bill's intention that the local education authority must ensure that those services are provided.

Like other committee members, I echo the committee's stage 1 report in asking the minister

to consider how he might ensure that other agencies, such as health, further education and higher education, can be included so that an integrated service is provided. I recognise that the bill is an education bill, but I ask the minister to consult his ministerial colleagues—notably those who deal with enterprise and lifelong learning and with health—to ensure that children with additional support needs are afforded a genuinely integrated provision.

Let me just comment on the speeches that have been made so far. I welcome the minister's reassurance that the additional support needs of children who currently have a record of needs will be met. That has been a concern and an anxiety of parents, which the committee has recognised. I welcome the assurance that HMIE will be involved in monitoring the services to this group of youngsters.

I also welcome the commitment to develop and fund advocacy services. The committee believes that it is important that parents feel that they have adequate support. One problem with the existing system is that parents find it difficult to find their way round it. Some of them end up being extremely frustrated and angry. In some cases, a confrontational situation can arise when that need not have happened.

**Mr Monteith:** Before the member enters the last minute of her speech, can she explain why she alone among committee members did not feel able to sign paragraph 37 of the Education Committee's report?

**Rhona Brankin:** I am happy to do that. I believe that the bill gives parents many fundamental new rights that they did not have previously.

As Brian Monteith has asked me to explain myself, I will address the issue that he raises. Any parent will be able to ask the education authority to assess their child for additional support needs. Any parent will be able to make a placing request to an independent special school if their child has additional support needs. Previously, that right was limited to parents of children with records of needs. Parents will be able to access independent mediation services in dispute resolution, when they disagree with the provision that is being made for their child. Those are just a few of the new rights that parents will have under the bill and that I welcome. In that spirit, I tried to persuade the committee that the legislation provides for a huge widening of parental rights. However, I understand what the committee was doing and welcome the minister's response to that. The fundamental point is that the quality of the services that are provided to our children and young people should not be lower than it is at the moment.

There are also new duties on education authorities. They must address and keep under

review provision for all children with additional support needs for whom they are responsible. If the bill is passed, they will have to publish their policy and arrangements for identifying and addressing additional support needs. Importantly, they will have to set out the roles and rights of parents, children and young people and indicate whom they should contact to obtain information and advice. There will also be a duty on education authorities to co-ordinate interagency work.

I am conscious of time, but I want to address one issue—

**The Presiding Officer (Mr George Reid):** I am afraid that you are almost a minute over time. Please wind up quickly.

**Rhona Brankin:** I will do so.

I find it difficult to understand those who say that they would like to have a single system. Fundamentally, they are saying that children with additional support needs should not have a legal entitlement to additional support. Do they mean that the additional legal framework that supports our most vulnerable children and families should be taken away? That is in direct contradiction to the principles of the bill.

I call on the Parliament to support the general principles of the bill and, if the amendment is moved, to reject that. I welcome the fact that Lord James Douglas-Hamilton did not move his amendment.

16:28

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I have listened to and taken part in many debates. I can think of no other debate—in particular, no debate on a bill—in which there has been such a degree of unease in the chamber about what we are debating. That is not to say that there are not moments when we disagree. However, when we debate a bill on which views are clearly polarised, we can understand one another's positions. I think of members' bills that we have considered, such as the Protection of Wild Mammals (Scotland) Bill, which dealt with fox hunting. On that issue members had clear positions; those who did not tried to reach a view by listening to the debate. I think of the Standards in Scotland's Schools etc Bill, when a division was created by the clear views that members took on self-governing schools.

Such bills were controversial, but they did not give rise to unease. There is unease about the Education (Additional Support for Learning) (Scotland) Bill because there is overwhelming sympathy for the bill, but a number of fears about whether it will deliver. If there is one area in which we do not want to get things wrong, it is this one,

which relates to children who, where appropriate, need the help of the state.

Clearly, as the minister said, the intention behind the bill is to ensure that provision improves for all pupils who need additional support. I do not think that any member would quibble with that. However, there is a concern that, if the bill is passed, some children will lose rights that they currently have and children who may have been entitled to those rights in the future will not have them.

There is also unease because many members' experience—of surgery work, of being parents, or of dealing with or having worked for local authorities—makes them concerned that the balance is being shifted away from the rights of parents who represent young children and towards the rights of local authorities.

**Robert Brown:** Just for the clarity of the debate and bearing in mind the lack of appeal under part V of the record of needs, can Brian Monteith be more specific about which rights he claims the bill will take away?

**Mr Monteith:** I think that it is self-evident from the debate that there is concern that a number of children who currently qualify for a record of needs will not qualify for a CSP. Naturally, the Education Committee was concerned about that. Lord James Douglas-Hamilton was concerned enough to lodge a reasoned amendment to the motion; his amendment supports the idea of the bill but seeks further clarification. On this occasion, having listened to the minister's words, we have said that we will reserve our position because it is right that the minister is given the chance to make a number of improvements to the bill. We look forward to improvements being suggested.

It is important that we have had an expression of concern and good will from the minister at stage 1 and not at stage 3, as has happened previously. For example, I extracted a condition from the then Deputy Minister for Children and Education on home education during stage 3 of the Standards in Scotland's Schools etc Bill. Offers can be made, but can they be delivered? The minister has offered at this stage to consider aspects of the bill, so we will wait and see what happens during stages 2 and 3. In the case of home education, just when there was the possibility of guidance on that issue being put into the Standards in Scotland's Schools etc Bill, we conceded that the Executive should issue the guidance; however, we are still waiting to see that guidance. It is important that, in the public debate and in the debate behind the scenes, we press the Executive to do as it says it will.

**Mr Macintosh:** I do not underestimate Mr Monteith's ability to spread unease and dissent

where there is, in fact, harmony. Using the term "unease" is over-egging the situation to a huge extent. Rhona Brankin neatly summarised the degree of the extension of rights to parents across the board. I suggest that the Education Committee agreed unanimously virtually all aspects of the extension of rights. Not only that, the committee would fundamentally disagree that the bill shifts the balance away from parents and towards local authorities. I think that the bill does exactly the opposite.

**The Presiding Officer:** We are tight for time, Mr Monteith.

**Mr Monteith:** I appreciate that, Presiding Officer.

I hear what the member says, but it is clear that some of the detail in the bill that must be considered at stage 2 concerns the balance of rights and duties and whether they are, in fact, the same. Mary Scanlon made that point earlier, drawing from her experience of the Mental Health (Scotland) Bill.

On the issue of legal aid for tribunals, legal aid will be available for advice but it will not be available for representation. To suggest that, having gone through the expense of obtaining legal advice, a local authority will then tell its solicitor to stand outside in the corridor while it marshals its arguments by itself is to fly in the face of reality. Local authorities will seek to bring in legal advice and if they do not hire a solicitor, they will bring in the paralegals who work for them and have relevant experience. We all want to clear up such points and ensure that everyone is satisfied about them. When we are satisfied, we will give the bill a fair wind.

16:35

**Mr Adam Ingram (South of Scotland) (SNP):** Today's debate has demonstrated that there is a desire among all parties in the Parliament to ensure that, in the terms expressed by the Standards in Scotland's Schools etc Act 2000,

"the right of every child of school age to be provided with school education",

in accordance with his or her needs, is fulfilled in such a way as to develop each child to his or her full potential. That intention fits well with the fundamental commitment of the Scottish Parliament to build an inclusive and just Scotland where everyone matters. The question that we face is whether or not the legislation that we are considering today fits the bill.

There is no doubt that the current record of needs system is ripe for reform. It is overly bureaucratic and too often brings families and education authorities to loggerheads over service

provision and resources. It is an adversarial system in which the onus is on the parents to enforce the law. To some extent, those features were inevitable consequences of setting up a separate special system to try to ensure that a vulnerable minority of children got what they needed. Unfortunately, from our perspective, the Education (Additional Support for Learning) (Scotland) Bill comes from the same stable.

Our basic view is that strengthening the universal system is the more powerful safeguard for children with additional support needs. In the real world, systems for everyone tend to have higher standards than systems for particular sub-groups of the population, not to mention the fact that a universal system limits the scope for stigmatisation. That means that, firstly, there must be a clear recognition that education, as a public service, has a duty—as does, for example, the national health service—to adapt its service to meet the needs of all children and to act in their best interests. Secondly, it means that there must be generic systems for appeal and dispute resolution when children and families are not getting the service that they feel they need.

Although the bill attempts to address the inequities of the current system, we are in danger of creating or continuing a three-tier system, as Fiona Hyslop and Rosemary Byrne have eloquently pointed out. The Scottish Executive has clearly set out on a road to improve the current system, but there is no statement of intent or aim to aspire to. I would be grateful if the deputy minister could provide such a statement in summing up. Is the key purpose of the bill to reduce inequalities in educational outcomes by providing more flexible and individualised teaching and support to all children, or is it simply to try to replace one system for classifying and assessing special children and for rationing resources with another, more efficient, system, while leaving the basic way in which children are helped to learn the same?

On the specific provisions of the bill, the minister will be aware that the Education Committee has been wrestling with a number of thorny issues, which are laid out in what I believe is a thorough and commendable report. Those issues have been well reflected in this afternoon's debate. The committee was particularly concerned about the rights of the children and parents who currently qualify for a record of needs but who will not be eligible for a co-ordinated support plan. Lord James rightly focused much of his contribution on the not insubstantial number of people who might feel that they will lose out in the transition from the old system to the new one. I echo his call for the protection of those legal rights, while acknowledging that the minister has set out his stall to ensure continuity of service provision.

It is also widely recognised that the proposed code of practice, in defining the duties of education authorities and others, is absolutely central to the success of the legislation. The minister himself has acknowledged the lack of trust that many parents feel under the current system, and it is essential that appropriate provision is made for all children, irrespective of whether or not they are eligible for a co-ordinated support plan. The fear that education authorities and other agencies may invoke what can be interpreted as get-out clauses in section 19 of the bill or that they may use another get-out clause on the ground of reasonable cost deserves further attention. The whole area of assessment and diagnosis or identification is particularly sensitive. Mary Scanlon and Rosemary Byrne spoke well on those matters.

I would be grateful if the deputy minister would respond to the committee's concerns in paragraphs 110 to 114 of its report and in particular to the call for provision of advocacy services for parents, although I recognise the welcome announcement that he has made today.

In addition, the importance of independent mediation, clear dispute resolution procedures and equity in legal assistance before and during tribunals has been reflected well in the debate. I trust that ministers will be able to lodge suitable stage 2 amendments to address the concerns of witnesses and the committee. I have already touched on—as did Robert Brown, Christine Grahame and others—the desirability of extending access to tribunals beyond those with CSPs.

I am aware that there are many other issues that I have not mentioned, but it would be remiss of me to finish without highlighting what we see as weaknesses in the financial memorandum, particularly the fact that it does not quantify the provision of services for children with additional support needs. Given Audit Scotland's recent criticism of the Parliament for passing the Standards in Scotland's Schools etc Bill without having full and robust financial information, we believe that every effort should be made to illustrate the wider impact of the bill when it is enacted rather than focus narrowly on the changes to administration costs.

16:42

**The Deputy Minister for Education and Young People (Euan Robson):** I will be as quick as I can, but there is an awful lot to get through. I apologise to any members whom I cannot get to in my seven minutes.

First, I put on record our appreciation of the Education Committee's excellent report, the reports from the supporting secondary committees

and the work—and wide engagement—of members.

I agree with Brian Adam's point that the bill's progress shows the Parliament working at its best. Today's debate has been very constructive. In his opening remarks, my colleague Peter Peacock made it clear that the Executive will take away comments and ideas from the debate further to inform stage 2. As explained, we will lodge some amendments on the issues that were raised during the committee's deliberations.

I will respond briefly to Adam Ingram's points. We made it clear in last week's education debate that we are heading for personal learning plans for all, but that we are not there yet; we make no bones about that.

Brian Monteith mentioned some unease. I think that all members are anxious that we get the legislation right.

I thank Lord James Douglas-Hamilton for elegantly not moving his amendment today. I understand the context in which he made that decision and I repeat the assurance on paragraph 36 of the Education Committee's report that Peter Peacock gave.

The bill introduces a new duty on education authorities to identify the additional support needs of all children for whom they are responsible. Those needs must then be addressed and the adequacy of provision kept under review. We will involve Her Majesty's Inspectorate of Education. I thank Ken Macintosh for his comments in that regard and we will look at his suggestion about issuing letters—I will come back to him about that matter.

We will also continue to consider the point that Robert Brown made about the expression of legal rights, without at this stage making any commitment on that point.

I will briefly address the transition from school to further and higher education. We are considering that matter with other ministerial colleagues. I think that some members raised that point. I say to Nanette Milne that the point about transition is not that there is one year in which the plan for transition should be developed; it is that the plan must be ready at least one year before the young person moves on. I hope that that clarification helps.

I thank Wendy Alexander for her comments on the extended coverage of emotional and behavioural needs. I agree with her that that is very important. She also made a point about the independence of the mediation service being particularly important. I recognise that other members have concerns about that matter. We will doubtless pick up the matter at stage 2 and in the code.

Brian Adam and—I think—Mary Scanlon also mentioned social workers, auxiliaries and allied workers. We had a debate on social work numbers last year. We have a record number of social workers in Scotland, but we place more demands on the service. We are responding to that by introducing fast-track training and other ways of developing the service.

Lord James Douglas-Hamilton and Cathy Peattie mentioned the Disability Discrimination Act 1995. We believe that auxiliary aids and services that are needed for disabled pupils' learning—that is the key point—are included in the bill, although aids and adaptations that are not related to learning are not a matter for the bill. Again, we can explore that at stage 2. Of course, the 1995 act would have to be amended by the Westminster Parliament, which would be difficult. It is important that the bill should deal with the matter, as I am confident that it does.

I recognise Jeremy Purvis's work on behalf of his constituents who have additional support needs. He expressed very well the dilemma of balancing the presumption of mainstreaming and the requirement for special schools in certain circumstances. The needs of the individual child are paramount; if a special school is right for a child, that placement should be made. I hope that that helps Jeremy Purvis.

Christine Grahame must forgive me, as I am not legally qualified, as she is, but I understand that there would be no legal aid for representation at an education authority appeal committee. What is being considered is not a civil right, but a public right, which is not a matter for article 6 of the European convention on human rights. If the member wants to explore the matter in more detail, I would be happy to enter into correspondence about it, rather than inadvertently mislead members because I am not legally qualified.

In the two minutes that are left to me, I will talk about the announcement that £12 million will be made available in 2004-05 to support preparation for the implementation of the bill. We will use that money to publish information to tell parents and professionals about the bill—members might recall that I gave that commitment to the Education Committee. We will also use the money to develop the code of practice in partnership with stakeholders to ensure that all those who will be affected by the new system know how it will work and what standards will be expected. The money will also be used to set up the additional support needs tribunals and to enable local authorities and health boards to prepare for implementation by developing new guidance and information and starting to reconfigure services. The funds will also be used to ensure that staff across all sectors are

appropriately trained and informed.

**Mr Swinney:** Will the minister say how much of the money that has been announced today will be deployed on service delivery, rather than on administration, which seems to be what he is saying?

**Euan Robson:** I am talking about the £12 million set-up money for 2004-05. We will come on to the £14 million that will be allocated annually and will kick in from 2005-06 onwards—that will provide the member with the information that he seeks.

The £12 million that was announced is, of course, in addition to the £8.4 million that is currently available for the training of teachers, auxiliaries and psychologists. It also comes on top of the £25 million that is available for the inclusion of pupils in the widest sense and the £17 million that is available for the implementation of accessibility strategies. Local authorities will also be able to use the changing children's services fund, which stands at £60 million this year and will be £65 million next year.

I reiterate that we are committed to widespread consultation on the code of practice. Of course we will involve the Education Committee and the Parliament in that process. Incidentally, the code is designed to address the problem of postcode provision that Jeremy Purvis described.

I regret that I do not have time to go into further detail. I believe that the bill will make a difference to Scotland's children and young people. It is aimed at ensuring that the additional support needs for learning of all children are addressed, so that every child can benefit from school education and be supported towards reaching his or her full potential. I urge members to endorse this big advance for Scotland's children and young people. I ask the Parliament to support the Executive motion today.

**The Presiding Officer:** I am grateful to Mr Robson for accommodating our time needs.

## Education (Additional Support for Learning) (Scotland) Bill: Financial Resolution

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of the financial resolution in respect of the Education (Additional Support for Learning) (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Education (Additional Support for Learning) (Scotland) Bill, agrees to the following expenditure payable out of the Scottish Consolidated Fund, namely—

(a) any expenditure of the Scottish Ministers in consequence of the Act; and

(b) any increase attributable to the Act in expenditure payable out of the Fund under any other enactment.—  
[*Peter Peacock.*]

16:51

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I echo the sentiments of most members: we support the aims of the bill. However, the question is whether those aims will be achieved.

The first problem is that the financial memorandum states that the most recent estimate shows that there are 17,315 records of needs, but the Executive estimates that there will be only between 11,200 and 13,700 co-ordinated support plans. The Executive calculates that between 3,600 and 5,000 fewer children will have CSPs than have records of needs. That has huge ramifications, and the difference in the figures has not been explained.

My second point relates to paragraph 162 of the Education Committee report, which states that some parents will be denied “legal recourse”. All of us know that no one fights more tenaciously or with more determination than a parent for his or her child. There will almost certainly be judicial review and additional legal costs to those that have been estimated.

My third point relates to the importance of definitions. Fuzzy definitions lead to poor cost estimates. The word “enduring” appears in paragraph 82 of the policy memorandum, but it does not appear in the definitions of additional support needs or co-ordinated support plans that are to be found in section 1(1) and section 2(1) of the bill. If CSPs are to be only for children who have “enduring” additional support needs, how is that category to be assessed? A legal minefield could be created.

I have little time, but I want to say that there are some oddities in the procedure today. In effect, the original financial memorandum has been entirely superseded. We heard a veritable avalanche of references to other budgets today, including a reference to £60 million in the changing children’s services fund. References were also made to £12 million, £14 million, £8.4 million and £17 million. How do all those budgets relate to each other and have they been fully thought through? I think not; I suspect not; we all fear not.

The minister said that more money will be needed for CSPs than he estimated but that he will find the money. Might that money have to be found at the cost of other vital expenditure in local authority education departments? If a department overspends in one area, it must find its money from spending in other areas.

The motion is an unusual creature. Not only does it invite us to agree to the financial memorandum in respect of the bill, but it refers to increased funding in any other bill, without saying what that might be. The Parliament has been criticised for signing blank cheques. I call on the Executive to return to the chamber with a fresh financial memorandum. The Executive should think the memorandum through and work it out. If it does not, we might be heading towards scuppering the aims that all of us support.

16:54

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I have gone through the Finance Committee’s report on the financial memorandum and it is obvious to me that it believes that the cost estimates in the financial memorandum are unclear and inaccurate. The only thing that is clear is that the financial memorandum underestimates the costs of the bill.

That view is clearly expressed in paragraph 38 of the Finance Committee’s report, which states:

“It is patently obvious that until a Code of Practice has been developed, costs cannot be properly ascertained and there remains the very real possibility that the costs quoted in the Financial Memorandum have been under-estimated, potentially very significantly.”

**Dr Elaine Murray (Dumfries) (Lab):** Will the member take an intervention?

**Mr Monteith:** Not at the moment.

The Finance Committee highlights the significant additional resources that will be needed to process items such as CSPs, mediation, tribunals and pupil records. With all those new demands, there is a real risk that resources will be diverted to meet administrative requirements. Funds must be used to help children and families and must not be swallowed up by the Executive’s desire to regulate. Members will be familiar with the

experience of estimating the cost of free personal care and mainstreaming in Scotland's schools, which many members feel was not adequate.

I leave members with these thoughts. The Finance Committee's report states:

"the Committee has not been reassured on key substantive matters and it remains extremely concerned that the Parliament could be asked to approve legislation without being made aware of the full financial implications."

I note what ministers have said about costs, but a great deal more work remains to be done. We look forward to more announcements and clarification from ministers.

16:56

**The Minister for Education and Young People (Peter Peacock):** We take finance very seriously. In Government, finance has to be taken seriously, which is unlike the case in Opposition—the Opposition promises all sorts of things without having to deliver. We have to deliver, which is why we put a lot of effort into the financial memorandum.

The concerns about finance were first raised by the Convention of Scottish Local Authorities in evidence that it gave, which, we subsequently discovered, was based on a misinterpretation of a change of wording in the bill, which COSLA thought meant a widening of rights and entitlements when it did not mean that at all. That has been clarified with COSLA. COSLA further misunderstood that any child with multiple or complex and enduring needs, and with social work help, would get a CSP automatically, even if that support was not directed at their learning. We clarified that misunderstanding with COSLA, and it has indicated that it is satisfied with the reassurances that we have given.

I am afraid that in its evidence COSLA brought into play a logical inconsistency, which Fergus Ewing did not pick up on, which is that—as we have debated today—there is a higher hurdle for a CSP than there is for a record of needs, therefore it is not possible to say that more people will be entitled automatically to a CSP than are entitled to a record of needs. COSLA has been significantly reassured by that, and has moved away from the projection that 15 per cent of the school population will require a CSP. Indeed, in its most recent letter to the Education Committee, that figure was not mentioned at all.

The Finance Committee raised the further concern that if the assumptions in the financial memorandum are wrong on CSPs and on the numbers going to tribunals, that will have consequences for the rest of the system and will result in the displacement of cash from one part of the system to another. We set out clearly our

assumptions in the financial memorandum, and I stand by them.

**Fiona Hyslop (Lothians) (SNP):** Paragraph 215 of the Education Committee's report on the bill requests that the minister itemises those moneys that are meant to support the general duty and produces a revised financial memorandum. What is his response to that?

**Peter Peacock:** I will come to that in a second.

We set out our assumptions in the financial memorandum, and I stand by them. However, we gave the Education Committee additional evidence and information that looked at a variety of scenarios where we might just have got it wrong, and worked out the cost if we had got it wrong. We worked out that those costs fall within a reasonable variance of any demand-led budget. I made it clear to the committee that we will find any additional money that is required if the assumptions on the numbers of CSPs and the working of the tribunal are wrong, because we are committed to the policy and we want to push it forward.

I also set out for the Education Committee the other sources of finance that we have talked about that are available generally to improve services in education, which will amount to more than £400 million in a couple of years' time. Increasingly, we will examine how those resources are applied to the additional support sector, as well as to other sectors of education.

There is plenty of new money in education, as we all know, and we want to apply it to the benefit of everybody. Today, I announced a further £12 million, followed by a further £14 million that will continue thereafter, to implement the new system. Parliament can be confident that we have the resources in place to take the policy and the services further. We do not believe that a further financial memorandum is required. All the information is in the public domain and we have had committee scrutiny of that.

I say to Fergus Ewing that I am afraid that the Scottish National Party cannot have it both ways. It cannot say on one hand that we need more, but on the other that more must not come from anywhere—although that may be the economics of the SNP. Fergus Ewing is well known in this Parliament for making fatuous points, and the point that he made is one of the most fatuous that I have heard from him. He also talked about a blank cheque. If anybody knows a blank cheque, it is the SNP.

I commend the financial resolution to Parliament.

**The Presiding Officer:** The question on the motion will be put at decision time.



## Business Motion

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of business motion S2M-824, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a business programme.

*Motion moved,*

That the Parliament agrees the following programme of business—

Wednesday 4 February 2004

2.30 pm Time for Reflection  
*followed by* Parliamentary Bureau Motions  
*followed by* Ministerial Statement - A Housing Standard for the 21st Century  
*followed by* Motion on the Energy Bill - UK Legislation  
*followed by* Business Motion  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Thursday 5 February 2004

9.30 am Scottish Conservative and Unionist Party Business  
 12 noon First Minister's Question Time  
 2.30 pm Question Time  
 3.10 pm Executive Debate on the Local Government Finance (Scotland) Order 2004  
*followed by* Motion on Gender Recognition Bill - UK Legislation  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Wednesday 11 February 2004

2.30 pm Time for Reflection  
*followed by* Parliamentary Bureau Motions  
*followed by* Scottish National Party Business  
*followed by* Business Motion  
*followed by* Parliamentary Bureau Motions  
 5.00 pm Decision Time  
*followed by* Members' Business

Thursday 12 February 2004

9.30 am Procedures Committee Debate on its 2nd Report 2003: Oral Questions in the Chamber  
 12 noon First Minister's Question Time  
 2.30 pm Question Time  
 3.10 pm Stage 3 of the Budget (Scotland) Bill

*followed by* Parliamentary Bureau Motions

*followed by* Motion on Higher Education Bill - UK Legislation

5.00 pm Decision Time

*followed by* Members' Business.—[Patricia Ferguson.]

17:00

**Mark Ballard (Lothians) (Green):** I oppose the business motion because it is not appropriate for the Parliament to attempt to discuss the Sewel motion on the United Kingdom Energy Bill next week. Sewel motions are sometimes an appropriate way to legislate and to save the Scottish Parliament time and resources, but the UK Energy Bill process has been far too rushed for proper consideration. The bill will have a major impact on Scotland and the work of the Scottish Parliament. It will result in crucial issues, such as the environmental aspects of the management of nuclear waste and nuclear decommissioning, being taken out of the hands of the Scottish Parliament. Renewable energy companies have also said that they are concerned that there might be major implications for their ability to deliver the Scottish Executive's target of 40 per cent renewable energy by 2020 if the bill is passed.

Yesterday, only an hour was allocated for the Enterprise and Culture Committee to discuss the bill. That was not enough time to scrutinise it properly and to take proper evidence. Therefore, it is not appropriate for the Parliament to discuss the motion next week. The process is being rushed, but the issue is too important to be rushed. The bill will have too much of an impact on Scotland and so it would be inappropriate for the Sewel motion to be discussed next week.

17:01

**The Minister for Parliamentary Business (Patricia Ferguson):** On the Sewel motion, members have had longer to consider the issues relating to the Westminster bill than they have had with many other Westminster bills. At the Enterprise and Culture Committee's meeting yesterday, the convener correctly pointed out that the bill and its explanatory notes were published on 27 November, so they have been in the public domain for some two months. During that period, some MSPs have sensibly taken the opportunity to ask parliamentary questions about the bill. Those supplement the scrutiny that was given to the bill yesterday in the one-and-a-quarter-hour slot that the committee devoted to it and that will be given to it in the hour and a half that will be devoted to it in the chamber next week.

The timetable is tight, but manageable. We must give Westminster a view in accordance with the

bill's timetable and MSPs have sufficient information to reach an informed conclusion next week about the Sewel motion. The proper course is to consider the motion and to let the Parliament determine whether it is content with it. If some committee members are concerned about a lack of time for considering the proposals for which consent is being sought, one wonders why they spent so much of their time yesterday discussing entirely reserved provisions that are not relevant to whether permission for a Sewel motion is granted or withheld.

**The Presiding Officer:** The question is, that motion S2M-824, in the name of Patricia Ferguson, be agreed to. Are members agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

#### FOR

Adam, Brian (Aberdeen North) (SNP)  
 Alexander, Ms Wendy (Paisley North) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marilyn (North East Scotland) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Johnstone, Alex (North East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (North East Scotland) (SNP)  
 Lyon, George (Argyll and Bute) (LD)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Campbell (West of Scotland) (SNP)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Neil, Alex (Central Scotland) (SNP)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robison, Shona (Dundee East) (SNP)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

#### AGAINST

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Curran, Frances (West of Scotland) (SSP)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)

**The Presiding Officer:** The result of the division is: For 99, Against 10, Abstentions 0.

*Motion agreed to.*

**Mr Kenneth Macintosh (Eastwood) (Lab):** On a point of order, Presiding Officer. Further to Carolyn Leckie's earlier point of order and the resulting protests, I say that I fully support the right of all MSPs to express their views and I believe that the Presiding Officer—

**The Presiding Officer:** I thought that your point of order was germane to this item. I will take your point of order once the voting has finished.

## Parliamentary Bureau Motions

17:04

**The Presiding Officer (Mr George Reid):** The next item of business is consideration of two Parliamentary Bureau motions. Motions S2M-825 and S2M-826 are both on the approval of a Scottish statutory instrument.

*Motions moved,*

That the Parliament agrees that the draft National Health Service (Distribution of Endowment Income Scheme) (Scotland) Regulations 2004 be approved.

That the Parliament agrees that the draft Scottish Hospital Trust (Transfer of Property) Regulations 2004 be approved.—[*Patricia Ferguson.*]

## Decision Time

17:05

**The Presiding Officer (Mr George Reid):** Amendment S2M-529.1, in the name of Lord James Douglas-Hamilton, was not moved, so we go straight to the question on motion S2M-529. The question is, that motion S2M-529, in the name of Peter Peacock, on the general principles of the Education (Additional Support for Learning) (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**FOR**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baird, Shiona (North East Scotland) (Green)  
 Baker, Richard (North East Scotland) (Lab)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahan, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)

Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

### ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Frances (West of Scotland) (SSP)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Johnstone, Alex (North East Scotland) (Con)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 McGregor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Tosh, Murray (West of Scotland) (Con)  
 Welsh, Mr Andrew (Angus) (SNP)

**The Presiding Officer:** The result of the division is: For 69, Against 0, Abstentions 40.

*Motion agreed to.*

That the Parliament agrees to the general principles of the Education (Additional Support for Learning) (Scotland) Bill.

**The Presiding Officer:** The next question is,

that motion S2M-616, in the name of Andy Kerr, on the financial resolution in respect of the Education (Additional Support for Learning) (Scotland) Bill, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**FOR**

Alexander, Ms Wendy (Paisley North) (Lab)  
 Baker, Richard (North East Scotland) (Lab)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Gillon, Karen (Clydesdale) (Lab)  
 Glen, Marlyn (North East Scotland) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lyon, George (Argyll and Bute) (LD)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 Maclean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 May, Christine (Central Fife) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McCabe, Mr Tom (Hamilton South) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McMahon, Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 McNulty, Des (Clydebank and Milngavie) (Lab)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Muldoon, Bristow (Livingston) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Oldfather, Irene (Cunninghame South) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Pringle, Mike (Edinburgh South) (LD)  
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)  
 Smith, Iain (North East Fife) (LD)  
 Smith, Margaret (Edinburgh West) (LD)  
 Stephen, Nicol (Aberdeen South) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)

Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)

**AGAINST**

Adam, Brian (Aberdeen North) (SNP)  
 Byrne, Ms Rosemary (South of Scotland) (SSP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Curran, Frances (West of Scotland) (SSP)  
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Gibson, Rob (Highlands and Islands) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Leckie, Carolyn (Central Scotland) (SSP)  
 Lochhead, Richard (North East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Martin, Campbell (West of Scotland) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 Maxwell, Mr Stewart (West of Scotland) (SNP)  
 McFee, Mr Bruce (West of Scotland) (SNP)  
 Morgan, Alasdair (South of Scotland) (SNP)  
 Neil, Alex (Central Scotland) (SNP)  
 Robison, Shona (Dundee East) (SNP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Swinney, Mr John (North Tayside) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)

**ABSTENTIONS**

Baird, Shiona (North East Scotland) (Green)  
 Ballance, Chris (South of Scotland) (Green)  
 Ballard, Mark (Lothians) (Green)  
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
 Davidson, Mr David (North East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Harper, Robin (Lothians) (Green)  
 Harvie, Patrick (Glasgow) (Green)  
 Johnstone, Alex (North East Scotland) (Con)  
 McGregor, Mr Jamie (Highlands and Islands) (Con)  
 McLetchie, David (Edinburgh Pentlands) (Con)  
 Milne, Mrs Nanette (North East Scotland) (Con)  
 Mitchell, Margaret (Central Scotland) (Con)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, Eleanor (Highlands and Islands) (Green)  
 Scott, John (Ayr) (Con)  
 Swinburne, John (Central Scotland) (SSCUP)  
 Tosh, Murray (West of Scotland) (Con)

**The Presiding Officer:** The result of the division is: For 61, Against 25, Abstentions 23.

*Motion agreed to.*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Education (Additional Support for Learning) (Scotland) Bill, agrees to the following expenditure payable out of the Scottish Consolidated Fund, namely—

(a) any expenditure of the Scottish Ministers in consequence of the Act; and

(b) any increase attributable to the Act in expenditure payable out of the Fund under any other enactment.

**The Presiding Officer:** The next question is, that motion S2M-825, in the name of Patricia

Ferguson, on the approval of a Scottish statutory instrument, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the draft National Health Service (Distribution of Endowment Income Scheme) (Scotland) Regulations 2004 be approved.

**The Presiding Officer:** The final question is, that motion S2M-826, in the name of Patricia Ferguson, also on the approval of an SSI, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the draft Scottish Hospital Trust (Transfer of Property) Regulations 2004 be approved.

## Point of Order

17:07

**Mr Kenneth Macintosh (Eastwood) (Lab):** On a point of order, Presiding Officer. This is further to the point of order that was raised earlier by Carolyn Leckie, on the visit of a dignitary to the Scottish Parliament. I fully accept that all MSPs, from all sides of the chamber, may have different views on the appropriateness of the Parliament offering a welcome to certain dignitaries. I also fully appreciate that the Presiding Officer has powers to keep MSPs in check, so that they guard their own behaviour. However, I am very concerned about behaviour in the public gallery. Is it in order for MSPs to use their privilege to sign supporters into the public gallery who then abuse that position by interrupting proceedings? I ask the Presiding Officer whether he will investigate such behaviour with a view to removing such privileges in future.

**The Presiding Officer (Mr George Reid):** I can confirm that the matter was brought to my attention earlier this afternoon and that it has been referred to the security office. In due course, a report will be given to the Scottish Parliamentary Corporate Body, which deals with such matters.

## Food for Good

### **The Deputy Presiding Officer (Murray Tosh):**

The final item of business today is a members' business debate on motion S2M-742, in the name of Mark Ballard, on food for good.

#### *Motion debated,*

That the Parliament commends UNISON on the production of its "Food for Good Charter" and considers that NHS Scotland should adopt the targets set out therein for organic produce, animal welfare and fair trade and accept the UNISON Food for Good recommendations on meat quality, five portions of fruit and vegetables a day, recycling and composting, patients not profit, resources, real food and fair pay as policy.

17:10

**Mark Ballard (Lothians) (Green):** I start by thanking all those colleagues who have chosen to stay behind for this debate on what is a very important issue. The national health service is one of the largest purchasers of food in the country and I think that Unison's report—its food for good charter—is a brilliant document. Unison should be heartily commended for the work that it has done in raising the issues that the charter highlights.

The proposals in the charter represent a major test of the Government's resolve on many issues, from supporting local food markets, fair trade and recycling to delivering on promises of fair pay for public sector workers and environmental justice. There is also the obvious point that we need to deliver healthy food to patients in Scotland. Scotland needs food that is good for health, good for the environment and good for the economy. Unison's 10-point food for good charter and the NHS's massive food-purchasing power could help to fast-track the delivery of a good food economy for Scotland. That is why I commend Unison for its work.

I will highlight some of the points that Unison raised in its charter. It starts with organic food, which is the fastest-growing part of the food economy in Scotland. We must ensure that NHS food is free of toxic chemicals, pesticides, steroids, antibiotics and additives and the NHS should be declared a genetically-modified-food free zone. There should be an organic option on its menus, which would mean a major increase in organic food procurement on the part of the NHS. The charter includes targets on organic food procurement of 5 per cent by 2005 and 10 per cent by 2010, which I think are achievable targets. Staff and patients must have the right to reject food that is contaminated with excessive levels of additives or with pesticides—they must have that choice.

In relation to animal welfare, we need to take positive action to promote the highest standards of food quality. We need decent quality meat. Take the economy sausage, which is the cheapest sausage that can be produced. It is all too often served in local authority and other public sector outlets throughout Scotland and it is the kind of sausage that is only about 50 per cent meat. Of that 50 per cent, 30 per cent will be pork fat with a bit of gel and 20 per cent will be made up of mechanically recovered meat. What of the other 50 per cent of the sausage? That will consist of water and soya mixed with preservatives, flavourings, phosphates and sugar, which are in there in an attempt to make such sausages at least slightly palatable. That, however, is not a recipe for good food; it is a recipe for profits and nothing else. Decent quality food and nothing else should be served in NHS and other public sector outlets. Healthy food must be enticing, accessible and varied—the healthy option on the menu must not be the boring option.

The food for good charter also deals with buying Fairtrade goods and products. We have the opportunity to buy Fairtrade tea and coffee in the Parliament so, if we have that choice, staff and patients in the NHS should also have the choice to buy Fairtrade tea and coffee, which deliver environmental justice. We now know the impact that the purchasing decisions that we make can have on the economies that produce the goods.

### **Mary Scanlon (Highlands and Islands) (Con):**

In the member's quest for food for good does he think that taste should be a factor? When did he last taste the Fairtrade coffee and tea in the Parliament's tea room?

**Mark Ballard:** I have made the choice to drink only Fairtrade tea and coffee. I think that it tastes better and that it is better for the environment and the people who produce it. That is why I choose Fairtrade options and why I encourage other people to do likewise.

The third point in the charter is on recycling and composting. Major public services are well placed not only to reduce waste but to save money by doing so. Recycling in the NHS should match the targets that the Executive has set for domestic waste, which is 55 per cent recycling of waste by 2020. The NHS is about patients, not profits. The provision of nutritious and safe food to patients should always be the number 1 priority; however, since privatisation profit has inevitably become the number 1 priority of the companies that supply the food.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Does Mark Ballard agree that farmed salmon is good for you, as Unison confirmed to me by e-mail this afternoon?

**Mark Ballard:** I believe that we need further investigation of the impact of toxic chemicals in food. We should take the organic choice, which is what the first point in the Unison charter is about, because it ensures that the food is as free as possible from additives and contamination.

Patients, not profit, should be considered first in respect of food in the NHS, but privatisation means that profits come first for the food producers. That has to change. All too often the companies that were brought in to provide food in hospitals have been found wanting and have not been able to meet their contractual obligations. That is another reason why we have to move away from the failed Tory privatisation of services and towards focusing on food that is produced for patients, rather than for profit.

Scottish patients deserve fresh food that is prepared by local chefs using Scottish produce, where possible. A target to use seasonal local produce would help to reduce food costs. Also, such produce is the healthiest food for our bodies, especially if it is organic.

The NHS, as the biggest purchaser of food in Scotland, can be a real force for good in delivering local jobs. However, Edinburgh's new private finance initiative hospital brings in its food frozen from Wales. How can that make sense? The only reason why that is happening is that no company in Scotland was able to meet the low price targets that have been set by Lothian NHS Board. That is not acceptable. We need real healthy food to be delivered to patients.

I turn to fair pay for those who make the food. The Greens support Unison's petition for better pay for catering workers. The Scottish NHS should seek to retain and recruit a well motivated and highly trained work force in its kitchens. The Executive must act on the Scottish Low Pay Unit's report, which revealed the true and unacceptable extent of low pay in catering in the NHS.

**The Deputy Presiding Officer:** Are you reasonably close to the end so that you can finish, Mr Ballard?

**Mark Ballard:** The Executive must enter negotiations with Unison for a satisfactory pay deal. Finally, I turn to proper resources. No longer should NHS catering budgets be the first call for savings; that is a false economy. Food for good and food for health requires proper resourcing. The Scottish Executive should accept the charter and secure good food within the Scottish NHS. I urge members of all parties to support the charter and to unite behind it, because it is a key way in which to deliver a good food economy for Scotland, which we all want to see for the environment, the economy and health.

**The Deputy Presiding Officer:** "Finally" is one of my favourite words.

17:20

**Stewart Stevenson (Banff and Buchan) (SNP):** I draw the attention of members to my entry in the register of members' interests and I apologise in advance because I shall be leaving before the end of the debate to attend another meeting.

I thank Mark Ballard for giving us the opportunity to discuss the important subject of food, something that I am looking forward to indulging in a little later this evening, as usual.

Unison has done an excellent job with its food charter. Like that union, I believe that there are three important strands in producing healthy, quality foods with respect to animal welfare and fair trade. I prefer the Fairtrade coffee that comes from Columbia to that that comes from Kenya and I think that the fair trade movement provides a lot of choice within its boundaries, which I commend.

We have to use our procurement system in a constructive way to deliver on our objectives, but the NHS is but one strand of the considerable public procurement budget. I understand that food for patients currently costs about £55 million a year. If we extend that, it becomes an extremely substantial figure.

We want to aspire to higher standards of welfare and production; in many ways, our standards are higher than those of other countries in the European Union and they are much higher than those of countries further afield. That is particularly the case with regard to pigs: the cost of pig-meat production in Scotland is higher than it is elsewhere because our welfare requirements are higher. At present, procurement practice discriminates against buying that higher quality food.

Local production means local employment, which is often not taken into account in relation to tenders. Of course, local employment means more money circulating in local areas. If we procure food locally, we reduce food miles and we reduce pointless consumption of fuel.

It is a matter of grave disappointment to me—as an SNP member—that I have to commend the situation that has been brought about by the English Government as being substantially in advance of that which exists, at this point, in Scotland. Procurement in the NHS in Scotland concentrates on procurement departments and procedures. In England, however, the Department for Environment, Food and Rural Affairs has launched a sustainable food procurement initiative that includes five priority objectives: to raise



production and processing standards; to increase tenders from small and local producers; to increase consumption of healthy and nutritious food; to reduce adverse environmental impacts of production and supply; and to increase the capacity of small and local suppliers to meet demand. That is what we are after in Scotland.

The English have also addressed the difficult issue of how that interacts with European Union procurement policy and have solved the problem by referring to standard schemes. By the way, the English are being entirely fair to us and the guidelines list a series of Scottish standard schemes, for which I commend them. The point is made—in relation to the EU's procurement rules—that we are permitted to specify delivery frequencies, freshness and taste as criteria that might give local suppliers a competitive advantage provided that a foreign supplier is not denied the opportunity to compete on equal terms by setting up here. That is quite legitimate.

I commend the DEFRA guidelines to the Executive. If it lifted them and copied them, we would probably be happy. Only a word or two would have to be changed.

17:24

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** I congratulate Mark Ballard on securing this debate and thank Unison for raising the issue. Before I start, I declare an interest as a member of Unison and a graduate of the Scottish hospital catering school. I will not tell members how many years old my qualifications are—suffice it to say that I got them a long time ago.

However, the issues that are faced by chefs in the NHS today are the same issues that I faced many years ago. I started in the national health service as an apprentice chef and I then transferred to the trainee chefs scheme, which provided in-house training for the NHS and gave its own qualification to supplement the City and Guilds qualifications that trainees had already obtained. It is unfortunate that that scheme has not survived due to the need to reduce costs and to keep the private contractor wolf from the door.

Ancillary workers have never had the opportunity to continue to develop in their professions—chefs have clearly been disadvantaged in that area. If we are serious about the contribution that chefs make to health improvement, that needs to be addressed and I look forward to hearing what the minister has to say on that. If we accept that catering is a distinct profession in the national health service, pay and conditions must reflect the professionalism that is shown in it day in, day out.

The opportunities that are available to the NHS in Scotland to improve the health of the Scottish

people are many. Health improvement should not just be words in leaflets, but should be demonstrated at every opportunity. It is not sufficient to direct patients as to what diet they should follow; demonstrations of how food should be prepared and cooked would also be of benefit. The availability of produce and its cost are seen as major factors by many people in Scotland who try to follow the diet that is prescribed by the medical profession, but a nutritious diet is not beyond the pocket of everyone. Education in eating habits will be significant if we want to address the lifestyle health issues that face Scotland. Fresh vegetables are not more expensive than frozen or processed vegetables and the nutritional value of fresh vegetables is significantly greater than that of frozen or processed produce. Also, fresh vegetables need to be properly cooked.

The spin-offs from people buying local produce for the local economy should not be forgotten. The NHS is one of the largest purchasers of commodities, yet much purchasing and procurement to provide meals to patients and staff is done through national contracts on the basis of cost. Local suppliers can provide better-quality fresh produce to local hospitals and they can do so more regularly. Best value is supposed to encompass quality and the quality of food is no exception.

In my area, the health board's in-house catering service has won many awards for the quality of its meals for patients and staff. I take this opportunity to congratulate it on achieving those awards and I thank its staff for the service that they provide daily to my constituents. If Ayrshire and Arran NHS Board can do that, other boards can, and they should raise their game as part of the performance assessment framework.

I have touched on only some of the issues that are raised in Unison's NHS food for good charter, but time is not on my side. I commend the charter and I sincerely hope that the minister will direct the NHS to adopt it for the benefit of patients and the catering profession. That will lead to a healthier Scotland that is supported by a valued NHS catering staff.

17:28

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Dr Douglas Watt worked in the health service all his life. He is now a constituent of mine, being retired in Lochaline. He spent 28 years as a consultant physician in Lancashire and was then the medical director of an NHS trust. He suffered a heart attack not long ago and was treated at the Belford hospital, which he described as excellent. Because of complications in his condition, he was then taken to the Edinburgh royal infirmary. I should say that he received

excellent medical attention there but, other than that, that is where his problems truly began, as has been described in the newspapers. Dr Watt described the food as "too horrible to imagine". The food, which is provided by Consort Healthcare under the PFI scheme, it is made not in Edinburgh or Lothian but in Wales and then transported and reheated—according to Dr Watt, it is inedible. He was in the hospital for a long time and lost a substantial amount of weight. The message seems to be that, because of this presumably unintended consequence of PFI, someone goes into hospital and is treated by excellent professionals but then faces the real risk to their health in the food.

The point that I make is not facetious or frivolous, but serious. Although it is one that I have addressed at length with the minister and David Bolton, it has not been answered. I would like to know whether the minister can do anything differently. Does he have any powers to do so, or have they all been handed over—given away by the democratically elected Government to a PFI company?

My second point is one to which I alluded earlier. I have been eating farmed salmon all my life, and so have most people whom I know. Despite what we read in the papers—that farmed salmon is more dangerous than any poisonous substance yet known to man—people are, surprisingly, living longer and longer. That is despite their consuming that ultra-dangerous commodity that we hear about from the friends of the Greens.

Some recent publicity followed research that was commissioned by the Pew institute. The Pew institute believes in direct action and has already destroyed a number of industries and jobs in America through its calculated and deliberate so-called environmental campaigns. Yet the truth is that the institute's work was deliberately misleading: it was flawed and it misused the guidelines of the United States Environmental Protection Agency.

**Mr Mark Ruskell (Mid Scotland and Fife) (Green):** I assume from his argument that the member believes that dioxin levels in salmon are declining over time. On what basis does he hold that view?

**Fergus Ewing:** The views that I hold are shared by more than 5,000 scientists, including Phil Guzelian, professor of medicine. He states that, in relation to the chemicals involved, the incidence is "about 100 times lower than the safe amounts recommended".

That speaks for itself.

I was delighted when Unison confirmed to me today that, unlike the sponsor of the motion, it

thinks that farmed salmon is good for us. It is apparently rich in omega 3 fatty acids—that does not particularly bother me, but it is apparently good for us. It is excellent for bone health in developing infants and for a range of diseases and ailments. Scottish farmed salmon also tastes good and supports more than 6,000 jobs—in my constituency and elsewhere—which the Greens want to destroy, suggesting no alternative whatever. I am delighted to set the record straight.

17:33

**Donald Gorrie (Central Scotland) (LD):** I am authorised by the Liberal Democrats to say that our policies fully support the Unison document. I congratulate Mark Ballard on securing the debate. It was decided at our parliamentary group meeting yesterday that I am our gluttony spokesperson and, as such, I am entitled to speak officially on this subject. I was also lobbied by somebody who, like me, is an enthusiast for fair trade. He said that Fairtrade now makes biscuits and asked whether we could have Fairtrade biscuits with our coffee. I throw that into the pot for whatever it is worth.

I would like to concentrate on the need to buy local produce, which is the most important thing. We can have different views about organic products and so on, and people are entitled to their opinions; however, it is essential that we buy quality local produce. The national health service, as a huge purchaser, can obviously play a big part in providing the basis for local people to develop and market their produce better. It is essential that we have better labelling, monitoring of standards and accreditation, so that people know what they are getting and that it is a good, local Scottish product that is definitely up to standard. That would save lots of travelling and polluting the skies with aeroplanes, and it would also create local jobs. Essentially, it would produce better food, as good Scottish products are of a quality that is unsurpassed in any country.

The English are better than us at farmers' markets; indeed, they have a long tradition of small market towns. However, although the Scots have not been as good at such things, farmers' markets are developing in Scotland and we need to encourage them. After all, if the NHS purchased more local product, it might encourage local people to patronise the markets more. They have a big role to play.

Stewart Stevenson mentioned pigs. I was lobbied on that issue when I represented a constituency that included a large pig farm. It was quite clear that, because we had higher standards, the farmer had to spend more money to meet them. As a result, all sorts of people bought cheaper, less well-managed pigs from countries abroad. We must support our own people as far as

animals and other products are concerned, which might mean that the NHS has to spend more money. Although that might be a difficulty for the minister, it might not require all that much additional money. I would have thought that, if the NHS purchased in bulk, it could secure good prices for the local product.

Unison could extend its excellent work into two particular areas, the first of which is sustainability. If that is done correctly, it can create jobs. Secondly, designing its buildings in an environmentally correct way would save the NHS a lot of money and make life more pleasant for the people who work in them. Unison is very much on the right track. If we supported it, we could perhaps go even further together.

17:36

**Alex Johnstone (North East Scotland) (Con):**

I congratulate Mark Ballard on securing this debate, which opens up an area that the Parliament has not had a chance to discuss in quite a while.

As a Conservative, I am committed to the principle of providing good and nutritious food in Scotland's hospitals. Given Audit Scotland's findings and some of Fergus Ewing's earlier comments, that principle is especially important. According to figures for November 2003, one in three patients in Scotland loses weight while they are in hospital and, more seriously, one in 10 becomes malnourished.

I am happy to welcome a number of positive points in the food for good charter. For example, I have no problems with the principle behind animal welfare, meat quality, recycling and composting and the provision of five portions of fruit and vegetables a day. Such suggestions are entirely appropriate with regard to any approach to feeding people in hospital. However, local circumstances should be taken into account wherever possible in deciding the extent to which any proposals should be adopted.

It should be up to individual health boards to make decisions about what food to provide. That said, I believe that fresh food should be given wherever possible and would therefore be pleased to see more consideration of local product options.

I have rather more to say about organic targets. For a start, I do not approve of such targets being imposed rigidly. The provision of organic produce should be driven by demand for it from NHS patients and staff.

**Mark Ballard:** Does the member agree with the charter's call for menus to include an organic choice that patients and staff can choose if they wish? Providing such a choice would require the NHS to purchase more organic produce.

**Alex Johnstone:** I believe that demand should be catered for where it is proven to exist. However, where I differ from Mark Ballard—and indeed have differed from his party in the past—is that I believe that we would be making a mistake if we were to drive for organic as the first choice in providing what is described as quality food. Fergus Ewing and other members have already raised the issue of the quality of Scottish salmon. The Green party should be embarrassed by how quickly it was willing to jump on some poor-quality research and exploit it for little more than its own political ends.

I believe that a problem with the general principle—

**Mark Ballard:** Will the member take an intervention?

**Alex Johnstone:** No thanks.

There is also a problem with the general principle that appears to be applied by Mark Ballard. As a result of his own prejudices, he assumes that all other food that is produced in Scotland is somehow of inferior quality to organic food. I must inform him that Scotland uses a range of production methods to produce some of the highest-quality food using the highest welfare and hygiene standards anywhere in the world. It is essential that we accept the principle that Scottish food is good. No single production method should be given pre-eminence over the rest.

For that reason, although I support in principle many aspects of the food for good programme and congratulate Unison on bringing the issue to the country's attention, I ask that we remember that the quality of our food is the highest available anywhere in Europe. We should defend the interests of those who produce that food and those who process it.

17:41

**Rob Gibson (Highlands and Islands) (SNP):** I am glad to be able to support the principles of the food for good charter. By debating the issue in the Parliament, we are taking steps towards setting a target for the NHS to have the charter put in place. As Mark Ballard said, such a target is needed quickly both by those who work in the NHS and by the patients who consume its products. As has been pointed out, the dangers from entering hospital sometimes relate to the care that is given in terms of the food that the patient has to eat—although that is not to disparage the medical help and treatment that people receive. If we are to remove that danger from hospitals, something must be done quickly to set a target on this important issue.

As a Highlands MSP, I will mention briefly a number of local concerns that relate to the issue.

Because there are central buying processes, Highland NHS Board has a hand in choosing the food that is bought for schools. Such bulk buying is one of the means that are used to keep down costs. However, given that food needs to be bought for prisons and other public institutions, I hope that Unison's charter could also be considered for other related public enterprises. Perhaps the minister will have some wise words for us on that, given that the requirement on education authorities to go down the road of using the buying power and purchasing arrangements of the NHS has led to similar problems about the quality of food that is available in school canteens.

The issue about whether food comes from local suppliers is bound up with the whole question of seasonality. On the issue of choice, the question is not just whether there is an organic choice but whether there is any choice on the menu in hospitals. Those who do not care to eat salmon—farmed or otherwise—ought to have a choice.

**Mark Ballard:** Does Rob Gibson agree that the recent article that raised concerns about the levels of potentially toxic chemicals in farmed salmon was in a peer-reviewed scientific journal? Does he accept that those of us who seek to investigate the facts behind that article do so in the interests of preserving the Scottish farmed-salmon industry rather than of undermining it? Unless we are certain of the facts, there will continue to be concerns.

**Rob Gibson:** I understand that there are problems with the feed for farmed salmon in the present context. I also understand that the Pew institute is interested in promoting American business and in perhaps introducing GM soya that contains omega 3. My party opposes the use of GM feed for salmon and I would oppose that all the way down the line.

It is important that we proceed to adopt the charter and make it possible for local suppliers to do so. The means of contracting in the NHS must be changed to allow that to take place. That will take a little more money, but it will support many more jobs at local level.

I have spoken for longer than I thought I would. Thank you, Presiding Officer, for allowing me to take part in the debate.

**The Deputy Presiding Officer:** I am minded to accept a motion under rule 8.14.3 of standing orders that the debate be extended by 10 minutes, to allow all speakers to take part. I have consulted the minister, who has an important early-evening engagement but is willing for the debate to be extended by that amount of time, if any member cares to move such a motion.

*Motion moved,*

That the Parliament agrees that Members' Business on 28 January 2004 be extended by up to 10 minutes.—  
[Shiona Baird.]

*Motion agreed to.*

17:45

**Mr Mark Ruskell (Mid Scotland and Fife) (Green):** I thank Mark Ballard for proposing this important topic for debate tonight and the 23 MSPs who signed the motion that I lodged on the topic last year.

It is disappointing that Fergus Ewing has hijacked the debate and turned it into a discussion about salmon. There will be further opportunities to debate that issue. I reassure Fergus Ewing that if we wanted to do down the industry I, along with my colleague Eleanor Scott, would not have met and had talks with representatives of Scottish Quality Salmon two weeks ago. The Green party wants to see figures on the long-term trend in dioxin levels in salmon. I have asked the Scottish Executive for the relevant figures, but those have not been forthcoming. I want reassurance on the issue.

I return to the subject that we are debating. There are those who will see the Unison food for good charter as an expensive green wish list. I do not see it in that way, because I believe that food plays a central role in our society. With food, we have a real opportunity to start to join up some public policy. The adoption of the food for good charter in the NHS and in other institutions, such as schools, would help us to meet targets in other areas of Scottish Executive policy. Institutions are becoming increasingly important, because every day we eat more of our food in institutions.

I will give three examples of the significant benefits of joining up food policy. Organic food has been mentioned. Promoting organic food in our public institutions can help us to deliver our environment policy, to reduce pollution, to deliver biodiversity improvements and to increase the number of jobs in local areas.

Secondly, if we start to procure food that is grown, processed and prepared locally, we can start to develop local food economies in our rural areas. We can ensure that wealth circulates in our rural areas and does not drain away. Through local procurement, we can deliver economic regeneration opportunities. Forth Valley Food Links in my constituency is an excellent pilot project that is trying to develop a local food economy. We need such work to be extended across Scotland.

My third example relates to nutritional quality. If we can get food of high nutritional quality, we will, of course, be promoting health. We have an opportunity to introduce patients—who are also

consumers—to new patterns of consumption. One of our greatest challenges in Scotland is to develop a positive food culture. We cannot do that just through adverts on television. We need our institutions to set an example.

Elements of the Unison food for good charter would lead to an increase in expenditure in the NHS, but many aspects of it would require only a refocusing of procurement policies and would not necessarily result in higher expenditure. We must bear in mind the fact that, although the introduction of the charter might bring some higher costs in the NHS, those costs would be offset by savings elsewhere in the Executive's budget.

I highlight a commitment made by the Executive in the previous session in its "Organic Action Plan". The plan contains a commitment to a public procurement strategy for organic food, but the response from the Scottish Executive Health Department to Unison contains no such commitment. The Deputy Minister for Environment and Rural Development, Allan Wilson, made no such commitment in the chamber on 8 January, when I asked him about a public procurement strategy for organic food. We want what has already been promised—a strategy for local and organic food procurement. Stewart Stevenson has already mentioned the DEFRA guidance. Why cannot the Scottish Executive Environment and Rural Affairs Department produce similar guidance on the procurement of local food in Scotland? I want the Executive to work with the charter, rather than just to rebut it, and to consider the public policy gains that can be delivered across departments and the savings that we can make as well as the costs.

17:50

**Carolyn Leckie (Central Scotland) (SSP):** I am proud to be a member of Unison. I am also proud to see Unison representatives in the public gallery.

Fergus Ewing, unfortunately, elevated salmon into the debate. I do not apologise for similarly elevating into the debate questions of pay, privatisation and lack of resources. I have intimate experience of the consequences of under-resourcing and privatisation in relation to Sodexo, which is one of the companies that have made vast profits from the privatisation of catering in the national health service.

Glasgow royal infirmary and Edinburgh royal infirmary have their food transported from the Tilbury valley in Wales, using cook-chill equipment. Many health and safety reports have commented on that practice. However, what is frightening is the number of complaints about the food's quality, temperature and portion sizes and its ability to be consumed in hospital wards—a

situation that is made worse by the inadequate staffing levels in the NHS in general. In the cook-chill method, the food is frequently too hot. When there are vulnerable elderly patients on a ward that is under-staffed and where nurses are busy running round, the over-hot food often does not reach the patients' mouths because staff do not have the time to spend with the patients to help them to eat it. The cook-chill practice must be wiped out. Food must be cooked on hospital premises, with proper equipment, by qualified chefs whose rewards and pay are commensurate with the high-quality job that they do.

**Mark Ballard:** At the new Edinburgh royal infirmary, ward staff cannot get access to cooking facilities because the private company that does the cooking owns those facilities. Rather than the cooking facilities being for staff to use, they are for the private company to use. Does Carolyn Leckie agree that such situations are a scandal?

**Carolyn Leckie:** I agree. The profit motive means that it is in the interests of the private company to monopolise the provision of food, and that is exactly what happens. The company controls the quality, availability and price of the food and it pockets the profits. It is time to stop that haemorrhage.

Capital investment is required in hospital kitchens across the country, which are dilapidated. There is a big gap in resourcing to provide the facilities that can deliver food on the premises. What action is the minister taking on that and what finances will be made available to remedy the situation?

What does the minister think that chefs and catering workers are worth? They are certainly worth a lot more than the £5 to £6 an hour that they are on just now. It is an absolute disgrace that they are forced to work 50-odd or 60-odd hours a week—sometimes more—to supplement their poor basic pay. It is time that their pay was increased and their working hours were reduced. What are the minister's plans for tackling that?

References were made, rightly, to malnutrition and weight loss in patients. Donald Gorrie referred to being a glutton. There would be no use in him being a glutton if he was a patient in the NHS—he would be given short shrift.

Patients, like our schoolchildren, deserve decent, healthy food that is cooked on the premises. They should have free, healthy meals. What has the Executive to say about that? I give my whole-hearted support to the charter, but with specific reference to uprating pay, getting rid of privatisation and increasing the resources that are necessary to deliver good-quality food. We need investment in equipment, we must reverse all privatisation efforts and we must send the Sodexhos of this country packing.

17:54

**Mr Stewart Maxwell (West of Scotland) (SNP):**

I thank Mark Ballard for introducing this debate on food, which is long overdue. Food is one of the most important topics in the country and it is important to have the chance to spend time debating it. I also thank Unison for its charter, which has succinctly introduced a number of points, on a range of issues, which needed saying. I think that many members support those points and I hope that all members will support them once they hear the arguments.

In preparation for tonight's debate, I was looking at a website called [betterhospitalfood.com](http://betterhospitalfood.com). It said:

"Food is not simply a means of satisfying hunger—it is a token of exchange between hospital and patient, and it matters tremendously how it is made available to patients, how it is prepared and how it is served."

What that means is that there is a contract between the hospital, the NHS and the patient; that is an extremely important point.

Members have made a number of interesting points. In particular, I want to mention Rob Gibson's point about other groups—not just hospitals but schools, prisons and other public sector areas. I hope that the debate on providing good food will not just be about the NHS, but that it will spread out into a wider debate on how we supply food to people in the public sector, from children right through to those in old people's homes.

Alex Johnstone talked about his dislike of targets in the organic food sector. Perhaps if we called them performance indicators he would like them better.

**Alex Johnstone:** No, no.

**Mr Maxwell:** Targets make a difference. When we set targets, they drive up quality, whether that be in renewable energy or in council performance areas such as the recruitment of staff or even the collection of council tax.

**Alex Johnstone:** Does Stewart Maxwell accept that, when we are talking about a particular production method and a type of food that is produced by that method, the situation is different from some of the other examples that he gave? That production system working, from the primary producer to the end supplier and the consumer, depends entirely on its being demand led. If we overproduce as the result of an unrealistic target, we will undermine the system. The system must be demand led from start to finish.

**Mr Maxwell:** I accept that demand is extremely important, if not critical, in the whole process, but it is important that we understand the targets and set them at the right level. It does not mean that we should not set the targets.

Finance and the costs involved have been mentioned by a number of members, but that aspect is not just about the contract price that is paid by the NHS to a private sector contractor for food that has been driven from Wales to Edinburgh. It is about all the other costs, in the widest sense, and the charter covers many of those areas. We are talking about costs to the economy, to the environment and to individual patients.

This is a short debate, so I will not be able to cover many of the points that I wanted to cover, but I would like to mention the area of organics and, particularly, GM products. I absolutely oppose the use of GM products. The precautionary principle must apply in that area as it does elsewhere.

The five-portions-a-day target is excellent, although I would like to see it higher. I think that five portions a day should be a minimum, not a maximum. The examples that Stewart Stevenson gave from England are pertinent, as are the examples from Scandinavia. The Finnish berry projects showed exactly what can be achieved by using food to improve a nation's health. Finland used to have some of the worst heart disease and coronary problems in the whole of Europe, but the Finns used food as a crucial factor in bringing about a change in culture. They used food in schools and in the home and, through education and the use of local produce, they made a difference to their nation's health. That is what we should be considering.

I commend the document that Unison has produced and I hope that everyone will support it.

17:58

**The Deputy Minister for Health and Community Care (Mr Tom McCabe):** I join other members in congratulating Mark Ballard on securing the debate. This is an important subject and the Executive welcomes the opportunity to respond to the debate.

The constructive speeches that have been made this evening have led to some startling revelations. We have heard Stewart Stevenson praising a Westminster initiative—previously considered heresy. I am sorry that he has left, but I assure him that any brownie points that he loses in the SNP for that contribution we will make up on this side of the chamber. We have heard Margaret Jamieson tell us of her renowned culinary skills, and people who have attended her dinner parties in Ayrshire are aware of them. Tragically, however, I have never had an invitation, although I still await such a happy event.

We have heard Fergus Ewing's comments and, later in my speech, I will be able to offer him the

reassurance that he seeks. He made a pertinent and strident defence of the Scottish salmon industry and, unusually, I agree 100 per cent with him. Therefore, the debate has already produced some rather strange outcomes.

I am glad to say that a great deal is happening in the national health service in Scotland that is very much in line with Unison's charter and with the points that members have made during the debate.

Unison's charter states that high-quality, nutritious food in hospitals is very important for the welfare of patients. I am happy to agree 100 per cent with that statement. I would go further and say that the provision of high-quality nutritional care is crucial to the well-being and recovery of patients. Such care covers not only food quality and presentation but menu planning, nutritional content, preparation of special diets and assistance with feeding where necessary. More important, it means assessing each patient as an individual and ensuring that their requirements are met. That is the real challenge and it is one that we are tackling through the clinical standards for food, fluid and nutritional care.

I am happy to provide the reassurances that Mr Ewing sought. The Executive gave a commitment in the health white paper that was published in December 2000 to improve the quality of nutritional care that is provided in Scotland's hospitals. We also said that we would introduce national performance specifications for catering services and develop service standards on hospital food. Following wide consultation, NHS Quality Improvement Scotland has recently issued standards on food, fluid and nutritional care in hospitals. I am grateful to everyone—including a number of patient representatives and members of the public—who contributed to the development of those standards.

**Mark Ballard:** Does the minister think that it is possible to combine cooking food in Wales, freezing it, transporting it to Scotland, microwaving it and serving it to patients with the principles that he has described? I do not believe that cook-chill food is compatible with the principles that he has described. I would like to hear his opinion.

**Mr McCabe:** What is important is that we produce the standards and rigorously monitor them. Obviously, anything that failed to ensure that the standards were applied would be a matter on which we would take action. We have no evidence to suggest that the current methods of procuring food militate against the implementation of those standards.

It is important to say that NHS Scotland's performance against those standards will be assessed and monitored independently of the

individual NHS boards, and the first reports will be published next year.

In addition, a national nutritional and catering specification is being developed to support hospital dietitians, catering managers and staff in meeting the new standards. We are very keen that patients' views should be taken into account during that consideration.

I believe that there will be an important role for the new Scottish health council in ensuring that boards effectively discharge their responsibilities for involving patients in checking up on the quality of hospital food.

Of course, Unison's charter is a wide-ranging document, which touches on many issues besides nutritional care in hospitals. It has certainly stimulated much interest. Not all the issues that it raises fall within the remit of Scottish or, indeed, United Kingdom ministers, but I will deal with some of the specific issues.

Members will be pleased to hear that the Executive has made a commitment, as part of the Scottish Executive's organic action plan, to promote organic food and farming and increase the proportion of organic food available in Scotland. The Executive has committed itself to helping the Scottish organic sector to achieve its potential to supply at least 70 per cent of Scottish demand for home-grown organic products. Since May 2001, more than £5.3 million has been awarded to projects under the processing and marketing grant schemes and the marketing development scheme. Ultimately, the choice of whether to purchase organic produce is made by the consumer, but what matters for nutritional care in hospitals is that there is healthy wholesome food—whether it is from organic or other sources.

I also welcome Unison's recognition of the importance of animal welfare in relation to animal produce. It is important that meat and meat products should be derived from livestock that are healthy and reared under conditions of good animal husbandry. Many Scottish producers are members of farm assurance schemes and meet the standards set by Quality Meat Scotland, including those relating to animal welfare. Scotland has a good record when it comes to farm animal welfare—there is a wide range of effective legislation—and we continue to seek improvements in that area.

On meat quality, we whole-heartedly support the enforcement of food safety standards and high quality in the food chain through improved farm standards, rigorous monitoring of food quality control regimes and more effective restaurant and food premises inspection.

There is a national dietary target in Scotland of five portions of fruit and vegetables a day, which is

in line with World Health Organisation recommendations. As the charter suggests, locally available fruit and vegetables can contribute towards the maintenance of a sustainable supply of fresh produce to help to achieve that target.

New guidance on public sector procurement, aligned with the sustainable development programme, will help to maximise opportunities for the local food sector. The Scottish Executive's document "Improving Health in Scotland—the Challenge" emphasises the importance of workplace health. NHS boards, like all Scottish employers, are encouraged to support the healthy living campaign and to put in place local diet and nutrition policies to support that. At national level, the Scotland's health at work and Scottish healthy choices award schemes encourage healthy eating in the workplace.

There is also a debate around the issue of patients not profit. Clearly, catering services in the NHS in Scotland must be run for the benefit of patients' health and welfare. What matters is the service's quality and responsiveness, rather than its provider. The provision of catering services should and will remain a matter for local decision making, subject to the need for services to meet the rigorous standards that we are putting in place. I am happy to make it clear that the Executive regards the achievement of best value in catering services as a key objective. Securing services at the lowest cost is certainly not an objective. It is important that standards are met and that patient care is assured.

Pay has been mentioned, both in this debate and in the Unison charter.

**Carolyn Leckie:** The minister talks about best value. Will he tell me how many potatoes and bits of fruit are lost as a result of private companies' profit margins? How much of that food could be put on patients' plates if those profits were removed?

Perhaps the minister will also respond to my earlier questions. How much is a chef worth? How much capital investment is he prepared to put into kitchens to bring them up to scratch?

**Mr McCabe:** The life of a deputy health minister is a fairly busy one—too busy to allow him to go round Scotland counting potatoes and fruit.

New arrangements for determining pay in the NHS are already being taken forward through the agenda for change pay modernisation package, which will modernise pay structures. The agenda for change programme has been developed in partnership with trade unions and professional groups and we hope that, after the forthcoming staff ballots, we will have the go-ahead to roll out the system throughout Scotland later in the year.

We are determined to continue to drive up the quality of patient care in the NHS in Scotland. Our approach to setting and reviewing performance against catering standards is very much in line with the points that have been made in the Unison charter and in today's debate. Hand in hand with that, the NHS is expected to demonstrate commitment to driving forward health improvement in its work force.

There is much to commend in the food for good charter and I congratulate Unison on its ability to contextualise national policies for its membership. I encourage Unison to continue to build its effective partnership with its members and their employers in the public sector and to continue to build on what is learned from the charter, so that it can deliver on health improvement for its members and lead by example for the rest of this nation's population.

*Meeting closed at 18:08.*



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