

EDUCATION COMMITTEE

Wednesday 5 May 2004
(*Morning*)

Session 2

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EDUCATION COMMITTEE

13th Meeting 2004, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Rhona Brankin (Midlothian) (Lab)

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

*Fiona Hyslop (Lothians) (SNP)

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

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Bill Aitken (Glasgow) (Con)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Graham Donaldson (Her Majesty's Inspectorate of Education)

Rachel Edgar (Scottish Executive Education Department)

Chris McIlroy (Her Majesty's Inspectorate of Education)

Colin Reeves (Scottish Executive Education Department)

Jacquie Roberts (Scottish Commission for the Regulation of Care)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Education Committee

Wednesday 5 May 2004

(Morning)

[THE CONVENER opened the meeting at 09:48]

Item in Private

The Convener (Robert Brown): I welcome everyone to this meeting of the Education Committee. As always, I ask people to make sure that their mobile phones and things are turned off.

Item 1 is to consider whether to take item 3, on the draft report on the budget process, in private.

Fiona Hyslop (Lothians) (SNP): In principle, I prefer to take items in public unless there is a good reason not to. From the previous discussions that we have had and given the content of the draft report, I do not think that there is any need for us to discuss the item in private.

Mr Kenneth Macintosh (Eastwood) (Lab): I would prefer to consider the draft report in private.

Dr Elaine Murray (Dumfries) (Lab): I tend to agree with Ken Macintosh. It is a bit unfair to discuss the draft report in public because there might be differences of opinion between committee members and the advisers.

Ms Rosemary Byrne (South of Scotland) (SSP): I would rather consider the item in public. There are no current issues that necessitate our discussing the draft report in private.

Lord James Douglas-Hamilton (Lothians) (Con): There is a principle at issue. It seems to me that drafting matters should be discussed in private but that policy matters should be discussed in public. Of course, the report will be made public anyway and holding the discussion in private might make for more efficiency and speed.

The Convener: Although at the beginning of the session my view was that draft reports should more often than not be discussed in private, I was impressed by the way in which we did the report on the Education (Additional Support for Learning) (Scotland) Bill—that worked quite well. However, there are more contentious and political issues in the budget report. The argument for considering such items in private is that that can sometimes allow the committee to produce a more powerful report than would otherwise be the case. That is my concern. I am not sure whether the report will

cause a lot of controversy, but I am inclined to hold that part of the meeting in private.

Mr Macintosh: I will move that we meet in private for that item.

Fiona Hyslop: I register my dissent. I propose that, as happened at the end of the last budget discussion, which was held in private, we reflect at the end of the meeting on whether we needed to have the meeting in private.

The Convener: Perhaps it would be worth while considering that later in the session when we have undertaken one or two meetings differently. My experience of the Social Justice Committee in the previous session was that it was helpful to consider a controversial report in private so that we could produce a more powerful report at the end of the day. I have not made up my mind totally on the issue. I think that it would be good to reflect on the matter later, but not today.

Ms Byrne: It is a good idea to reflect on the matter at some point. I, too, register my dissent at holding that part of the meeting in private today.

The Convener: You are entitled to think the other way, but if members are of a mind and there is a majority in the committee in favour of considering the item in private, we will take that as a decision. I do not think that I am jumping the democratic gun. We will review our procedures at a suitable point later in the session. Is that agreed?

Members indicated agreement.

School Education (Ministerial Powers and Independent Schools) (Scotland) Bill: Stage 1

09:51

The Convener: Item 2 is consideration of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill. This is our first evidence-taking session on the bill and I am pleased to welcome from the Scottish Executive Colin Reeves, head of schools division, and Rachel Edgar, head of the bill team. I also welcome, from Her Majesty's Inspectorate of Education, Graham Donaldson, who is senior chief inspector of schools—he is becoming an old friend to the committee, to say the least—and Chris McIlroy, chief inspector, division 1. Graham, do you want to say anything first or do you just want to answer questions?

Graham Donaldson (Her Majesty's Inspectorate of Education): I am happy for us just to answer questions.

The Convener: One of the key issues with regard to ministerial intervention is whether there is a need for new ministerial powers at all. In HMIE's experience, have there have been situations in which the introduction of such powers would have been a helpful addition to the panoply of remedies?

Graham Donaldson: It is difficult to generalise from our past experience through to the current context. I will enlarge on that in relation to the nature of the inspection process as it now operates. Until 18 months ago, a school was inspected and we delivered evaluation resulting from that inspection together with several points for action that were designed to address issues that had been identified during the inspection. We then followed up on the extent to which the points for action had been met. Normally, that happened within two years, although, if the circumstances were particularly exceptional, the follow-up could be accelerated and would happen sooner.

The current inspection model is a bit different from that and operates in the context of the Standards in Scotland's Schools etc Act 2000, particularly in relation to the duties that the act lays on ministers and authorities to secure improvement, the sections in the act that deal with the duty to realise the potential of all young people, the definition of "potential" and the fact that the act refers to the entire school population. In other words, the 2000 act changed the context within which inspection operates.

In the previous system, a small but significant number of inspections were continued after the

follow-up, but we were usually able to reach a point at which satisfactory progress had been made on the original points for action. The system that we are now operating involves a shorter, more focused inspection as our first contact with the school. That inspection focuses directly on three main issues: the achievement of the young people; the processes of learning and teaching in the school; and the capacity of the school to sustain improvement. We look at the situation as we find it and make a judgment about whether the duty to secure improvement is likely to be delivered given the context that we have found inside the school.

In an inspection that demonstrates that the school is serving its young people well and in which the resulting inspection also shows that the school is well led and has the capacity to continue to improve, HMIE does not itself continue the follow-up as it did under the previous system. We agree with the education authority the way in which the authority will follow through on the report on the school. The authority maintains contact with us and we have a process through which we can look at the way in which the authority discharges its duties. That feeds into the broader inspection of the education authority programme; it is part of the evidence base for the way in which the authority discharges its duties.

In a proportion of schools, either the quality of education or the achievement of pupils—or both—gives cause for concern and we are not convinced that the school has the capacity at its own hand to deliver the necessary improvement. Under the new system, the inspectorate maintains rather closer contact with the schools that fall into that category. We do that in a couple of ways. The first is for the district inspector to maintain contact with both the authority and the school to assist and oversee the improvement process where the school has been identified as requiring significant improvement. I should add that each authority has a designated inspector who acts as our main point of contact with the authority. We then more formally report on the extent to which improvement has taken place.

In many ways, our present operating system is more ambitious than the system that we operated previously. The end point of the process is hard to foretell; we have not reached it yet because the new system has only just been put in place. My firm intention is that the existence of the powers in the bill will not change in any way the way in which we go about inspections. The process that I have just described will remain the way in which we go about inspections.

However, under the bill, if we are not satisfied that the improvement has been achieved, there will be an end point to the process that has not

existed hitherto. That was a long answer to your question, convener. Essentially, if through our work with the authority and the school we are unable to realise the kind of improvement that is necessary for the young people, the new context gives a prudent end to the process.

The Convener: Does any other panel member wish to add to that?

Rachel Edgar (Scottish Executive Education Department): I think that Mr Donaldson has set out the policy context in which we operate. We seek to fill a gap that was identified in the existing legislation, which is that ministers do not have the power to intervene to secure improvement in schools should they need to do so in order to meet their statutory duty under the 2000 act.

The Convener: I want to be clear about what happens at the moment. What powers do ministers currently have to take action in circumstances in which things are going funny at the local authority or school level?

Graham Donaldson: I will say a word on that, after which Rachel Edgar might like to come in. My perspective is that we would go through the process that I described. If we reached a point at which I was not satisfied that the process would deliver the kind of improvement that is required, I would refer the case to ministers to indicate that, from the inspectorate's point of view, we had reached the end of our engagement with the school to deliver the required improvement. It would be for the minister to determine what action the Executive should take at that point.

Rachel Edgar: Ministers would be able to take action only if they were satisfied that there was a breach of an existing statutory duty.

The Convener: That is the duty to provide an adequate education and so forth.

Rachel Edgar: The duties could relate to a range of issues, some of which are specific to individuals, such as duties to do with special educational needs; others are expressed much more broadly in terms of securing improvement and so forth.

Lord James Douglas-Hamilton: Will you explain in a little more detail why the current inspection regime, the existing statutory duties on schools and education authorities, and the powers of ministers to intervene when there has been a failure to meet statutory obligations are not considered sufficient to ensure improvement in schools?

10:00

Colin Reeves (Scottish Executive Education Department): After the 2000 act had been

passed, it was realised that a gap existed in ministerial powers. As Rachel Edgar indicated, the section 70 power in the Education (Scotland) Act 1980 is applicable only when a breach of a statutory duty has occurred. Ministers realised that, if one had arrived almost at the end of the process that Graham Donaldson described and matters had still not been resolved satisfactorily, a gap existed in the powers at their disposal. That gap in their powers meant that ministers could not fulfil the new ministerial statutory duty under the 2000 act to secure improvement in education.

Dr Murray: Recent legislation has placed an obligation on local authorities to provide an education that enables all children to achieve their full potential. Can you give an example of a situation in which a ministerial power might be needed without an authority having breached that wide statutory duty? If an authority is failing to provide an adequate education for a particular group of children or in a particular school, surely it is already failing in its statutory duty and section 70 powers could be used.

Colin Reeves: Graham Donaldson is better able to explain the vast range of recommendations that are contained in HMIE reports. Some of those recommendations are very specific. In scale and focus, they are far removed from the breadth of the statutory duties in the various pieces of legislation. For example, some recommendations would encourage a head teacher in a specific school to engage better with teachers of English or maths. In other words, the HMIE reports include specific and focused points for action. We have taken legal advice as to whether recommendations and points for action in an HMIE report could be construed as a failure in relation to one of the overarching statutory duties. We were told clearly that that would not be the case.

The Convener: Local authorities have an electoral mandate. If an issue arises that does not amount to a serious breach of statutory duties, should it not be up to the local authority, rather than ministers, to resolve it?

Colin Reeves: Principally, the matter would be for the local authority. The bill is constructed in such a way that the local authority will take any necessary action using the powers in the bill. The partnership agreement gives the rationale behind the bill. It says:

"Where the established steps of inspection, professional support and development do not secure the improvements identified ... we will extend Ministerial powers to intervene, as a last resort and on the recommendations of the Inspectorate, to ensure that ... action ... is taken by the local authority."

The emphasis in the bill is that action should be taken by the local authority.

Mr Adam Ingram (South of Scotland) (SNP): I have a follow-up question about the responses to the Executive's consultation. It has been suggested that the relationship between HMIE and local authorities will change as a consequence of the bill and that HMIE recommendations to education authorities will, in effect, become instructions backed up by the threat of ministerial intervention. How might the current partnership ethos change because of that?

Graham Donaldson: I would like to put on record the fact that the process that we have put in place over the past 18 months, working with authorities to establish the new proportionate system, is proceeding well. I am pleased with the response of authorities to that proportionate inspection system. It is not my belief that the powers in the bill will, by themselves, change the nature of that relationship.

As the minister has said on record, it is anticipated that the powers will be used rarely. They will be used only if there is a breakdown in the relationship between authorities and the inspectorate. It is my firm intention that the kind of partnership working that we have with authorities just now will continue to characterise the inspection process in Scotland. However, that issue is distinct from the possibility that, in a particular circumstance, the process might be letting young people down. I suppose that, in that context, all of us have to be confident that, were that to happen, the powers exist to ensure that the situation could be remedied.

I am not in any way assuming that there will be any change in the way in which we relate to local authorities or schools as a result of the bill. If the suggestion is that the bill will give us a power of direction, there has been a misunderstanding. The bill gives us no powers at all. It simply says that, if we reach a point at which we do not believe that we can do anything more, we can refer the matter to the minister, who has the necessary powers.

That is the distinction between the inspectorate and other bodies. We are not a regulatory body that, at our own hand, can give direction. At the point at which we referred a matter to the minister, the authority would have an opportunity to make its case. If it could persuade ministers that we were acting incorrectly in relation to what was being proposed, the minister would be under no obligation to act on our recommendations. The minister would act only if he or she felt that there was a justified case for doing so.

That issue has run through one or two of the responses that I have seen. The role of the inspectorate is to promote improvement and to identify areas of concern. We do not have the powers to direct action to be taken.

Mr Ingram: The perception is that there will be a big stick behind you in the form of ministerial intervention, which is different from the previous situation. Do you accept that?

Graham Donaldson: There is a logical inconsistency in people saying both that the bill is unnecessary because section 70 of the 1980 act provides all the powers that are needed and that the bill will change the situation. If the bill is unnecessary, the stick exists at the moment and the bill's introduction will not change the situation. People cannot have it both ways.

Mr Ingram: What kind of actions may an enforcement direction from the ministers specify? If you reported to ministers that the level of improvement was not what you sought, what would the minister do in that circumstance?

Graham Donaldson: The action would be specific to the circumstance as and when it arose.

Mr Ingram: Will you give us a recent example?

Graham Donaldson: The areas about which our concerns would lead us to make significant recommendations that would take us along the road of continued engagement with a school and that might ultimately lead to a reference to ministers would relate to the achievement of the young people in the school and the quality of the educational process. The action that would be taken would be designed to address those kinds of areas and might relate to the nature of the learning and teaching in the school, the nature of the leadership of the school in providing the context for effective action or the nature of the support that is provided to the school to enable it to discharge its duties. There is a variety of areas in which action can be taken to bring about improvement after an inspection.

The key point that I stress to the committee is that the process is not about the inspectorate's view on a particular way of teaching or organising a school. We would not tell schools, "You must do it this way because the inspectorate says so." Our firm starting point would be the quality of the education and its impact on pupils and the young people's achievements and experiences. From that starting point, we would invariably work with schools and local authorities to agree what needed to be done to address the need to provide high-quality education for youngsters. The focus would be on the young people and the quality of the education that they receive.

Fiona Hyslop: From what you say, it sounds as though HMIE would scope the problem, make the referral and identify any need for ministerial intervention, but it is still not clear what action would be taken and by whom if there was a problem. When the bill was first mooted, it was thought that hit squads would go into failing

schools, but there has been some backtracking since then. I see that you are nodding—

Graham Donaldson: I am nodding because the bill is not about hit squads.

Fiona Hyslop: In that case, who would do what? The minister would not fly in like Superman to sort out individual schools. You say that the relationship would be with the local authority, but what action would be taken to support the pupils' education? Would Scottish Executive policy people go into education authorities?

Rachel Edgar: The crucial aspect of the bill is that it would remain for local authorities to take action. Ministers would direct local authorities about the action that was needed to achieve the necessary improvements. In relation to the support that is offered, HMIE would not drop out of the process at that stage. However, I am talking about an end point, by which time HMIE would have been offering support for several months—possibly a year or two—but would not have been able to help the school to achieve the necessary improvement, as Mr Donaldson said. At that point, ministers would have to decide whether to direct the authority to take certain actions to secure the improvement. The bill would allow ministers to do that.

Fiona Hyslop: I will pick up on a point that Elaine Murray made. You said that there is a gap in the 2000 act, but the act can be interpreted as providing a catch-all in relation to duties and responsibilities for education. Why do we need additional legislation?

The most recent situation in which there was concern about a local education authority was the crisis in Scottish Borders Council. What difference would the bill have made in that situation? We want to get a handle on the practical difference that the bill will make.

Colin Reeves: It is difficult to answer that in relation to a specific example. However, your question is reasonable and I will try to answer it. I do not think that the bill would have made a difference to the case that you cite, because experience demonstrates how well Scottish Borders Council responded to the HMIE recommendations. That council is not alone in responding well to reports from HMIE that its education authority must address significant points. In the cases that we have experienced, the bill might not have made a difference, apart from the fact that, as we all recognise, any piece of legislation that sits on the stocks—such as section 70 of the 1980 act—colours the way in which people react and respond.

You mentioned the 2000 act, which contains a number of broad statutory duties. The gap in the act relates not to those duties but to the fact that

HMIE inspections represent a significant component of the improvement framework that the act established. Because the findings and recommendations of HMIE inspections are not statutory duties, there is a gap in ministerial powers to deal with those recommendations when, in HMIE's estimation, an authority has failed to take satisfactory action. We are talking about the distinction between HMIE recommendations and the larger-scale statutory duties.

10:15

Fiona Hyslop: In the past 10 years, how many examples have fallen into the category of local authorities not responding?

Graham Donaldson: As I said in response to the initial question, the context in which we are now operating is different from that which applied prior to the 2000 act. We are at the point now where the new processes are coming into being. Notions of adequacy and efficiency are flat—like a floor or ceiling—but in the ambitious context in which we now operate, where the avowed intention of ministers and local authorities is to bring about improvement, improvement is a process that is engaged with to try to enhance the quality of education for young people, particularly where one starts from a situation of serious concern. It is difficult to look back and wonder about what happened in the past, because the context in which we operated then was different.

There is a misunderstanding about hit squads. It is standard under the current arrangements at school or even authority level for the authority or the school to bring in people to assist them in the process of addressing improvement. One could characterise that arrangement as a hit squad, but it is not. When people talk about hit squads, they are talking about taking the responsibility for bringing about improvement away from the authority and giving it to someone else. Critically, that is not what the process is about. The object is to maintain responsibility where it should lie—with the authority and the school—and to ensure that, in that context, the minister has the powers, should they be required, to deliver the improvements in education for young people if we reach an impasse. Whether we will reach that impasse, I just do not know.

Fiona Hyslop: Do you have faith that we are starting from the ground level here?

Graham Donaldson: The bill is a prudent step given that we do not know what the future holds and given the advice that there is a gap in the existing powers of ministers.

The Convener: I want to clarify who a "relevant person" is under proposed section 66D, entitled "Enforcement direction", to be inserted into the

Education (Scotland) Act 1980. I cannot see a definition in the bill, although there might be one in the principal act.

Rachel Edgar: In the case of an education authority school, it would be the education authority. The provision also covers grant-aided schools, in which case it would be the managing body of the grant-aided school.

The Convener: So in the case of a state school the “relevant person” is the education authority, not the school.

Rachel Edgar: Yes.

Rhona Brankin (Midlothian) (Lab): I declare an interest in that I am related to Graham Donaldson.

The Convention of Scottish Local Authorities has claimed that the proposed power goes further than the powers in the Local Government in Scotland Act 2003, because it would allow ministers to intervene directly in how services are provided, rather than covering all services as provided for in the 2003 act. Is that the intention of the proposals?

Rachel Edgar: The intention is not to go beyond the powers in the 2003 act. The intention is to allow similar powers to those in the 2003 act to be taken, but they would be triggered by an HMIE recommendation. The powers under the 2003 act are triggered by a recommendation from the Accounts Commission.

Rhona Brankin: That is helpful.

The Education (Additional Support for Learning) (Scotland) Bill was passed recently and the committee expressed concern about other agencies acting to provide for the additional support needs of a youngster. Is there provision in the bill to bring in other agencies if those needs are not being met, or would they be met in another way?

Graham Donaldson: The bill does not provide for that, but as an inspectorate we are increasingly working with other inspectorates and agencies in the context of the requirement for all young people to realise their potential, which is one of the triggers for additional support needs. A direct focus of our inspection is to look not just at whether the school is performing reasonably well in general—say, in relation to standards of attainment—but also at the extent to which individual young people and groups of young people are being well served by the education that they are receiving in the school. If we were not convinced that the school was delivering for all its young people, the process that we have been talking about could ultimately lead to recommendations to involve other agencies.

Mr Macintosh: At this stage of devolution, we are all conscious of the sensitive relationship

between local government, the Parliament and the Executive, which are all democratically accountable bodies. My first question is for the Executive officials. Do you think that that relationship has been hampered in the past by ambiguity about when the power under section 70 of the 1980 act could be used and that the relationship—certainly the day-to-day dealings—that you have with local authorities could be improved by the creation of a clearer line of accountability through the new powers?

Colin Reeves: I do not think that there has been any difficulty in the relationship between the Executive and local authorities. You cite the example of the section 70 power; however, that power has been used extremely rarely. On the only occasion of its use that I can recall, the council in question acted immediately to rectify the deficiency, which related to the breach of a specific statutory duty in the case of an individual child.

Ministers are well aware of the reaction to the proposals in the bill. The letter that the minister wrote to the convener on 29 March, which was sent along with all the paperwork relating to the bill, made it clear that he was aware of the points that had been made by COSLA and the Association of Directors of Education in Scotland. He articulated his view of difficulties that might arise in future that would damage children’s education in a specific school or authority. The focus of the bill is very much on the quality of education that children in specific schools are receiving. That has to be the prime concern. The minister said that, if it were found at some stage in future that the education of children in a particular school was being harmed by the inaction of an authority or the Executive, he would have no answer to the question, “Why did you not use this last resort power?” However, it is hoped that the generally very good relations between the Executive and local authorities on educational matters will continue.

Mr Macintosh: My next point is for Graham Donaldson. From your comments, I take it that you do not expect the bill to make your job any more difficult.

Graham Donaldson: No. Our relationship with authorities and schools is not legalistic—it is not founded on reference to statute to achieve the inspection process. The extent to which we have an impact and can bring about improvement must rest on the extent to which our conduct of inspections and the findings of those inspections command the confidence of those who are being inspected and the wider community. I do not envisage that changing as a result of the legislation. Clarity about the end-point—which was implied in your original question—would be helpful.

Ms Byrne: I have a question on the capacity to sustain improvement.

I remain unconvinced that the power is needed. As a former teacher, I can say that the thought of HMIE coming to conduct an inspection filled all teachers with fear. We always tried to adhere to every point that HMIE made. I could say the same for local authorities, which have their own quality assurance schemes and scrutinise planning in schools. I have difficulty understanding why a local authority would not adhere to what HMIE said. I know that you cannot give us such examples because you are not at the end point. I will pursue Fiona Hyslop's line. Before the Standards in Scotland's Schools etc Act 2000 was passed, did you feel frustrated about many situations and feel that you were not turning schools around or resolving problems in schools that were pertinent to young people's education and the capacity to sustain improvement?

Graham Donaldson: I make it clear that we want the inspection process to operate not on the basis of fear, but on the basis of a genuinely constructive partnership between us and schools in young people's interests.

Ms Byrne: I know.

Graham Donaldson: In some circumstances, the process has certainly continued for a time. However, at the end of the process, we have always managed to reach a resolution that allowed the inspectorate to disengage from the process. That related to expectations before the 2000 act was passed. Expectations now are different. In the context of those different expectations and duties, the possibility must be considered intellectually that an unresolved difficulty would remain. To put in place legislation that addressed that possibility—however remote—would help.

I see the minister's case. If we reached the end of the process and I referred a matter to the minister because I thought that young people in a school were not being well served, but the minister could not take action, the minister would be in an odd position in relation to their duties under the 2000 act. That does not mean that I think that such a situation will arise. That is not how an inspection is conducted. However, there is a case for having such a prudent reserve power in the new context.

Ms Byrne: Would that also apply if a school building was felt to be inadequate to provide the education that young people needed and the local authority was not taking action because it lacked finance? Would that apply to the state of a school's environment?

Graham Donaldson: If accommodation were detrimental to young people's learning, we might want to pursue the case. We are not a health and

safety inspectorate but, during inspection, safety issues might emerge about which we would make recommendations. If safety was a concern, we would bring in the Health and Safety Executive and work with others to establish what was required.

Ms Wendy Alexander (Paisley North) (Lab):

The briefing that the Scottish Parliament information centre has provided to us gives us a flavour of how the inspection process is proceeding. You have spoken about that. About 300 inspections a year take place. Every primary school can expect to be inspected once in a child's time there. Similarly, every secondary school will be inspected once during a child's four or six years there.

Several inspections now generate, after two years, follow-up inspections on points of action. Between 120 and 150 follow-up inspections take place each year. The numbers of schools that remained unsatisfactory after two years were 13 in 2002-03 and 10 in 2003-04. That means that 5 to 10 per cent of the schools are still unsatisfactory when HMIE goes back to look at them two years later.

Over the lifetime of the Parliament, 48 schools have remained unsatisfactory after two years. It is a considerable concern for parents if their child happens to be at one of the schools that has not made the grade over the past five years. Would implementing the powers in the bill make it likely that action would be taken more quickly over those 50 or so schools or would there be a more wholehearted response to the small but significant number of schools—10 or 15 a year—that despite HMIE's work with the local authority are still failing two years on?

10:30

Chris McIlroy (Her Majesty's Inspectorate of Education): Some of the data that you have quoted derive from the previous system in which we carried out follow-up inspections two years after the initial inspection. At that point, schools and authorities had to satisfy us that 80 per cent of the points of action set out in our report had been implemented before we would disengage. In other words, the judgment of the follow-up inspection in some cases indicated that the school had a fairly good standard of education and had taken some steps towards our recommendations, but that it had not yet reached the very high threshold at which we felt we could disengage. The fact that the schools were in that category did not mean that we necessarily had serious concerns about the quality of education. The number of schools that fell into that latter category would have been much smaller.

Graham Donaldson has already outlined the new arrangements. When we carry out the initial core inspection, we look at the school's standard of attainment, the children's broader achievement, the school's capacity to improve and other factors relating to its effectiveness in order to find out whether to ask the education authority to work on the follow-through process or whether we have to do it ourselves. At that stage, we engage with a quarter of the schools and finally reach the decision that we can go no further for only a tiny number, if any at all. Scottish schools and authorities have a strong track record of achieving improvement. Indeed, through elements such as staff development, mentoring, other heads, education authority support and other means we have a wide body of experience in improvement. The situation is not on the scale that you have suggested.

Ms Alexander: I seek some clarification about the figures. In the old system, the percentage of follow-up inspections that resulted in an unsatisfactory report ranged between 5 to 11 per cent, which equates to 10 to 15 schools a year. By my reckoning, that means that about 50 schools have required intervention over the lifetime of the Parliament. Interestingly, you said that under the new system, instead of having a 5 per cent residual, HMIE asks to work in partnership with the education authority to improve schools after about 25 per cent of its original inspections. Is that right?

Chris McIlroy: No. Under the old system, the original inspection made its recommendations. The figure that you quoted is for the number of schools that, two years later, had not achieved 80 per cent or more of our recommendations.

Under the new system, we conduct initial inspections at a point at which the school has not taken any action to achieve the improvement agenda, and we then want to work with about a quarter of the schools on that agenda. We do not yet know what proportion of that number is left two years down the line.

Lord James Douglas-Hamilton: How will you ensure integration and communication in the intervention process with the care commission, which may also be involved in regulating and inspecting certain schools?

Colin Reeves: In the letter that he wrote on 29 March, the minister dealt with that specific point, saying that he was aware of the care commission having made

"a number of suggestions highlighting the need for good communication with the Commission in relation to services also registered with them."

He went on to say:

"I accept that good communication is crucial to the effective exercise of the powers in relation to independent

schools and am committed to ensuring that we work closely with the Commission. Officials are developing a mechanism for sharing information and ensuring proper consultation with the Commission."

The minister is receptive to the need to ensure joined-upness with the commission. Graham Donaldson will also be able to speak about how HMIE has thus far been engaging directly with the commission. The minister has made clear the importance of joined-upness in that respect.

Graham Donaldson: It is important for me to put on record the fact that, on quite a wide variety of fronts, we work directly with the care commission. In a relatively short space of time, we have established very good, productive working relationships with the commission. In circumstances where there is a joint focus that is a subset and does not relate to normal day provision in primary and secondary schools, but where there is a need for the commission to register, we have a memorandum of understanding with the commission, which is about ensuring that we have good communication between ourselves and the commission. Because of that relationship, we are able to determine the appropriate action that should be taken, whether by the commission or by ourselves. That is a fine call in relation to the specific circumstances that we find.

Lord James Douglas-Hamilton: In view of the complexity of the respective roles, would it be possible for you to draft a little note for us explaining how you envisage the respective roles, or indeed the combined role if the roles should be combined, so that we can form a clear understanding of exactly what might be involved? I realise that the relationship might be at an embryonic stage, but if you felt able to give us a note on that it would be extremely helpful.

Graham Donaldson: Certainly.

The Convener: The letter that the minister wrote to us has been mentioned once or twice. Do members still have that letter, or would they like it to be circulated again?

Fiona Hyslop: I do not have it to hand today.

The Convener: I wanted to check that members still had copies of it so that we do not need to circulate it again.

Lord James Douglas-Hamilton: It might help to circulate it again with a note on the respective roles.

The Convener: No, no, no. I am talking about the letter that I received from the minister, which was circulated to members of the committee a while back. I was just asking whether members still had it or whether they wanted it to be circulated again.

Lord James Douglas-Hamilton: It would be helpful to circulate it again.

The Convener: I can do that.

Dr Murray: On independent schools, I think that it was East Ayrshire Council that suggested that there might be a slight problem with home educators, who are actually excluded. However, there are circumstances in which parents might get together, because one parent may have a background in languages and another may have a background in science and they might want to work together in home educating their children. Does the bill create a problem for such parents? If they get together collectively to home educate their children, do they then become an independent school and have to be registered?

Rachel Edgar: There is no intention in the bill to change the existing relationship with home educators. Those parents who choose to educate their children at home would not be covered by the scope of the bill. I take your point that there could be a fine line between a group of parents educating their children themselves at home and those parents not educating in their own home and employing somebody else to deliver that education, which would look more like a school to me.

Dr Murray: So a voluntary arrangement involving a group of parents who were not employing people would not come under the scope of an independent school.

Rachel Edgar: No, it would not, if those parents were genuinely home educating.

Dr Murray: My next point is similar to one that Lord James Douglas-Hamilton made. I have had a quick look at the minister's letter, which I do not think covers it. The care commission will be involved in the registration of schools where children will be in residence. How do you ensure that an integrated approach is taken with the care commission? Could you say a bit about progress on the additional consultation that I understand that you are to conduct on the information that schools will be required to give in order to be registered? How will that consultation take place?

Rachel Edgar: There are existing regulations about the information that independent schools provide in relation to their registration. We intend to take the opportunity to consult on new regulations under the eventual act, so as to consider whether the provisions can be streamlined, given that a number of the schools will also be registered with the care commission. We could consider in the course of the consultation on the regulations whether the information could be provided in one form for both the required purposes.

Chris McIlroy: As Graham Donaldson said, we currently work in very close partnership with the care commission, for example when inspecting secure units and special residential schools. We have arrangements for discussions, for regular meetings, for shared staff development events, for exchanging communications about reports, for the editing process and for consideration of any decisions arising from that. Those relationships are already established and productive, and we would want to build on them.

Dr Murray: The bill introduces ministerial powers to set conditions, as an alternative to closing an independent school. Can you give us any examples? We obviously do not want to flag up things that have been in the media recently, but there has been a recent, fairly high-profile case of an independent school that might have to close if it does not improve its performance. Could you illustrate how ministers might be able to use their powers to set conditions, rather than having a guillotine coming down on a school?

Rachel Edgar: We anticipate that the powers will be appropriate in circumstances where there is a short-term issue to deal with, for example if the fire brigade identified a problem with a fire escape at a certain part of a school. Ministers could set a condition that that part of the school was not to be used until the matter was rectified.

The Convener: I would like to ask about the change in the appeal procedure, which I think gets rid of the independent schools tribunal. What is the rationale behind that?

Rachel Edgar: We looked back at our records and found that the independent schools tribunal has not in fact met since about 1977.

The Convener: That seems like a good point.

Rachel Edgar: The review of tribunals highlighted that as an issue and felt that we should consider the position of the independent schools tribunal in that context. At the moment, the tribunal is made up of a sheriff principal and two lay members. The difficulty is that there is no expertise among the lay members, and I do not think that we would be able to identify those who last met in 1977.

The Convener: I wonder how that tribunal escaped the bonfire of the quangos.

Fiona Hyslop: What is the impetus behind part 2 of the bill, on independent schools? Could the sections on independent schools stand alone as a piece of technical legislation? Why are the measures to do with independent schools being introduced now? Following the consultation, it seems that part 2 is generally regarded as uncontroversial.

Rachel Edgar: Ministers considered that a bill dealing with improvement in schools provided a good opportunity to update legislation on independent schools.

Fiona Hyslop: So the bill is a convenient vehicle, because the measures come under the general title of improvement.

Rachel Edgar: It would be fair to say that there have been some concerns in relation to independent schools over the past few years. I believe that the powers in the 1980 act derive from the early part of last century and have not been significantly updated. The bill offered the opportunity of updating them and allowing ministers to have slightly more flexible powers to deal with some of the issues that have arisen in the past few years.

10:45

Colin Reeves: Ministers were aware of the scope of their new duty under the 2000 act to endeavour to secure improvement in the quality of school education—all school education—that is provided in Scotland. It was in that context that they realised that the provisions that governed independent schools, which had not really been examined since 1980, were very elderly. Certain experiences and situations in the independent sector have already been alluded to briefly and it was recognised that there was a need to re-examine the structures and systems in that sector. That opportunity was taken in the context of a piece of legislation that endeavours to ensure that ministers can indeed secure improvement in the quality of education right across the piece in all Scottish schools.

Fiona Hyslop: Could part 2, on independent schools, stand alone as a concept, technically speaking?

Colin Reeves: I am not a lawyer, but I think that, technically, it perhaps could stand alone.

Rhona Brankin: It will not surprise members to find out that I want to ask about rural schools. Given the concerns that have been expressed recently about some local authorities' proposals to close rural schools, which seem to go against ministerial guidance, could the bill be used—perhaps in an amended form—to provide the necessary safeguards against such closures? If the present bill is not the bill for doing that, how could it be done?

Colin Reeves: You asked several questions. All that I can say at the moment is that I am not sure whether provisions that focused on that issue would fall within the scope of the bill as drafted. In relation to the bill, I can say only that ministers consulted on a particular piece of legislation,

which has now been introduced in the Parliament. Decisions about the drafting and introduction of legislation are ministerial decisions. I understand that the committee will have the opportunity to question ministers next week and towards the end of the month, when—if my understanding is correct—it will hold a session focusing on rural schools.

The Convener: When HMIE examines local authorities more generally and reports on the distribution of school provision, does it have a say on changes in provision for rural schools—or, for that matter, urban schools—and whether such changes affect the adequate and efficient provision of school education? I admit that that is a political issue.

Graham Donaldson: That would not be covered as a matter of routine in a local authority inspection. We work with Audit Scotland in the inspection of local authorities. Part of that exercise is about best value. The nature of the estate is certainly a focus as regards the interest in best value that we share with Audit Scotland. The particular circumstance that you are talking about would not normally be covered in an inspection.

Rhona Brankin: Can I confirm that, if changes in provision for rural schools are not covered by inspection, they are covered in the context of best value? Do best-value considerations take into account ministerial guidance on rural schools? If that guidance was not being followed, would Audit Scotland pick that up? If not Audit Scotland, who would pick that up and what would happen?

The Convener: I am not totally certain whether the witnesses can answer that.

Rhona Brankin: I am just wondering whether such matters might conceivably fall within the scope of the bill—that is why I am following this line of questioning.

Colin Reeves: I would have difficulty in answering the specific question, considering the long title or the scope of the bill. I am also afraid that I am not an expert on the Local Government in Scotland Act 2003, apart from understanding broadly that the definition of best value that it contains is a balance between a number of factors that the act sets out. My understanding is that the statutory provisions take precedence over all other matters, and that local authorities must have regard to, and adhere to, the statute in the 2003 act.

The Convener: I am conscious that there is the potential for us to wander off the issue a little bit, and that we will come back to rural schools more generally. We must keep in mind the general principles of the bill.

Fiona Hyslop: The long title includes the phrase:

“following inspection of a public or grant-aided school or of an education authority”.

An inspection of an authority—I think that it involved Argyll and Bute Council—that reported recently raised concerns related to the condition of the school estate. The council decided that it did not necessarily want to embark on the public-private partnership programme that had been endorsed by the previous council. There was, however, strong criticism of the content of the estate. Let us imagine that, for some reason, a democratically elected council decides that it does not want to review its estate—whether urban or rural—following concerns raised in an HMIE report, and says that it has a mandate that allows it to pursue a different form of funding. Do you envisage such circumstances being referred to ministers? If the central funding stream is directed at PPP, could ministers use the powers under the bill to direct the local authority? It comes back to Ken Macintosh’s point about the relationship between central and local government and their respective democratic mandates. At the heart of the matter is the concern, raised particularly by COSLA and the local authorities, about the power relationship between central and local government, which are both democratically elected.

Graham Donaldson: As an inspectorate, we would take no view on the nature of the funding mechanism, whether it is PPP or anything else. It goes back to Rosemary Byrne’s question about the nature of the estate and the accommodation. Our recommendations would relate to whether the authority was taking action, in the context of best value, to use the resource that it has in the best interests of young people. In best-value terms, whether that is happening satisfactorily is an Audit Scotland area of responsibility. It is unlikely that the bill is the route that we would go down in relation to the issue that Fiona Hyslop raises, but I am not a lawyer, so I cannot be absolutely certain about that. I would have thought that the Local Government in Scotland Act 2003 would be a more likely route than the bill.

The Convener: We have received a fair bit of information on that matter.

As there are no further points, I draw the session to an end. I thank the witnesses for their attendance—it was an interesting and useful session. I have no doubt that we will meet again.

For our second panel, I am pleased to welcome Jacquie Roberts, who is chief executive of the Scottish Commission for the Regulation of Care, and Ronnie Hill who is the commission’s south-

east regional manager. Jacquie Roberts will start by saying a few words.

Jacquie Roberts (Scottish Commission for the Regulation of Care): I will say a few brief words of introduction. As the care commission is concerned with quite a well-defined area of the bill, we thought that it would be helpful to set out our statutory role and how we have responsibilities for the care and welfare of children in just some of the schools that will be covered by the bill.

All our evidence—both in our response to the consultation and in our written submission to the committee—is submitted on the basis that we wish wherever possible to minimise duplication and to reduce the regulatory burden.

I endorse all that was said by Graham Donaldson and by Rachel Edgar, who is the registrar of independent schools.

We are into our second year of integrated working with HMIE, which involves joint inspections and joint reports. The system is working well and is a good example of regulators working together to fulfil the duties and responsibilities of both bodies. That integrated working is underpinned by a section in the Regulation of Care (Scotland) Act 2001, which imposes on us a statutory responsibility to collaborate in inspections under the regulations.

We have a working draft memorandum of understanding with the registrar of independent schools to ensure that notification and liaison take place. I endorse all that Rachel Edgar said about working together and about consultation with the independent school providers. As far as possible, we need to streamline the information that we request, so that the two bodies do not request similar information in a different way at a different time.

We question whether, for the sake of clarity, liaison and notification should have a statutory basis. We are actively involved in considering that issue with Education Department officials. We want to find the best mechanism possible for avoiding any confusion in areas in which responsibilities overlap so that we can achieve the best possible integration.

The Convener: I will kick off the questioning. Under the proposed power of ministerial intervention, how will the care commission’s position differ from the current situation? Will there be a difference, or will the bill not affect you?

Jacquie Roberts: There will be no difference in our statutory powers and responsibilities, but we want effective mechanisms for integrating with the new systems that will be brought into place by the bill.

The Convener: I have a small question that is slightly off to one side, but it results from something that happened in a school in Glasgow. Partnership working is supposed to extend both to schools and to pre-school facilities. However, in one instance, a nursery school that was located on the premises of a state primary school ended up having to fulfil higher requirements for structural matters than the primary school within whose building it sat. That sounded a bit odd. Have those anomalies been ironed out now, or are nursery schools still required to fulfil higher requirements than primary schools? I am asking not about that particular instance but about the general issue. In your liaison with HMIE, do you aim to produce the same results for different sorts of situations within your domain?

Jacquie Roberts: I am not aware of the example to which you refer, but we work hard to avoid setting conflicting conditions or requirements for different parts of the same school. We have already made a couple of adjustments to our inspection regime to ensure that we do not put too many people in or set too many differing requirements. We are trying to work closely together.

Ms Byrne: Are the notification and liaison provisions in the bill sufficient to ensure adequate liaison between HMIE and the care commission when matters are referred to ministers? You touched on that issue in your opening remarks. Will a memorandum of understanding between the two bodies be sufficient, or is some statutory mechanism required? Will you expand on how you feel the two agencies will work together?

Jacquie Roberts: We have found that the statutory requirement to collaborate in section 26 of the Regulation of Care (Scotland) Act 2001 has been a really successful underpinning of our working together. Therefore, I am asking whether a statutory basis for liaison and notification is required for this bill? We need to work to ensure that we have the best possible mechanism for working across the organisations.

Ms Byrne: So you are saying that we should consider the situation and take more evidence on it.

Jacquie Roberts: Yes. I am sure that we can work it out.

11:00

Ms Byrne: The care commission works with many other agencies. Given that it is a fairly young body and you are still finding out what the mechanisms are, do you feel that you have enough resources to work with all the different agencies with which you are expected to work on weighty issues? Is there good practice that you

can pass on to us in relation to your work with HMIE?

Jacquie Roberts: It is not a question of resources. As a national body, we find that the best mechanism for working with lots of other bodies is to have a national framework and agreement and then to work out a local liaison and information arrangement, with local authorities and health boards for example.

In working with HMIE, we have found it extremely helpful to have the statutory requirement to collaborate. We have worked hard on dovetailing all our arrangements. We are in the middle of a three-year transition period, which we will evaluate, and we will come back to tell you about the lessons learned about where we and HMIE could move forward and, I hope, reduce further the regulatory burden.

Lord James Douglas-Hamilton: Do you support the general principles of part 2 of the bill, which relates to independent schools?

Jacquie Roberts: Yes. We stated in our evidence that we support the provisions of part 2.

Dr Murray: You have probably answered the question that I was going to ask, which was about your views on the need for a formal mechanism. You have explained to us that you found it useful to have a statutory basis for your work with HMIE.

What are your views on abolishing the independent schools tribunal? Will an appeal to the sheriff be sufficient? That relates to an earlier answer about the length of time that has passed since the tribunal last sat.

Jacquie Roberts: We support the abolition of the tribunal, partly because it has been used so little and partly because we use the sheriff tribunal system anyway for the rest of our enforcement activities.

The Convener: You have identified one or two areas in which there are overlaps of responsibility. In paragraph 5.1.5 of your submission, you say:

"There is a clear overlap in responsibility in relation to the school care accommodation element where the independent school provides residential accommodation."

Will you clarify your concerns in that regard? I was not sure how that relates to registration.

Jacquie Roberts: That statement is really part of our main point about ensuring that we integrate wherever possible so that we do not refuse to grant registration or cancel services that are considered differently by the registrar of independent schools, HMIE or Scottish ministers. We must not have conflict and we are working out the proper mechanisms to ensure that it does not arise.

The Convener: Does that work have any legislative implications? For example, are there measures that should be in the bill but are not, or measures that are in the bill but which do not go far enough?

Jacquie Roberts: No, not at this point.

The Convener: It is a practical issue rather than a legislative issue.

Jacquie Roberts: Yes. It is exactly that.

The Convener: I think that you have had an easier row to hoe than did our previous witnesses. Thank you very much.

The committee will move into private session at this point, but first we will take a five-minute break.

11:04

Meeting suspended until 11:10 and thereafter continued in private until 12:42.

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