

EDUCATION COMMITTEE

Wednesday 12 May 2004

Session 2

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EDUCATION COMMITTEE

14th 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:

Councillor the Rev Ewan Aitken (Convention of Scottish Local Authorities)

Margaret Doran (Association of Directors of Education in Scotland)

Alex Easton (Headteachers Association of Scotland)

Rachel Edgar (Scottish Executive Education Department)

Anna Fowlie (Convention of Scottish Local Authorities)

Colin Mair (Headteachers Association of Scotland)

Peter Peacock (Minister for Education and Young People)

Judith Sischy (Scottish Council of Independent Schools)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament Education Committee

Wednesday 12 May 2004

[THE CONVENER *opened the meeting at 09:49*]

The Convener (Robert Brown): I welcome everybody to this meeting of the Education Committee. We are in public session, so I ask everyone to ensure that their mobile phones and pagers are turned off. We have received apologies from Elaine Murray.

I will use the convener's privilege at this point to mention the disaster in Maryhill yesterday. I ask everybody to stand, if they will, for a minute's silence in memory of those who died in the tragedy. It might also be appropriate to ask that our sympathy for the victims of the disaster be noted in the minutes of the meeting.

Item in Private

09:51

The Convener: Item 1 on the agenda is to consider whether to take item 5 in private. In light of previous similar decisions, can I take it that that is agreed on this occasion?

Members *indicated agreement.*

School Education (Ministerial Powers and Independent Schools) (Scotland) Bill

09:52

The Convener: Item 2 is further consideration of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill. We will hear more evidence from witnesses, whom we are pleased to welcome. Our first panel consists of Anna Fowlie and Councillor the Rev Ewan Aitken from the Convention of Scottish Local Authorities; and Margaret Doran from the Association of Directors of Education in Scotland, who are all old friends in this context. I invite Ewan Aitken to say something to start off with.

Councillor the Rev Ewan Aitken (Convention of Scottish Local Authorities): We find ourselves in a strange position with regard to the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill. Over the past few years, we have been able to develop a positive relationship in the sense that we are able to influence and reflect on policy and policy proposals. The relationship between policy makers and service deliverers has been strengthened greatly; I argue that that has been one of the real benefits of the creation of the Scottish Parliament.

Having set the context, I would say that the bill appears to be coming from left field—it seems to express a different type of relationship, which is of concern to us. We view the bill in the context of one or two other things that seem to be coming through in what might be described as a more centralising agenda; I cite the proposed new transport agency and the proposed single corrections agency as examples.

We are clear that there are distinct roles for Parliament and local government: we deliver education and we understand that it is Parliament's job to make policy. However, we cannot imagine a scenario in which the powers in the bill would be required, and nobody has been able to explain such a scenario to us.

Authorities and schools are both subject to the inspection system of Her Majesty's Inspectorate of Education, which has continually been revised and has evolved into a more sophisticated system, or at least a more sensitive one. There are more intensive inspections of some schools and lighter inspections of others, depending on what is known about them. There are also quality assurance processes in all authorities in different forms, so the proposed powers seem to us to be strange powers to bring to the table. One wonders what would have to happen for them to be used, but nobody has been able to explain that. They have

been described as another tool in the toolbox, but I would prefer to spend time and effort on what we know we need.

The Convener: Does Anna Fowlie want to add anything?

Anna Fowlie (Convention of Scottish Local Authorities): No. I am happy with that.

Margaret Doran (Association of Directors of Education in Scotland): The Association of Directors of Education in Scotland welcomed the Standards in Scotland's Schools etc Act 2000, primarily because it defines education clearly as a right for all Scotland's children, but also because of the clarity that it provides on the role of each stakeholder to promote improvement and raise standards. As a consequence, we regard the proposal to give ministers powers to intervene in certain circumstances as unexceptional; to some extent, it is unfinished business from the 2000 act. If we accept—as we must—that the minister, Parliament, local authorities, directors of education, head teachers and school boards all have duties to promote improvement, we need to be clear about what action they should take if that improvement is not forthcoming.

It is clear that the powers will be triggered by a reference from HMIE, but we must all work together to make the system even more rigorous, based on high expectations and on transparent and objective analysis of performance that identifies what is most effective and what works. Although we accept the intention, there is a need for a sense of perspective and a word of caution. Journalistic and other inquiries have failed to identify any occasion on which the proposed powers of intervention would be used. The current system, with its increasing emphasis on best value and continuous improvement, is working and caution is required for the following reasons.

The most effective quality assurance arrangements require confident and critical self-evaluation. Scotland is highly regarded for its focus on self-evaluation as a strategy for continuous improvement. HMIE reports make it clear that there is considerable scope for improvement in that area, but self-evaluation might not be aided by fear of intervention and the associated negative publicity. Arrangements for inspection of schools, in partnership with authorities and HMIE, have never been more rigorous. It is rare for a head teacher to remain in post if an authority has reservations about him or her and those reservations are confirmed in an HMIE report. Changes are made in consultation with the school board and the local community, but education officials seek to avoid unnecessary damage to a school's confidence.

Inspection of education authorities has a similar effect. Whenever there has been strong criticism from HMIE as part of the inspection of education authorities, there have been immediate management changes associated either directly or indirectly with the findings. ADES welcomes the fact that ministers would have the power to intervene only through authorities, rather than directly in schools. The responsibility for making changes and accountability for changes would lie with the authority. However, as we move towards the second round of education authority inspections, we must consider carefully what has worked. There is no correlation between size and effectiveness. A significant number of highly creditable reports have been gained by smaller education authorities including those in Renfrewshire, Inverclyde, East Ayrshire and South Ayrshire.

10:00

Intervention would be a function of failure to undertake successfully points of action that have been agreed following a school inspection report. Care therefore requires to be taken regarding the framing of such recommendations. There should be emphasis on outcomes and impact. In times gone by there was a tendency for certain recommendations merely to reflect the focus or the fashion of the time, such as minor aspects of five to 14 curriculum arrangements in secondary 1 and secondary 2, the organisation and timetabling of social subjects and the breadth and balance of the curriculum in S3 and S4; for example, having a certain proportion of time for subjects such as modern languages, art and music. One of our secondary schools was pursued strongly over those issues. However, such recommendations do not necessarily always stand the test of time.

Finally, it could be argued that ministerial responsibility for improvement and power of intervention works both ways. Is there now a direct relationship between national initiatives and Scottish Executive accountability in relation to securing improvement? If a policy such as reducing class sizes is faithfully implemented but has little impact, where does responsibility lie for that operational use of resources being implemented in a way that contradicts devolved management and local decision making? Similarly, on the national priorities for education, what is the impact of new initiatives that come out of ministerial working group recommendations seven months into the financial year, but which require associated whole-year funding? What is the resultant impact on the effectiveness of the education functions of an authority, the school development planning cycle and, indeed, local authority three-year budgeting?

The Standards in Scotland's Schools etc Act 2000 is about clarifying what is expected of education. Parliament should continue to move towards an emphasis on outcomes—there is still far too great an emphasis not only on isolated initiatives but on the process. For example, a clear national outcome that would have an impact would be a year-on-year reduction in the number of people who are not in education, employment and training. Effectiveness and accountability, just like quality assurance, are everyone's responsibility.

The Convener: You raised a number of important wider issues, such as the process being less important than the substance of what we are doing. I want to be clear about your position on the bill. I think that you said at the beginning that your association supports the bill, but a good deal of what you said after that seemed to be critical of the circumstances in which the powers in the bill might be exercised. Does the ADES support the ministerial powers of intervention in the bill?

Margaret Doran: I said at the beginning that we support the Standards in Scotland's Schools etc Act 2000. The bill is about completing that act and in that sense, it is logical and makes sense. Our organisation is committed to improvement; I would even suggest that we are an improvement agency, given our active engagement and partnership working with HMIE, the Education Management Information Exchange and the Virtual College on staff development for senior officers. We are therefore committed to ensuring that the system works.

Quality assurance in Scotland is known for self-evaluation; people should not be afraid to say, "This is what we think we do well in and these are the areas we think we don't do so well in." If we stop people self-evaluating publicly and we stop encouraging public debate about how to improve the service by consulting stakeholders on best value, we will close the system down and end up with a solely inspectorial model and not one that includes self-evaluation, which leads to continuous improvement. You heard what I said about authority inspections: we need to stop and think after the first round of inspections and not dwell on the authorities that have not done so well. In a true spirit of partnership with HMIE, we learn from what works and we share it.

HMIE does a very good job of following through recommendations at school and authority level. It is rare that HMIE does not achieve its outcomes in relation to encouraging authorities and schools to achieve improvements—authorities and schools have a duty to secure improvement in school education.

HMIE has also become more willing to work in partnership with education authorities. It is consulting on the new round of performance

indicators for inspection of education functions of authorities. Education authorities increasingly regard those quality indicators as a useful tool for self-evaluation.

HMIE is also increasingly willing to share its skills and expertise through forums, for example. ADES meets HMIE annually in conference. In addition, HMIE is currently training link officers to schools to share the criteria for inspections and thus to improve the quality of support that is given, and the challenges that are made, to schools. HMIE is also becoming more willing to recognise diversity and difference in context in its reports—that is evident in school and authority reports and I welcome that. Given that all that is happening, I hope that the proposed powers will be just a technicality that will not need to be used.

The Convener: I follow that up with a question for Ewan Aitken. The Executive has a role in relation to standards and monitoring in a number of different areas. Given that the proposed powers would be exercised in exceptional cases and only after reports from HMIE—that is an intrinsic part of the arrangement—will you clarify why local authorities regard the bill as a threat to their democratic mandate? The interrelation between authorities and HMIE is quite an important issue.

Councillor the Rev Aitken: We cannot envisage how the relationship between an authority and HMIE, in particular, could break down so completely that the proposed additional powers would need to be used. As Margaret Doran clearly pointed out, a series of positive relationships already exists in the process. HMIE does not sit in a distant place from which it runs in, has a look and then runs out again. Conversations take place constantly between those who provide education and those who are responsible for quality assurance and inspection. That relationship would have to break down completely for the power to be used. We cannot envisage that, which is why we wonder whether there is another agenda behind the proposals. We would realise that the relationship was breaking down long before we reached a situation in which special powers needed to be used for a particular school.

The Convener: Perhaps the argument is that if the relationship has not broken down, the power would not be used, but if an HMIE report—and all the things that go with it—in effect certify that the relationship has broken down, there would be no problem with the power.

Councillor the Rev Aitken: Our time and effort should be put into ensuring that the relationship does not break down, rather than into providing powers that we hope would never have to be used. If there are structural pressures on the relationship—I do not think that that is the case and I echo what Margaret Doran said about the

positive relationship between authorities and HMIE—and the relationship is breaking down, we should concentrate on that, as opposed to on having in the back cupboard a power that we could pull out.

Fiona Hyslop (Lothians) (SNP): COSLA's written submission says quite bluntly:

"COSLA is opposed in principle to this Bill"

and

"COSLA remains of the view that the Bill is a waste of parliamentary time".

How do HMIE, the Executive officials and the ADES respond to the suggestion that the bill's intention is only to close a gap in the Standards in Scotland's Schools etc Act 2000?

Councillor the Rev Aitken: As I said, I do not see a gap. We have created a system of checks and balances that uses HMIE's inspections of schools and education authorities—that should ensure that any problems are followed up long before we need central action. We need to work on the series of relationships, rather than create a power in the background that says, "If you get it wrong, we'll come right on in."

Fiona Hyslop: ADES has said that there is a gap in the legislation. What is it? Moreover, why does it need to be filled if the bill's other objectors have said that the Education (Scotland) Act 1980 already covers the situation?

Margaret Doran: I can see the technical reasons for the legislation. I regard it as the logical end of an argument: what would one do if a school did not meet HMIE's recommendations? However, I have spent all this time describing all the cautions around the bill in order to show that it does not acknowledge the fact that so much good practice goes on in Scotland. It appears to focus only on failure instead of acknowledging and celebrating success, which is perhaps unfortunate. In that regard, I am not just talking about the amount of parliamentary time that is being committed to discussing intervention and the publicity that is associated with that.

Fiona Hyslop: Although it can be argued that the proposed legislation is technically logical, it is still not clear whether it is worth spending parliamentary time and effort discussing it and putting at risk the positive relationships among local authorities, HMIE and the Executive. Is COSLA's central objection more to do with the fact that the bill might do more to damage that relationship than it would to resolve certain problems?

Councillor the Rev Aitken: The bill's introduction implies a lack of trust. We believe that we have a trusting and positive relationship that

has made real progress so we wonder why we need the bill. It might be the logical conclusion of a theoretical argument; however, in the real world, although there are constantly many new things to do and although improvements always have to be made, any approach should be based on positive relationships. In that regard, the prospect of the legislation is hanging in the background and could undermine current relationships. As I said, our position needs to be seen in the context of COSLA's concerns about the wider political picture in relation to the proposed transport authority and single correctional agency and other similar proposals.

Fiona Hyslop: We have not yet heard any examples of cases in which such legislation might have been used; indeed, I understand that none of the Executive officials could give us any. However, they argue that the bill is needed now to address any future situation and to act as an end-point in the inspection process. What would act as an end-point if the bill were not passed?

Margaret Doran: As I said, I can see the technical need for the legislation. However, it is everyone's duty to secure improvement; if a school or education authority does not respond to HMIE recommendations, someone somewhere is already responsible for intervention. If we followed the argument to its logical end, the legislation might well be required at some point. That said, given the quality of the current inspection process and the fact that quality assurance processes in authorities and schools are improving, I imagine that it will not be needed.

Councillor the Rev Aitken: The 1980 act already contains powers that should not be inadequate in addressing the extreme situation that Margaret Doran highlighted. However, the possibility of such a situation happening is so remote, that we should perhaps focus on preventive measures that would ensure that it did not happen in the first place.

Fiona Hyslop: In its written evidence, COSLA says that the provisions in the 1980 act are more severe than those in the bill. Given the choice, would you rather retain the provisions in the earlier act or have this new piece of legislation?

Councillor the Rev Aitken: We have a better understanding of the provisions in the 1980 act because they already form part of our relationship with HMIE and the Executive.

10:15

Anna Fowlie: It is COSLA's view that the Local Government in Scotland Act 2003 provides for a best-value regime that has the powers to address all the issues that we have talked about today, quite outwith education legislation. The 2003 act is

supposed to cover the whole of local government, providing the power to scrutinise decisions, to examine failures and to ensure continuous improvement. It is all already there.

For COSLA, one of the central questions is why we are focusing on the matter when the provisions are already in place, whether in the 2003 act or in the 1980 act. We would go with the 2003 act as a better model, but the debate must be seen in context along with other issues that seem to be giving rise to criticism of local government and which show a lack of trust in local government's ability to deliver services. That is why we have reacted as we have; we think that the powers are already there.

The Convener: For the avoidance of doubt, could you explain the process under the 2003 act? Does the act cover failures by the education authority? If so, what would happen in those circumstances?

Anna Fowlie: As the consultation paper says, the bill proposes a parallel process that mirrors the existing process. That is why we are asking why we need another process. If an authority is failing in any of its services, the Executive can ask why; it can also examine the situation. The authority will get another chance, and a scrutiny element is involved. I do not know all the technical details, but it is a two-stage process. The authority will be open to scrutiny and must justify its failure to deliver a service and show how it will deliver that service to the standard required.

Rhona Brankin (Midlothian) (Lab): COSLA's response to the consultation states:

"It is clear that the new powers are being driven by a political agenda that promotes the view that local government cannot be trusted to provide the quality of services expected by the public".

You also say that the Scottish Executive has not been able to give you an example of a scenario that might arise under those circumstances. Could you describe the sort of scenario that gives rise to your concern about the bill?

Councillor the Rev Aitken: Because I have yet to work out a scenario in which the Executive thinks that the powers might be used, it is difficult to understand the triggers that people would be looking for before the Executive would say, "Right. It's all over. We're coming in." We are concerned that the triggers would not be clear and that we would not see them. Nobody has said, "If A, B, C, D and E don't happen, we will use these powers." We are concerned that the powers would be used before all the criteria were met—or, indeed, not met. It is difficult for me to envisage a scenario in which the powers would be used. We are concerned that they would be used before all the other things had happened, which would

undermine our ability to deliver as we have been asked to deliver.

Rhona Brankin: You can understand our difficulty. If you say that you cannot envisage a scenario in which the powers might be used, it is hard to understand your concerns.

Councillor the Rev Aitken: As I said, our concerns must be seen in the wider political context of why the powers are being held at the centre. We understand the nature of the relationships and how we monitor and continually reassess what is going on in terms of quality assurance. We understand the role of HMIE; we also understand that we are under the HMIE inspection regime and that a series of things can happen. However, it is difficult to see why the powers are being held back. It feels as if we will, at some point, have to send in the cavalry, but if that is triggered in some way—if there has been a failure to notice the breakdown in relationship that triggers such a response in the first place—there could be a sense of failure all round. We need different responses to the breakdown of relationships, as opposed to wheeling in that response to a specific school.

Rhona Brankin: The powers already exist, you say, under the 1980 act, and there was no evidence of your being concerned about them.

Councillor the Rev Aitken: We live with the fact that those powers exist, but we do not understand why additional powers are needed. That suggests that there is still a sense in which local government cannot be trusted to do the job that it has set out to do.

Ms Rosemary Byrne (South of Scotland) (SSP): I would like to move on a bit and get to your current position on the existing legislation. Can you take us through the process that you have put in place under the existing legislation to deal with a school that is not complying with HMIE recommendations? I ask COSLA to answer first, from the perspective of the local authorities, and Margaret Doran to answer second, as a director of education.

Councillor the Rev Aitken: Our job would be to work with directors to deliver.

Margaret Doran: For quality services to be provided to children—that is what it is all about—there needs to be a compelling story in a school or an authority. It is all about the culture of the school, which is difficult to measure. There will be a commitment from everybody in the school, in the community and throughout the authority to be loyal to that compelling story. That is the ethos and the starting point for an effective organisation, whether it is a business, a local authority education service or a school. That creates the climate for mutual trust and respect, and when there is mutual trust

and respect, support and challenge can be blended in a way that means that people do not see them as a threat. That is a quite helpful way in which to look at what we are doing in authorities, which is very process focused. We need to be clear about the role of the authority and what is being done nationally.

In my authority, there is a clear quality assurance policy, which is that quality assurance is the responsibility of everyone—every child, parent, stakeholder, council member and member of staff, including, as I said earlier, Scottish ministers. However, it is all based on self-evaluation and children being able to say, “This is what I do well and this is what I need to do to achieve success.” It is also about the staff, parents and school board contributing to school improvement. They are also mentioned in the Standards in Scotland’s Schools etc Act 2000, in the context of the contribution that they must make in raising the level of achievement in the school. Therefore, they need to be clear about their role.

We also have quality intervention. I know which schools are on stages 1 to 4 of staged intervention. I know that, when a school is on stage 1, there is concern and that officers will support and challenge. We have some schools—very few—on stage 4, which requires considerable additional resources, intervention and perhaps a peer head teacher working alongside the head teacher and staff. There will be a clear action plan and an expectation that the school will achieve the targets in that action plan. The action plan will be shared with the school board and all the staff in the school. So, through quality intervention, there is a level of intervention at authority level that is carried out in a safe environment in which everybody is committed to securing improvement.

We also have quality audit teams in the authority, whereby peer teachers form a team of two or three people, along with an officer and, perhaps, other services if the team is considering a specific aspect of policy development, such as child protection. The team will audit the quality of provision in a school, sometimes against the HMIE framework—the HMIE indicators in “How good is our school?”—and will look at areas of strength and areas in which it can be supportive and help people to take the next step. In any effective authority, the link officers will know the schools very well and there will be on-going support. In our case, there might be five quality assurance meetings a year, with signed-up action plans following each meeting. We also have very good performance information—the school and the authority will also have that—and we will know when to intervene if we think that a school is underperforming.

There is an increasing strength to the quality assurance role in authorities that is perhaps not being recognised. It is linked to the sharing of expertise by HMIE with authorities, which know the schools. Of course, HMIE has now moved to proportionate inspections and there is more onus on the authority than on HMIE to secure improvement. We have to recognise that. I am sorry that that was a long answer.

Ms Byrne: It was a helpful answer. We are aware that there is a lot in place and I find it difficult to envisage a local authority stepping out of line and not providing the level of support that you indicated. I also have difficulty finding anything that would convince me that section 2, which deals with ministerial intervention in local authorities, is required. As a former teacher, I know of the thorough scrutiny that goes into inspections and the will within authorities to put right anything that is found not to be right. I cannot envisage a time—

The Convener: Do you have a question, Rosemary?

Ms Byrne: Yes. I want to pick up a bit more on the areas that Margaret Doran covered in her introductory statement. I thought that there was a note of concern in your statement, Margaret, about aspects in schools that are not as thoroughly inspected as other aspects. I am referring to the separate funding bases that go into schools for priorities that are not part of core work, if you like. I felt that you were implying that more scrutiny is needed for such areas to ensure that the funding and spending are properly managed.

Margaret Doran: It is not a question of having more scrutiny. I just believe that there should be scrutiny and clarity about roles and responsibilities in relation to the five national priorities for education. We arrived at those five broad aims to reduce the work load and pressure on people from initiatives and to get us to a point at which there is clarity about the purpose of Scottish education. Under those broad aims, there is a growing list of priorities, initiatives and funding sources. For example, £0.25 million might come into our authority in November and we would then quickly have to produce a plan for it. Within a few months we might receive another request: “Here is another £14,000. Could you give me a plan for it, please?” Therefore, there are issues around trust, devolved decision making and being outcome focused.

We need to sharpen up. For example, 20 indicators in the national priorities for education have not been refined yet, but they will be reported on to the Scottish Parliament in 2005. We must get back to a point at which there is clarity of expectation nationally for outcomes under the five priorities and at which improvement is reported.

One of the best things that we ever got involved in was the pilot on local outcome agreements. We have clarity about that. We are looking for improvements in achievement, health, social inclusion and integrated working. All our plans have that embedded in them and people are showing improvement in what they are doing. People recognise the local context. Improving achievement in regeneration areas is a different matter from doing so in more affluent areas and resources must be targeted accordingly. Therefore, there is an issue about getting back to clarity about broad outcomes nationally and securing improvement.

Locally, we are back to the trust issue. Let us get on with delivering the goods locally for local priorities. However, the number of initiatives that we are involved in just now has a knock-on impact on the effectiveness of education authorities. I do not know of an authority in which people are not working 70, 80 or 90-hour weeks. That is a phenomenal work load, much of which comes from initiatives from a national source. We need to stop and think about that—together.

Ms Byrne: I wonder, convener, whether it would be possible for Margaret Doran to put something in writing about the issues that we have just discussed. I think that that would be of interest to the committee.

The Convener: Are there particular issues there? She has given a lot of information.

Ms Byrne: I am talking about her latter comments about the priorities in education.

The Convener: Can you put something in writing about that, Margaret?

Margaret Doran: Yes.

Lord James Douglas-Hamilton (Lothians) (Con): I have a question for Ewan Aitken. He has implied part of the answer, but for the sake of clarity and to be absolutely certain I will just ask the question. We have heard from Scottish Office officials, who suggested to us that it would ultimately be for the local authority to implement specific actions to ensure improvement after an enforcement direction has been issued. Would that alleviate some of your concerns about a potential threat to local democracy and local decision making?

10:30

Councillor the Rev Aitken: I am sure that you heard from Scottish Executive officials, rather than Scottish Office officials.

What the officials suggested does not really alleviate our concerns, because it still feels as if the enforcement direction would undermine the

role of local government as a legitimate tier of government. Given all the different issues that Margaret Doran has outlined, such as sub-committees on standards and the new role of quality improvement officers, I cannot see how the relationship could break down to such an extent that enforcement directions would be necessary. An enforcement direction would suggest that the authority has somehow failed, but we are saying that we have enough of a process in place to ensure that we do not get to that stage in the first place and that if the Scottish ministers issue an enforcement direction, they would undermine our role as the service deliverers.

Lord James Douglas-Hamilton: I was referring to Scottish Executive officials—I hope that I used that expression, because I certainly meant to.

In your written submission, you describe the bill as

“a waste of parliamentary time”.

Indeed, you go further than that; you say:

“The threat of intervention goes against the grain of the outcome of the National Education Debate”

and imply that it could threaten the reduction of bureaucracy, the revised devolved school management guidelines and flexibility for local decision making. Is your view of the bill primarily that it is a waste of parliamentary time or that it could have damaging effects on local government?

Councillor the Rev Aitken: As I said, I think of the bill in the context of a number of questions about the relationship between national and local government, and I am concerned about that. As I said right at the beginning, the relationship that has been built up over recent years between the Scottish Executive and local authorities has been very positive. I have been to the Parliament three or four times as part of the process of having a direct influence on the direction of policy. It is not our job to set policy—that is the Executive’s job—but we are partners in that work, and it has felt like a partnership. All the points that are outlined in our evidence would be undermined if that relationship was lost, and that relationship is what we are striving to keep. The relationship needs to be positive, although we do not need to agree—absolutely not—and that is why I say that the good things that have happened would be undermined.

Lord James Douglas-Hamilton: So you would prefer not to have the bill, because it could affect trust that exists between local government and the Executive.

Councillor the Rev Aitken: Yes, that is right.

Mr Kenneth Macintosh (Eastwood) (Lab): You have made your point forcefully. I will pick up on

what you said last. The relationship between local government, the Scottish Executive and the Scottish Parliament is positive. It is not one-way traffic, and devolution has not centralised power in Edinburgh—at least, I do not feel that it has. Local government has, for example, the power of general competence, three-year budget reviews and outcome agreements, which are all positive.

The Executive states that the bill's purpose is not to centralise powers. You point out in your submission that the proposed power is less draconian than the power in the 1980 act, so the bill could be considered to be clarifying the relationship between the Executive and local government. Could the minister, who will give evidence to us later, say anything to reassure you that the bill is a logical step and that the motivation behind it is to close the gap that Margaret Doran has identified and clarify relationships, not to centralise power or attempt to abuse the relationship with local government, which the Parliament and Executive are conscious is good?

Councillor the Rev Aitken: If the minister feels that he needs an additional way of intervening, I would like him to do that differently; I would also like to talk to him about doing it differently. Ultimately, it feels like he is still holding back the final card. That is not a helpful approach, because it concentrates on failure and the failure of relationships, and we need means of communication that deal with those failures before we get to the stage of ministerial intervention.

Margaret Doran: I commented earlier on size and effectiveness. An article in *The Times Educational Supplement Scotland* two weeks ago alleged that the minister had suggested that small authorities could learn a lot from larger authorities. I have illustrated that that allegation was not sourced in fact, given the evidence to date. There are concerns throughout the education community that the message that size matters and that we are going to organise education authorities in such a way that smaller authorities will learn from larger authorities is not at all helpful. We need to be clear about that. I thought that the way in which we move things forward in Scotland is through consensus and developing things together from an idea and working them through, not by reading about them in the education press—the article was the first that ADES heard of that particular issue.

To conclude on what was said earlier, local government is confident about and committed to delivering on the outcomes. Whatever happens at the end of the day, if the bill is passed ADES will still regard it as a technicality and, no matter what, we will continue to deliver on the quality assurance processes that we currently deliver on. I am sure that the measures will not be required.

The Convener: I have a point about triggers, which Ewan Aitken touched on. Margaret Doran

talked about the process. If there is still an issue following an HMIE inspection, the inspectors can trigger the powers in the bill. That triggering of the process by HMIE was deliberately put into the partnership agreement. I say that as I was one of the Liberal Democrat negotiators at the time.

Despite your reluctance to comment on the detail of the bill, could the situation be clarified by identifying clearly on which triggers HMIE is entitled to report further? I say that against the background of a number of comments that have been made on the style of education and how people try this and that. We do not want to sit on that with the dead hand of centralising conformity. Are there certain areas in which it might be more appropriate for HMIE to say, "This is a significant quality issue that has not been addressed and we would like the minister to look at it"?

Councillor the Rev Aitken: If you are saying to me that, if the bill is passed, what do we do to ensure that it does not undermine—

The Convener: I am saying something different. The committee might be minded to examine suitable amendments to the bill in light of evidence that has been received. If it is so minded, what sort of triggers would you like to restrict HMIE to? Can you pin down things more clearly? You may want to think about that and come back to us, as it is important. We must focus on the process, the triggers and what the end result might be, against the background of what the Executive clearly wants to do.

Councillor the Rev Aitken: Clarity would be helpful. We would appreciate being given the chance to say to the Executive, "If it is going to happen, this is the way it should happen." That would be helpful and would be a good thing to do, if we are going to have to live with it.

The Convener: Is the detailed expertise in the hands of ADES?

Councillor the Rev Aitken: Absolutely.

The Convener: You might have further observations to make, either today or later, on how to focus in more. Whether or not legislation is required, what are the triggers that move us beyond HMIE, as opposed to the minor things that people spoke about earlier in their evidence?

Margaret Doran: I would like to go back to ADES to get views on that and come back with them.

The Convener: That would be helpful. Thank you. That was a useful session. We are pleased that you attended this morning.

I welcome our second panel, which comprises Colin Mair and Alex Easton, respectively the

president and council member of the Headteachers Association of Scotland.

Alex Easton (Headteachers Association of Scotland): It is the other way around. I am the president.

The Convener: In that case, my briefing is wrong. I apologise. Who is going to kick off?

Alex Easton: First of all I will give a brief background. HAS is delighted to be here. Our relationship with the Scottish Executive is better than it has ever been, with briefings and consultation on all kinds of issues. Since we removed ourselves from the neutral position in relation to teachers, the engagement has been better than ever. We are absolutely with the Executive on the five national priorities and on closing the gap between rich and poor—we are as one on all the inclusion issues. Of course, we disagree on job size and toolkit but we will not go there today.

I have a few adjectives that describe how heads feel about the bill. The first is “open minded”, as is to be expected. Secondary heads are a nice cuddly bunch, as you will all remember from your previous work. We are open minded; we will work with whatever the Executive and Parliament decide. We are also wondering and sceptical. We will certainly be watching closely to see what happens, because we believe that we already have a good inspection model, although we have a different slant on it. My school is linked with schools in Odenwald in Germany, which would give their back teeth to have the highly professional and challenging inspection regime that we have in Scotland.

We are moving on to a proportionate inspection model. As members will know, all 32 local authorities will soon have had a benchmark inspection; I think that 24 or 25 have been done and the others will be done soon. The authorities all have their own improvement agenda. Schools are inspected rigorously and their achievements are noted. Every school is full of achievements, even those whose names are most blackened in the press. However, schools also have areas for action.

It is not the inspection that is proportionate, but the follow-up. We are talking about the ability of the school and the local authority to proceed with the improvement agenda. That agenda can involve a light touch, if the inspection has been good and the local authority has robust quality assurance and internal mechanisms. However, we welcome the fact that, in future, HMIE will be highly interventionist in schools at the other end of the spectrum. HMIE will be doing extended monitoring and engaging more with the schools; it will not just be taking a snapshot of the situation

and going away and leaving the school. As I said, there will be increased HMIE input in schools that are—we do not use the word “failing” of schools in Scotland—less robust and at the poor end of the spectrum. There will be much greater HMIE involvement. The follow-up, rather than the inspection itself, will be proportionate.

10:45

Heads believe that that is a sound model that has a good track record. We believe that only an unprecedented failure would require intervention. The challenge is to name any historical point at which using the proposed power would have been necessary. That challenge has not been met and we think that the new proportionate follow-up system is even more robust than the previous system. If there were a significant number of interventions, there would be a huge question why the power has not existed before. However, nobody suggests that there will be a huge number of interventions. Given that, we come back to the old cliché, “If it ain’t broke, why fix it?”

There are many other exciting things that we want to get to grips with, such as the inclusion agenda, through which we are tackling the gap in attainment between the poorest children and children from other backgrounds—sorry, I will not bore you—or the fabulous £2 billion of estate finance to build new schools. Those are the big, meaty issues to work on. However, if the Parliament chooses to go down the route proposed in the bill, we will watch from the side.

I have a philosophical point about the climate in education. I have been in the education game for 35 years, always in working-class comprehensives, during which time I have found that, by and large, naming and shaming children and parents is rarely a good strategy. The same would apply to a school that ended up the subject of intervention. Although the failure would be not just the school’s, but the local authority’s and the HMIE inspectors’ who had been engaged in the follow-up work, intervention would not help the morale of staff, pupils or parents. No doubt, such a school would have challenging circumstances. I will not rabbit on, but the model that I described briefly is about challenging rigorously, setting targets and supporting and monitoring all the way through. That is a robust model and it is the way ahead.

I am sorry for the way in which I have spoken, convener, but in schools we get excited about education.

The Convener: That was helpful. I asked the previous panel about the trigger under the bill to start the move from the inspection process to HMIE reporting to the minister. Would there be

any advantage in focusing a bit more on what might or might not be reportable to the minister at that point?

Alex Easton: The proportionate model is a new regime—it began in January—and therefore, by definition, the first follow-up inspection will not happen for another year. However, as I have described, schools that are likely candidates for intervention, if there are any, will have had the new proportionate input, which is much greater. That is a good use of HMIE. Rather than spreading its input evenly, it will concentrate its efforts where they are most needed. During the period of the follow-up action plan, which would be triggered only after a failure to meet the action plan of a first inspection, the HMIE inspectors and the local authority would be heavily engaged with the school. As I understand it, the trigger point would be if there was an unprecedented failure of the combined efforts of the school, the local authority and the HMIE inspectors through the follow-up action plan.

The Convener: To summarise, are you telling the committee that the view of your organisation is that the power is not necessary?

Alex Easton: It would be wrong of me to say that the power is not necessary, but I cannot envisage it being used. The new system has not yet been fully tried and tested. The bill might have been more understandable three years ago, when it might have been argued that there were instances in which the inspection follow-up model had not worked—although I do not believe that there were. However, we now have a new regime with a much greater input of effort to schools that have the most areas for action. I am worried about the signal. If a school really struggles—which will partly be the school's fault but also the fault of the local authority and HMIE—the naming and shaming culture could well be devastating for youngsters in that school.

Graham Donaldson, with whom we work well, has explained to us that the bill is the natural final dot in the sentence of the Standards in Scotland's Schools etc Act 2000. I am not sure whether we should legislate for something that we cannot envisage being necessary. To use an analogy, an intervention would be a sort of big brother execution—we hope that we never have to hang anybody, but we still want capital punishment on the books. Obviously, the matter is up to the Parliament.

The Convener: The argument has been made that, with the improvement regime, we are dealing not with a level playing field, but with something that we want to get better over time. In that context, the challenges on local authorities and schools are greater. Does that give a different

context to the need for the final full stop in the toolkit that is available to ministers?

Alex Easton: Ideally, I would hold the proposal in abeyance and review the situation in two or three years. That is not procrastination. I would want to wait until there was evidence that the new proportionate model with proportionate input had delivered. I confidently predict that it will deliver—three years from now, you can bring me back and hang me if you have found schools in which it has not worked.

Lord James Douglas-Hamilton: You have probably answered the greater part of the question that I wanted to ask. However, for the sake of clarity, I will run through it quickly. We received evidence from Scottish Executive officials that the power of ministerial intervention is necessary to make certain that ministers can completely fulfil their duty to secure improvements under the Standards in Scotland's Schools etc Act 2000. If you had to say point blank whether you think the power necessary, on which side of the argument would you come down?

Alex Easton: Ministers are entitled to be able to ensure that improvements are carried out and that the money is spent properly. The situation is too important for there not to be rigour. What happens to the money that goes to local authorities for their quality assurance? What is the function of the HMIE inspectors? Not only would invoking the power mean that the school was named and shamed, but it would be an indictment of the local authority and HMIE. I am sorry to be so blunt.

Lord James Douglas-Hamilton: Do you consider the power to be necessary or not? Would you leave the matter to the discretion of the Executive?

Alex Easton: The use of the power would be a matter for the discretion of the Executive. Although I cannot envisage circumstances in which it would be necessary to use the power—unless the new inspection model failed—I think that it would be useful for the Executive to have the power in reserve.

Lord James Douglas-Hamilton: Several times, you have talked about schools being named and shamed. That is not at all the drift of the evidence that we have received from officials. Do you think that the proposals could work out in that way?

Alex Easton: I assiduously read what the Scottish media write about education. Even at the moment, if there is something negative about a school, the media will unfairly pillory that school—I will not name schools, but we all know of examples of that. The intention might not be to name and shame a school, but we can be certain that the press would name and shame the first school in relation to which the power is used.

Mr Macintosh: A lot of the concerns that have been raised about the bill have focused on the relationship between the Executive and local government. How will the bill affect the relationship between head teachers and their local authorities, which is developing in Scotland along a certain line? Not all head teachers get on with their local authorities and we must take into account the balance of power in that situation with regard to making decisions in the interests of the children. When the Executive intervenes in a situation, that intervention is often followed by a direct injection of resources. Do you think that schools might seek Executive intervention as a means of bypassing their local authority and perhaps pursuing an agenda that is different from that of the local authority?

Alex Easton: That is an interesting and complex question. HAS has no wish to minimise the position of local authorities. Of course, the situation is different in England. We are committed to our approach because we believe that education is not a stand-alone element but is tied in with all the other elements in the community in an holistic way. If the Executive had the power to intervene, I do not think that the relationship between schools and local authorities would change. Quality assurance has layers like an onion. Schools carry out quality assurance work, as do the local authority and HMIE.

There has been a wide range of outcomes from local authority inspections, as you know. However, action plans are in place and we hope that they will succeed in raising schools to around the same level. Yes, some heads can be individualistic and tetchy, but that is because we are passionate about our schools and local authorities vary in their approaches. That situation is healthy, provided that professional rigour is maintained.

Fiona Hyslop: Is there anything in the bill that might change the relationship between head teachers and HMIE? If schools knew that a big stick might come down on them, would their relationship of trust with HMIE be altered?

Alex Easton: HMIE will be pleased to hear me say that our relationship is excellent. It is not a cosy relationship. HMIE is rigorous—it uses the critical-friend model and it challenges robustly where that is necessary. If HMIE triggered the use of the power, as the bill provides for, it would also trigger severe condemnation of itself because, as I said, it would have been involved in the process that led up to that point. If the power was held in reserve to be used in extreme circumstances, I do not envisage that that would affect the normal relationship between head teachers and HMIE, which is robust and good for Scottish education.

Mr Adam Ingram (South of Scotland) (SNP): I want to pick up on your comments in the context

of HMIE's observations on the bill during the committee's evidence-taking session last week. HMIE said that it envisaged the use of the power as the "end point" of the inspection process. However, you have said today and we have heard from others that inspection is an on-going process of continuous improvement that involves work all the way down the line and has no end point, because it is not possible to achieve perfection. HMIE would be extremely unlikely to call a halt and say that it could make no further progress. Might not the trigger come from the politicians?

Alex Easton: During the 18-month follow-up period after an inspection, interim reports are produced—a midway report is certainly produced in the Falkirk Council area, which is my area. I imagine that if the interim report did not show significant progress—in other words, if the local authority officials and local HMIE inspectors were not delivering improvements—the authority would rightly be all over everybody like a rash.

Ms Byrne: In our questions to you and to previous witnesses, we have tried to find a scenario in which the proposed power might need to be used, but nobody has come up with one. People have compared the experience in England and Wales with the situation in Scotland, although that is different. We have seen the headlines about indiscipline in schools in England and Wales and about the hit squads that go in to sort everything out, but Scotland has never been in that situation because our system has always been rigorous and local authorities and HMIE have always worked well together. Can you envisage a situation in which the power might need to be used?

Alex Easton: HAS works with English colleagues, but we do not use the phrase "failing schools", which is used in England. There have always been what we call action plans. I will not name individual schools, but in one school the initial inspection report caused such concern that £300,000 of action plan money was put into the school. In England, that school would have been labelled a failing school. There have been examples of action plans during the past years, but there has not been a single instance in which there was no appropriate write-up for the inspectorate during the 18-month follow-up period. To give you an honest answer, I cannot envisage a situation in which the proposed power would be needed.

Ms Byrne: Are you saying that a mechanism is already in place to put more funding into a school if HMIE and the local authority consider that that would improve the situation?

Alex Easton: I could name schools in which that has happened.

Ms Byrne: That is helpful.

Rhona Brankin: An earlier witness suggested that there might be some political intent behind the bill. Do you accept that the bill's intention is to improve the lives of children and to ensure that the ultimate accountability lies with the minister?

11:00

Alex Easton: This is not a political answer. I heard Mrs Doran say that the bill deals with "unfinished business". That may be. We are open minded about the bill, as I said. We will watch what happens and we are sceptical, but I have not said that we are hostile towards the bill—if the bill is passed, so be it. However, you must understand our puzzlement. There are so many other exciting challenges for schools that we wonder why it is necessary to introduce a power that will exist just in case.

The Convener: May I challenge you a little on that? You suggest that the quality system is great and that it represents the best of all possible worlds. That is all terribly cosy, but there are differences in attainment between local authorities and between schools and significant criticism is made about whether Scottish education is quite what it was in days gone by. Against that background, is there not a case for saying that the minister should have the final power if HMIE raises issues that need to be addressed and they are not dealt with fully by the local authority or the school?

Alex Easton: One could argue for the existence of such a final, almost irrelevant power, but I would rather take on board the comments that were made last week on parenting and social issues. The reason why Glasgow schools do more poorly is not that they have poorer leaders—I know those folks and they work their socks off. Schools are part of integrated learning communities; they should be seen in the context of a range of other issues, including health and social issues, on which we are doing joined-up work. I hope that I did not convey any complacency about where we are and where we want to go. The final power is marginal, if not irrelevant. Driving forward other measures, such as the new community schools, will be much more beneficial to the youngsters.

The Convener: You said that there is a good regime and the committee heard HMIE express the same view, but are there things that need to be done at an earlier stage to sharpen up the improvement agenda? That might include the way in which inspections take place, the way in which issues are taken up and the things that the school should identify. Is more activity needed in that area to achieve the on-going challenge and improvement that everyone wants?

Alex Easton: We will be interested to see how

the new regime does. It is interesting that Scotland is going for a generational cycle of inspections that will cover every child during their seven years in primary school and six years in secondary school. In England, David Miliband and David Bell are introducing a regime in which there will be shorter inspections every three years. Those mid-term inspections will be held at short notice and they will have a light touch. There is a danger in such a regime; no matter what people say, inspections are traumatic and it is possible to monitor schools so much that things do not happen.

One option is to have more light inspections focusing on whether the 32 local authorities are being robust, given that they should be the key players in inspections. In an ideal world, there should be a mechanism to monitor local authorities, as is the case with the Scottish Qualifications Authority, where there is sampling to ensure quality. That would ensure robustness in the work that local authorities do. The role of HMIE in going into schools would be to ensure that local authorities are meeting their responsibilities. You asked me to say what I think and I spoke personally; my final comments were personal rather than reflective of HAS policy.

The Convener: My final question is on the part of the bill about independent schools. A number of technical points have been raised by the Scottish Council of Independent Schools, from which we will hear shortly, but does your organisation have any views on that part? Should the committee focus on any particular points in relation to regulation?

Alex Easton: I will pass that question to my colleague. You will be pleased to get a rest from my voice.

Colin Mair (Headteachers Association of Scotland): A large number of senior managers of independent schools benefit from involvement in HAS; we enjoy participating in Scottish education in the widest sense and working towards similar aims under the 2000 act. In that context, HAS applauds the principles of the part of the bill on independent schools. We appreciate that there is a need to update the regulation system and to ensure that it is applied consistently, with action when necessary.

However, we have one or two observations to make. Clarification and perhaps reconsideration of definitions would be helpful in some areas. The bill is bound to have resource implications, in particular for independent schools. Although that is to some extent inevitable, we hope that those could be minimised. When the resource implications are being considered, all schools would benefit if some account could be taken of the large number of official returns that schools are required to make. Obviously, the bill will result

in one or two extra returns being required. A frustration for schools is that many returns are required in different formats by different bodies. If the bill provided an opportunity to streamline those returns, I am sure that not only independent schools but schools generally would be in favour of that.

The Convener: Have you read the written evidence that we received from the Scottish Council of Independent Schools?

Colin Mair: Yes. I know that Judith Sischy will speak later, so I will not steal her thunder. She will more than capably deal with that issue.

The Convener: Finally, I want to ask further about the regulatory power, which SCIS thought was quite wide. The SCIS submission observes:

"The Bill gives power to Ministers 'to impose any conditions on the carrying on of a registered school, or vary or revoke any such condition as they think fit'."

Do you have any concerns about that?

Colin Mair: Yes. We have seen the submission and we agree with SCIS on that issue. It would be helpful if the bill gave some clarification or definition of what evidence would be required for those conditions. That might allay some fears about the width of the powers.

Fiona Hyslop: I have a more general question. As the Education Committee of the Scottish Parliament, we are here to serve the people and pupils of Scotland, so I was interested to hear you say that we should put the bill on hold. In order to take evidence on the bill, we have had to put on hold our inquiry into child protection. We should be spending our time on other exciting issues, such as the national priorities in education that you mentioned, rather than on the bill. If our committee decided to put the bill on hold and return to the national priorities in education and our inquiry into child protection, what kind of signal would that send to the education professionals and the education establishment?

Alex Easton: It would be an incredibly positive signal. It would be seen that you were listening and working jointly. The bill would still be there, but people could see whether we can deliver the improvement agenda without it. I repeat that, if you go ahead with the bill, we will co-operate and be open minded, but I have answered you honestly.

Rhona Brankin: Can I just get you to state whether you recognise that the bill is needed to finish unfinished business, in that it will ensure that ultimate accountability for ensuring that every child in Scotland has proper, adequate, efficient and excellent education lies—quite correctly—with the minister?

Alex Easton: Legally and technically, that may well be the case, but I am not a lawyer.

Educationally, I hope that the bill will be irrelevant. If it is irrelevant, that will be a sign of success, because it will mean that the system is working well.

The Convener: This has been a useful session. If you want to come back to us on anything, feel free to write to us. Thank you.

Alex Easton: Thank you for your courtesy.

The Convener: I have had a request for a comfort break before we move on to the third panel, so let us break for five minutes.

11:09

Meeting suspended.

11:21

On resuming—

The Convener: I welcome Judith Sischy, who is the director of the Scottish Council of Independent Schools. I believe that she would like to say something to kick us off.

Judith Sischy (Scottish Council of Independent Schools): The points that we wish to make are, we hope, clear in our submission. In principle, the bill has not upset us greatly. We feel that it provides an opportunity to tidy up and update the law in this area. The regulations that govern independent schools are pretty ancient and are full of antique language. They could do with tidying up and modernising.

The bill introduces some consistency in the reasons for which the Scottish Executive should accept an independent school on the register and the reasons why a school might be unacceptable or might need to be removed from the register. The bill also updates regulations to take into account important pieces of legislation such as the Children (Scotland) Act 1995 and other acts that are more recent than 1957.

The bill represents an opportune tidying-up process. We are concerned, however, about some of the drafting. We have looked at the bill in some detail, and our main points in that regard are under the heading "Omissions" in our submission. They are probably accidental rather than deliberate omissions. Although, for example, I am sure that ministers would not take powers to close a school without having evidence, I think that that and other details should be written into the bill. I am happy to answer members' questions.

The Convener: Your written evidence has been very helpful. The first point that I have to raise relates to paragraph 6, on pages 2 to 3 of your submission, on notices of complaint. It states:

"In cases where substantial resources are needed to meet the conditions, it may be helpful to allow the school time to find the resources".

Is that an important issue? Is there often such a concern about resources?

Judith Sischy: As I understand the bill, if HMIE or any other statutory body is very unhappy about a school, it can take action in different stages. It can take urgent action, or it can disqualify part of a school. For instance, if a residential part of a school were considered to be unsafe, the body might choose to disqualify that part of the school while allowing the rest of the school to continue. The school might well need resources and time to make good its deficiencies. It is important for schools to be allowed to do that.

The Convener: The other point that I wanted to make was on paragraph 7 of your submission, on regulation. You observe that the bill gives ministers some quite wide-ranging powers, including the power to

"impose any conditions on the carrying on of a registered school; or ... vary or revoke any such condition ... as they think fit."

Is it your view that that power is too wide? If so, how could it be narrowed down?

Judith Sischy: I think that that power is too wide. I am not a legal draftsman, but I am sure that there are ways in which it could be narrowed down in subsequent regulations and guidance to set out when and under what circumstances it would be used. I was quite surprised—as were all our colleagues—when the section containing that power was published. For someone who is running an establishment and is subject to close and rigorous scrutiny by HMIE and all the other bodies, it is alarming to think that ministers can suddenly have the power to impose any conditions that they think fit. That seems quite wrong.

The Convener: You make the point that the notice of complaint procedure has not been used very often and that, therefore, your experience of this area is limited. Would there be any advantage in linking the imposition of conditions to some sort of recommendation by HMIE or in putting it into a process-type arrangement, as has been done with mainstream schools?

Judith Sischy: Yes. The power is probably intended to be used to effect improvement. If it were set in that context, one would understand it more. It needs to be set in that context, as it would be frightening to think that the power was there with no parameters.

Rhona Brankin: Can you expand on your concerns about what is going to happen with the care commission? HMIE and the care commission have said that they intend to work closely in

establishing procedures for inspection. Can you elaborate further on your concerns about the changes involving the care commission?

Judith Sischy: I was interested to read the evidence that was submitted by the care commission, which reflects some of what we say.

At the moment, residential and early-years accommodation is inspected by HMIE under the Children (Scotland) Act 1995, under the broad heading of care and welfare. We have spent a very long time working with HMIE and the Scottish Executive to draw up care and welfare guidelines for those inspections, which happen unannounced every year. We have got used to that, and those inspections have helped to keep us on our toes with continuous improvement at the forefront. All that is now going to be moved to the care commission and we are anxious about that.

We accept the principle of our being inspected by the care commission—we have to—but we are anxious about the change in regime and possible changes in approach. We are also anxious for the schools, not because of the change in approach but because the children need consistency, as do the staff and the school managers. As we have said elsewhere, we are also anxious about the fee that the care commission has to charge. We have not yet heard how much it will charge for inspecting boarding accommodation, although the charge for early-years accommodation is acceptable. It could have a major resource implication.

Rhona Brankin: So, you would urge HMIE and the care commission to continue to collaborate to ensure that any changeover is seamless.

Judith Sischy: That is correct. We are all working together, and it is early days. However, if HMIE and the care commission do not work together and if the changeover is not seamless—to use the care commission's word—there is a danger that a gap will occur in understanding what the standards are. It is very important that the schools know exactly where they are and which set of standards they are following. We hope that the standards will be consistent and not changed very much. You can see the dangers of changing from one system to another.

Rhona Brankin: It is an area that we can ask the minister about this afternoon.

The Convener: If there are issues on which you think that an amendment to the bill at stage 2 would be worth considering, we will be anxious to have your views as the bill progresses after our stage 1 report.

Judith Sischy: We would like to give our views. I was not sure how relevant that issue was to the bill but, as it was mentioned, we picked it up in our submission.

The Convener: It might or might not be relevant, but we would be interested in your views.

Fiona Hyslop: In your submission you say:

"The Policy Memorandum suggests that under future regulations, 'proper person' could incorporate a requirement that all teachers in independent schools should be registered with the General Teaching Council for Scotland"

and that

"SCIS and the GTCS are working collaboratively".

What is the progress of those discussions; is there any reason why the provision should not be in the bill; and at what point would it be appropriate for any future legislation to include that requirement?

11:30

Judith Sischy: This started quite a while ago—I think that it was in 1999. In 2000 or 2001, SCIS and the GTC set up a partnership arrangement to encourage all existing teachers in the independent sector to be registered—which most of them are or were—and, more important, for independent schools not to take new teachers unless they were GTC registered.

According to the chief executive of the GTC, we have made huge progress on the issue. I think that many teachers in our schools were eligible for registration but had not paid their subscription or could not see the relevance of it. The partnership with the GTC is hugely beneficial. I am now a member of the council, which is good. According to the GTC, most teachers who are in situ in independent schools at the moment are registered.

Fiona Hyslop: I do not understand why we have to wait for future regulations.

Judith Sischy: That is not my decision.

Fiona Hyslop: No. I was simply wondering whether, from your point of view, there would be an issue with having the provision in this bill instead of in another piece of legislation.

Judith Sischy: No. There would be no issue except for the fact that, as we said in our submission, there should always be room for exceptions. We think that there should always be room for the excellent teacher who, for some reason or another, cannot be registered. The reason might relate to where their degree or their training comes from or to what their previous experience was. As the committee knows, the GTC is now looking at more flexible approaches to registration. I suspect that the delay is to do with that. Everything will come together at the same time.

Fiona Hyslop: Perhaps that is something about which we could usefully contact the GTC.

I will turn to the point that you made about definitions. In your submission, you draw attention to the fact that a "proper person" is defined in terms of teachers, proprietors and so forth but that it does not extend to non-teaching and support staff. Again, your concerns make sense. Are you going to recommend that if the bill progresses, changes should be made to that effect?

Judith Sischy: Ian Huntley was a non-teaching member of staff. I have asked the Scottish Executive why non-teaching staff are not included. There may be a legalistic reason. In a sense, it seems strange that it is SCIS and not the Scottish Executive that is raising the point. I do not understand the reason for the omission, if indeed, there is a reason.

Fiona Hyslop: Obviously, the later sections of the bill most definitely affect independent schools and in many ways those sections have been the least contentious. We heard from officials that it was convenient to put those provisions in this bill in order to catch up on old legislation and so forth. Could the sections of the bill that affect independent schools stand alone from part 1 of the bill or does that part of the bill have a direct impact on independent schools?

Judith Sischy: I think that it does not have a direct impact. However, it is an interesting question. Independent schools work under much the same ethos as local authority schools do with regard to HMIE inspections, proportionate follow-through, striving for improvement and capacity to improve. Although the bill does not directly affect us, we are working in the same context as the context for part 1—if that makes sense.

Fiona Hyslop: Yes. Thank you.

Judith Sischy: May I return to the point about the "proper person" and make a point that is connected to the previous question. The care commission, for instance, wants any member of our staff to be a "fit person"—I think that that was the expression that it used—or a person fit for the job. We hope that a "proper person" is the same as a "fit person", but we foresee two sets of standards and everybody being confused. In the end, we are talking about one set of children and one set of staff. We would be totally at sea if "fit person" does not mean the same as "proper person". It is important that it all fits together.

The Convener: Presumably it would be difficult to tie up inspection regimes if two different legislative provisions were in place.

Judith Sischy: Yes, it is a good illustration.

Lord James Douglas-Hamilton: Do you represent some of the special schools?

Judith Sischy: Yes. We represent most of the independent sector. A number of special and specialist schools are included in our membership.

Lord James Douglas-Hamilton: Does that include Donaldson's school for the deaf?

Judith Sischy: Yes, and the Royal Blind School.

Lord James Douglas-Hamilton: What about the school for autism?

Judith Sischy: That is not one of our member schools. Membership of SCIS is voluntary. The Royal Blind School and Donaldson's school for the deaf are members.

Lord James Douglas-Hamilton: Are there any particular considerations of relevance for schools for children with learning difficulties?

Judith Sischy: Those schools have not come forward with particular concerns. A number of our member schools cater for children with learning disabilities or emotional and behavioural problems. They have all been consulted and had the opportunity to shout, but they have not done so.

Lord James Douglas-Hamilton: Is it possible to give us a list of the special schools that you represent?

Judith Sischy: Yes.

Lord James Douglas-Hamilton: Thank you. Do you have a view on the proposed changes to the appeals procedures?

Judith Sischy: Not really. We have not considered them in great detail. At the moment it seems that ministers have to give schools six months before they can act. We would have to examine the changes in more detail before we took a view.

The Convener: It is more a question of the abolition of the tribunal which, as I understand it, has not had much of an active existence.

Judith Sischy: The tribunal is one of those things that exist in statute but not in reality.

Lord James Douglas-Hamilton: You have suggested a large number of improvements to the bill. Do you feel able to let us have a copy of draft amendments in due course?

Judith Sischy: We are not in the business of legislative drafting, but we have made it clear that there are omissions in the bill and that the definitions should be tighter to avoid future misunderstandings. We can certainly tell you about that in more detail.

Lord James Douglas-Hamilton: Have you had feedback from the minister on the points that you have raised in your paper?

Judith Sischy: Not yet. We have discussed them all with the Scottish Executive, so it is well aware of them. I hope that it is sympathetic, but I have not had a response yet.

The Convener: I appreciate that you are not legislators and that you do not have the legal resources to draft amendments, but you are the experts on what will be the operation of the regulations in the independent sector. Therefore, we are keen to have any further input from you as we progress to more detailed consideration of the bill at stage 2—assuming that the bill gets to that stage—on the policy issues that you would like to see reflected. You have identified a number of such issues; others might arise as we progress.

Judith Sischy: I will certainly go back to our legal advisers and ask for more definitive responses.

Mr Macintosh: I want to clarify something on the back of what Lord James Douglas-Hamilton asked. Are Rudolph Steiner schools members of SCIS?

Judith Sischy: The ones in Edinburgh, Glasgow and Aberdeen are.

Mr Macintosh: Are there criteria for joining SCIS relating to the numbers on the school roll?

Judith Sischy: No. One of our criteria is that all the schools have to be fully registered with the Scottish Executive Education Department. We issue guidelines to schools on standards, values and quality. We do not have specific rules about how many children should be on a school roll.

Mr Macintosh: Do you foresee particular problems for schools with small numbers, such as those with only three or four pupils?

Judith Sischy: No. Our concern would be the ratio of staff to pupils. We want to ensure that however many pupils are in the school, they are all looked after properly in terms of staffing. I always think that it is a bit odd that four pupils can constitute a school, but schools should be covered whether they have four or 400 pupils.

Fiona Hyslop: You make a point about the potential administrative burden and duplication of information to be provided. Is there anything specific in the bill that concerns you in that regard? It strikes me that that is more of a policy issue, which you mention in the summary of your submission. Are you getting responses from the Executive on that? It is a commonsense issue, but would anything in the bill cause particular difficulties?

Judith Sischy: I think that there is a section that gives ministers powers to ask the schools for any information that ministers think fit. That approach has always been implemented sensibly and ministers have always asked for information that they would obviously require. However, during the consultation process, the Executive visited three or four schools to ask specifically about the information that they were required to provide.

There seem to be countless bodies that ask schools for the same information, but always in slightly different formats, and that became quite an issue during our consultation process. If the number of teachers is asked about, things are never straightforward—questions can relate to part-time, full-time, primary and secondary teachers and each form is slightly different. That is becoming a major administrative issue for schools. We cannot see why there cannot in theory be a central database of information for schools. The same would apply to local authorities. For example, the care commission could share information with HMIE instead of going to every school—as it is about to—and asking them to supply all the information again. That is how the issue arose.

Fiona Hyslop: So you are concerned not necessarily about the bill itself but about its implications.

Judith Sischy: Yes.

The Convener: Thank you. Your evidence has been useful. As I said, we would obviously welcome any further input that you want to make as the bill progresses. I think that Lord James Douglas-Hamilton asked for information.

Lord James Douglas-Hamilton: Yes—on the special schools. Am I right in thinking that many special schools are funded in the main by the state but that SCIS still represents them?

Judith Sischy: Yes. Some special schools have mixed pupil populations in that some parents are fee paying, some fees are paid by the local authorities and some pupils are wholly funded by the local authorities. I think that around a dozen such schools are members of SCIS.

Lord James Douglas-Hamilton: It would be helpful to have a picture of that for the sake of clarity and completeness.

Judith Sischy: Certainly.

The Convener: Thank you.

Work Programme

11:42

The Convener: We were going to wait until 2 o'clock for the minister, but I would like to move on to agenda items 4 and 5 to consider the committee's work programme and the budget process this morning, if we have enough time. Agenda item 4 is on the committee's work programme. Members have a paper before them, which raises one or two issues. There is a gap in June in between the bits and pieces of legislation that we have been dealing with.

Lord James Douglas-Hamilton: I would like to make a suggestion, which I will put as a question. Can McCrone and to some extent the implementation of devolved school management be fitted in with everything else?

The Convener: We are not discussing the long-term work programme; we are discussing the programme only up to the summer recess. There may be limits on what we can do in that period because of the time that is available.

Lord James Douglas-Hamilton: I would like to put down a marker for those issues.

The Convener: I think that they are on our list of issues to return to at some point.

Fiona Hyslop: I am concerned that the paper does not reflect our previous discussions. When we had a discussion previously, I was concerned that our discussions at the summer away day had not been reflected. I am concerned that we keep coming back and moving the goalposts whenever we get there. We should stick to the issues that we have previously agreed on.

One issue was a strategic look at the national debate on education. I do not know whether we can do that before the summer. We can consider McCrone as a short, sharp issue—more of a where-are-we-now issue. It is essential that we consider early-years intervention and we are committed to doing so. We put off appointing a reporter on early-years nursery nurses pending our consideration of the petition and the early-years inquiry. Perhaps some preliminary work can be done before the recess to help to start that work. There is an expectation that we will do that and we are committed to doing it. We agreed that we would not have a reporter but that there would be regular updates to the committee on the issue, although I have not seen anything coming forward.

I am a bit concerned that we are just waiting in the trail of the Executive for it to produce a summary of its strategy. I strongly recommend some preparatory work on early-years intervention or on McCrone. As Lord James Douglas-Hamilton

said, we have acknowledged that stocktaking on McCrone would be appropriate. We should not reinvent the wheel and have similar discussions every three or four months.

The Convener: I do not accept the suggestion that we are doing that. To a degree, the target is moving and developments happen, but I do not accept your interpretation of what we have agreed. However, we can resume the argument shortly.

11:45

Rhona Brankin: I certainly do not accept what Fiona Hyslop said. One central issue that we said that we wanted to consider was the curriculum in the context of the Executive's curriculum review. I agree that the difficulty is in focusing on something in the curriculum on which we can make an input. My preference is for considering arts, culture and creativity in the curriculum. That is a hugely important topic with interesting evidence about what is happening in other parts of the world. The importance of that subject is increasingly accepted and the committee could make a significant contribution to that.

The Convener: I am conscious of the need for the committee's work to add value to what is happening in the Executive and not just to tread in its footprints as if it were good King Wenceslas.

Ms Byrne: We should examine early-years intervention, which is important. Many developments are happening in that. I am also keen to consider the curriculum and in particular an aspect that is mentioned in paragraph 4 of our briefing paper, which is

"increased flexibility and pupil choice".

As announcements have been made about producing a more flexible curriculum, we should consider how that is progressing.

I would also like to study the final point in that paragraph, which is

"the need to motivate those 'turned off' by the academic curriculum and to break down barriers between subject areas."

That fits in with the flexible curriculum. We should scrutinise those subjects carefully, because they are important.

The Convener: That links a little with the possibility that we talked about a while back of working with the Enterprise and Culture Committee on 14 to 16-year-olds going to college and other such matters. That has not progressed because of the difficulties of two committees working together.

Fiona Hyslop: That would be part of our strategic approach.

The Convener: Yes.

Mr Macintosh: I endorse Rosemary Byrne's and Rhona Brankin's point that the curriculum should be our focus in the weeks up to the summer. Two options for discussion in our briefing paper are "increased flexibility", which Rosemary and Rhona discussed, and

"the prevalence of academic subjects at the expense of 'soft skills'".

Discussing that would be more productive for us and would give us the option of adding value, which the convener mentioned.

Using the anniversary of the passing of the Standards in Scotland's Schools etc Act 2000 as an opportunity to discuss the national priorities for education strikes me as slightly tokenistic, although it could be productive.

I endorse the need to return to the early years but, to do that topic justice, I suspect that we will have to do that after the summer.

The Convener: That is the problem with working on the early years. My strong view is that the committee should make a significant contribution to early-years learning, but that is a lengthy and involved matter. There are two reasons for not dealing with that subject at the moment. One is that Executive reports that we should have first will be published in the next few months. The second reason is that such an investigation would take longer than the gap of two or three weeks in June. Does the committee agree that early-years learning will be a key priority for us from the autumn onwards, that we need time to study it properly and that we should examine another matter now? Is that broadly the consensus? Fiona Hyslop had a different view.

Fiona Hyslop: The question is whether we could kick-start work on the early years, as we did with the Education (Additional Support for Learning) (Scotland) Bill, on which we undertook preparatory work in the summer before it was introduced.

My concern is that we agreed not to have a reporter on the early years on the basis that we would be kept up to date with information, but we have not been kept up to date. The evidence sessions might take place in the autumn, but we could do preparatory work and receive information before that.

The Convener: I sense that the committee's feeling, however, has been to leave the early years until the autumn and to take advantage of the period between now and then to examine curriculum issues. Is that acceptable?

Members indicated agreement.

Lord James Douglas-Hamilton: I want to raise an issue to do with planning for next year. Rhona Brankin mentioned the arts, culture and creativity and I mentioned McCrone and devolved school management. I think that there might be scope for short, sharp, quick inquiries well into the future, because the committee can make a strong contribution without issues being overtaken by events. It is better to write the last word on everything, but I do not think that that is possible, because nothing in education is standing still. I want to put that down as a marker.

The Convener: I do not think that the possibility of having an away day during the summer recess is raised in the briefing paper, but an away day would allow us to consider, among other things, our work programme for the following year. Is the committee minded to repeat the experience of having an away day during the summer recess, perhaps in September? That would allow us to consider the matter in more detail and take some of the suggestions on board.

Members *indicated agreement.*

The Convener: Let us hear a few more views.

Ms Wendy Alexander (Paisley North) (Lab): When one thinks about a work programme, there are always two dimensions—what one does and how one does it. I would like the clerks and the convener to reflect on how we do things. The fact that the paper outlines a whole lot more that we might do raises issues such as the balance of written and oral evidence, the use of reporters and specialist advisers—which we have tried and, I think, has been quite helpful—and the frequency and duration of Education Committee meetings.

You used the word “gap”, but it is clear that we have abandoned the notion of having a long meeting once every two weeks, which I think was what Fiona Hyslop suggested at the beginning. I presume that by your reference to a gap you meant that we will not have filled three hours every week for the entire parliamentary session. That is not a flippant point. We started off by saying that we would have very long meetings once every two weeks. I can recollect only one week in which we have not met, and we are having a double session this week and a double session in two weeks’ time.

In any organisation, discussions about work programmes are a question not just of content, but of process. What is the assumption about the anticipated frequency and duration of our meetings and how should we allocate the use of our time within meetings? For example, I thought that it was unnecessary for COSLA to have two representatives this morning. Although they both spoke, I am not sure that that added to our

consideration, as the people driving the investigative aspect.

The Convener: The second representative did not say very much.

Ms Alexander: Sure. I simply say that it is a mistake to talk about a work programme only in terms of content and not to invite the clerks to comment on how to attack the volume of work. There needs to be an appetite to examine the use of written versus oral evidence, the anticipated frequency and duration of meetings, the timetabling of the meetings themselves and the role of reporters and outside advisers. We can come back to that at a future stage, but we need to consider the implications of the decisions that we make today. It is clear that expert advisers and reporters are more helpful on some subjects than on others.

The Convener: I do not think that what we decide today will have implications, because we are dealing only with the short term. Those were useful points, which we should consider in more detail at the away day and in preparation for it. I am sure that we will be able to take account of all the points that we want to talk about.

Mr Ingram: Notwithstanding what we said about early-years education—we must examine that—given that we are talking about a period of two or three weeks in June, I was wondering about a follow-up to our budget scrutiny. In particular, I was thinking about the national initiatives and the transparency of the funds and the outcomes. This morning, ADES told us that it perceives the integration of the national initiatives in their on-going local work as a problem. Should we not take some time to consider that? During our budget discussions, we indicated that we needed to drill down and examine that area. I do not think that that is in our programme for the near future.

The Convener: Again, it is a question of timescale. We need to do some work first. We need our advisers to work with the Executive, in accordance with Wendy’s suggestion, to go a bit deeper and give us something to get our teeth into.

Mr Ingram: When we come back, will we not be considering phase 2 of the budget process, during which the details will come through? Can we not do some preliminary work to prepare us for that?

The Convener: I have no doubt that we can, but I am not sure that we can do it before June, because we have to do further work on quite a lot of stuff.

Ms Byrne: I am very concerned about the short-term spending of funding when budgets have already been thought through. In this committee, and certainly in the chamber, I have said that

money that is ring-fenced for initiatives is often wasted because there is no strategy. I speak from personal experience. I do not know how we should push forward at the moment, but it would be useful to receive—perhaps separately from a paper on the budget—a paper that makes us aware of all the funding areas that will be affected. For example, the roll-out of community schools has short-term funding that appears every now and again. Money is launched into schools from the excellence fund, from social inclusion partnerships and from all sorts of sources. Getting an overview of that between now and the recess might be useful.

The Convener: I do not dispute what you say, Rosemary, but the issue is whether we have enough information to go on with until the advisers and the Executive have worked together. What you suggest may be an issue for the away day and after the summer recess. Members have raised good points, but we must approach our work in a systematic way that will add value. I am not convinced that we are in a position to do that. If we had been able to do that, we would have been able to do it in the context of the budget discussions at this point.

Fiona Hyslop: May I make a suggestion, even though I will probably be on maternity leave when you might follow it? I was interested in the points that Adam Ingram and Rosemary Byrne raised about the budget. Paragraph 4 in the work programme is on the curriculum. We are trying to find out what is happening in schools. What flexibility and choice do pupils have? What is the prevalence of soft skills? What is the theory behind what is happening? Elaine Murray has made the important point that, in the autumn, we will want to make interventions on the budget, if we have ideas. However, many ideas come from finding out what is happening on the ground. Involved discussions with experienced people are important. I got a lot out of school visits when we were working on the Education (Additional Support for Learning) (Scotland) Bill. Wendy makes points about how we go about our business. We may decide that working on both the curriculum and the budget would be unwieldy, but we could gain a great deal for our work on both subjects, not so much through meetings such as this, but through visits—learning about the theory, the academic background and the practice on the ground. However, I am loth to commit my colleagues to work that I will not necessarily be doing myself.

The Convener: Nevertheless, that is a good suggestion.

Before we move on, I want to say that I am interested in some of the academic subject areas. I do not mean that I am interested in the subjects as such, but because they involve major issues

that will affect the country. A while back, James Douglas-Hamilton had a members' business debate on science education. I and others were interested in that too. I am also interested in the teaching of languages, which is not done particularly well—not because of the teaching necessarily, but because of the structure. I wonder whether we want to look into that.

Is there support for the idea of making targeted visits over the summer? Is that a useful idea?

Ms Byrne: I think that that would be very useful, but we should focus on support for the young people in schools who would want to access the flexible curriculum, and on support for those who are disillusioned with school. What are the schools doing to reduce their truancy rates and to bring those children into the school community as participants? Fiona Hyslop is right that that links in with the extra funding, much of which focuses on those areas in school. That would be a very useful exercise.

12:00

The Convener: We need some kind of background briefing paper to guide us in our approach.

Rhona Brankin: I do not want the committee to do that particular work. We have done a lot of work on the Education (Additional Support for Learning) (Scotland) Bill and we need to see how that begins to bed down in practice.

Various measures and projects are under way to look at matters such as truancy and I am more than happy to ask for an update on those. However, we need to make a positive contribution to the debate on the curriculum, the opportunities to change the curriculum and how we look at the learning that we want to take place in schools. That is why creativity links in with entrepreneurship and with what Rosemary Byrne says about motivating young people. It is a particularly new and exciting area.

The Convener: That is a slightly difficult approach to pin down in recommendations.

Fiona Hyslop: It would have a potential budget implication.

Rhona Brankin: No, it would not.

Lord James Douglas-Hamilton: Could languages be considered in the context of the curriculum? They play a major part.

The Convener: Yes, they could. The good thing about the curriculum is that it is so wide—it covers everything—and the whole of school life is under one review. We have to narrow that down perhaps and focus on something a bit more meaningful. The briefing paper has tried to make one or two

suggestions about that: one is not necessarily any worse or better than the other; it is just a matter of making a choice and getting the approach right.

Mr Macintosh: Flexibility in the curriculum has an impact on the traditional academic subjects, so the two are not mutually exclusive. We just have to be careful about how we do this. For example, it is likely that science would suffer from increased flexibility—the protected environment in which it currently operates will not exist under a more flexible curriculum. Therefore, we have to look at that.

If we focus on the academic subjects, we will be looking back at how we used to do things—the boxed way of learning—and I would be more interested in having a greater understanding of how people learn, the advantages that flexibility has to offer and the lessons that can be learned.

Ms Alexander: Paragraph 4 of the briefing paper offers three priorities and we would detract from them if we were to add a fourth or more. We want to be at the stage where we have identified three priorities; if people want to suggest that one is deleted and we add another, that is fine.

Then we return to process. If we go beyond three priorities, we begin to dilute the quality of any one of them. My instinct is to say to people, “Let’s go with three, let’s do them well; if we don’t like them, let’s substitute one of them.” If we were to get up to four or five, we would lose focus. We might find ourselves trying to hear 12 witnesses and hold three priorities in our heads, and that probably approaches our limits.

The Convener: I was dubious about whether even three priorities were more than we could deal with. There is also a hidden agenda in the overcrowding of the curriculum and focusing it against all the demands that come in from across the board to do X, Y and Z and to add them to A, B, C, D and E.

Fiona Hyslop: You made the point that the committee should not tread in the steps of the Executive. My understanding of its priorities for the curriculum is that it wants to look at bureaucracy and overcrowding. We need to look at the situation from a slightly different angle because I do not want to repeat what the Executive is doing.

The Convener: Are we getting towards achieving a focus on the points in paragraph 4? Are we finding a central point?

Rhona Brankin: The paragraph covers quite a lot of what Rosemary Byrne wants.

The Convener: Is there too much there or is it about right? Do we need to change the areas that are suggested?

Rhona Brankin: I think that they are linked.

Ms Alexander: The first point—about increased

flexibility and pupil choice without overcrowding the curriculum—captures the tension in that issue.

The Convener: I think we have consensus on that. There were a number of suggestions about bodies and I am not unsympathetic to the idea of visits to schools. We must keep a balance between listening to the usual suspects and getting a flavour of what happens in the schools, which we do not always get once the information is evened out, qualified and modified by the official representatives.

I wonder how many slots we have for fitting in something. [*Interruption.*] The clerk has brought our timetable to my attention. On 2 June we will consider our draft report on the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill, which will take all morning. On 9 June, we will discuss the away day, which is a fairly minor matter and can go in anywhere. On 16 June, we will consider the draft report on the child protection inquiry, which will not take all day. I suppose that those items could be moved about slightly, although the clerks need proper time in which to complete the reports in reasonable time.

I suppose that, effectively, we have from 2 June to 30 June, which is five meetings of one sort or another; we could adjust the timetable a bit. I do not want the committee to decide exactly how we do it. However, if we take the principle that there are five meetings, with a bit of input we can either shuffle things about and get a clear meeting for a visit or we can do something else. Would it be sensible to adopt the approach of perhaps having one meeting on visits to suitable schools and in the rest we can try to identify suitable witnesses to hear from in that context? Obviously, we have the beginnings of a remit for the inquiry there.

Ms Alexander: When you talk about five meetings, when does that imply that the committee’s final meeting is?

The Convener: The final meeting before the recess is on 30 June.

Fiona Hyslop: We have the first week in July as well.

The Convener: Well—have we? [*Interruption.*] I am informed that the week of 28 June is the final week of the parliamentary term. The recess begins on 5 July. Perhaps we do not have a meeting scheduled for the final week—I do not know.

Mr Macintosh: That is the final week of the parliamentary term.

The Convener: Yes.

Mark Roberts (Clerk): I think that the final committee meeting is scheduled for 30 June. I am not aware that we have one scheduled for the first week in July, but I will check that.

The Convener: I do not think that we do.

Okay. We have broad consensus on where we are going in terms of that period. There will be one meeting on visits and the rest will be on witnesses. Perhaps suggestions beyond what is in the paper will come in from people within a day or two. People can give a bit of thought to whom we should actually see or where we should go.

Rhona Brankin: You said one meeting on visits. What do you mean by that?

The Convener: One period—instead of having a meeting on a Wednesday or another day—

Rhona Brankin: We do visits.

The Convener: Yes, we do visits.

Rhona Brankin: Sorry. I thought that you meant discuss doing visits.

The Convener: Not a bit of it.

As we did before, we could divide the visits into two or three people going to different places. That worked well.

Rhona Brankin: That is probably a good idea.

The Convener: We can try and get about a bit in that regard.

Okay. That should give the clerks enough to work with. We can talk that through. We will send an e-mail round, but can people put in suggestions within a day or two for consideration in the planning process—which is obviously quite tight—about where you want to go or witnesses that you want to see.

Rhona Brankin: May I also suggest that, in terms of visits, the clerk contacts someone like HMIE to find out where the examples of good practice are? I know that there are examples of good practice in different areas in Scotland. It would also be worth while contacting the Scottish Arts Council.

The Convener: That is a good point. I actually met with a group a while back. I will give you details on that particular issue.

Is there anything else under that? Obviously, this is the short-term work programme. We will come back to the away day and all of that for the longer-term stuff.

Rhona Brankin: I have one more suggestion. It might be worth while contacting sportscotland as well, given our involvement in engaging youngsters in sport.

The Convener: Okay. Thank you very much for that.

We move on to item 5, which is on the budget process. In accordance with our earlier decision,

the committee will move into private session. I ask members of the public to leave.

12:09

Meeting continued in private.

12:35

Meeting suspended.

14:03

Meeting continued in public.

School Education (Ministerial Powers and Independent Schools) (Scotland) Bill

The Convener: I welcome Peter Peacock and Euan Robson and their officials, Colin Reeves and Rachel Edgar, in connection with our continuing evidence on the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill. Before inviting Peter Peacock to make an opening statement, I remind everyone to switch off their mobiles and anything else that might make horrible noises during the course of the committee's proceedings.

The Minister for Education and Young People (Peter Peacock): I have an opening statement for the committee, which I will use to talk members through where we are coming from on this issue. I will then be happy to consider any questions that the committee wishes to put to me.

In 2000, we changed the statutory basis of education provision in Scotland. Now we have a framework for school improvement, within which there are roles for schools, for education authorities, for Her Majesty's Inspectorate of Education and for ministers. As Minister for Education and Young People, I am under a statutory duty to seek to secure improvement in Scottish education. I am willing to take responsibility and be accountable for that duty.

However, there is currently a gap in my powers to fulfil my statutory duty in all circumstances. Failure to implement HMIE recommendations does not, of itself, constitute a breach of duty under section 70 of the Education (Scotland) Act 1980. There is a gap in the system for ensuring that we meet the duty to endeavour to improve the quality of education in all schools. If HMIE tells me that the necessary improvements are not taking place, I need the power to take action to ensure that pupils' education does not suffer.

In addition, I would argue that I need those powers in order to be fully accountable to you and, more widely, to the Parliament. Most of all, those powers are required to ensure that action to bring about improvement actually happens. In the end, it is the interests of the individual child and their education that we are here to pursue. There would be little point in telling you, after something had gone wrong and once my lack of powers became known, that I knew that I had no powers in the area concerned but had done nothing about it.

Schools and authorities generally respond positively to HMIE recommendations for

improvement, but there is no statutory provision to ensure that that happens. Many authorities already have effective quality assurance mechanisms in place to identify problems, and they use them to ensure that HMIE recommendations are acted upon. The chances of those authorities being affected by the bill are slight. The powers that we seek are not—to nail this misconception—about so-called hit squads or ministerial takeovers of schools; they are about ensuring that education authorities themselves take action to bring about improvement.

Intervention powers exist across much of local government and in other sectors. Such powers are not uncommon. In passing other bills in recent years, the Parliament has approved a range of similar powers on a number of occasions. The intention of the bill is not to remove the local decision-making process. However, if authorities were not taking sufficient action, then it would be my duty to intervene in order to meet my statutory obligation by requiring them to take that action. The bill empowers ministers to require action to be taken by a local authority; it does not allow them to take over those authorities' functions. I should stress that those are last-resort powers. I believe that they are proportionate to the situations for which they may be required. I do not seek an unfettered power. As members know from the bill, it is a staged intervention process, with my power existing only in the last resort.

As I have made clear in the past, I do not expect to use the powers at all frequently, but I and my successors need to have them in the event of any problems arising. I am aware that there are many good examples of partnership working between education authorities and HMIE, and I want that to continue. It is therefore right that the powers are triggered by HMIE, and not on the basis of any political action. I view it as crucial that referrals are made by those who have an in-depth knowledge of the particular situation and of the education issues involved.

I turn now to the second aspect of the bill. As I said, I have a duty to secure improvement in the quality of education in all Scotland's schools. Changes to the existing legislation on independent schools bring the provisions up to date and make them workable; currently, they are not as workable as they could be. Many of the existing provisions need to be updated to reflect current views on child protection and welfare issues, and to reflect human rights more generally.

The bill extends the definition of an independent school to include those with fewer than five pupils. It abolishes the concept of provisional registration, replacing it with a power for ministers to set conditions on the operation of the school. It tightens the registration procedure to ensure that

schools are providing a proper education and to ensure the care and welfare of children from the moment the school opens. The bill ensures that immediate action can be required in schools where serious concerns have been identified. It ensures consistency of rights of appeal for applicants, proprietors and teachers against all decisions addressed at them. It also replaces the independent schools tribunal with a right of appeal to the sheriff principal.

Convener, I could go through each of those and expand on them in some detail, but I know that you are pressed for time so I will avoid doing that. You can pick up any of those points in questioning. Having said that, I am more than happy to take questions.

The Convener: Thank you, that was useful. We are going to deal with the bill in two parts: ministerial powers first and independent schools second.

We heard evidence this morning from COSLA—which is the extreme proponent of this view—that its members are the elected local authorities, that they provide the schools in local areas and it is up to them to be accountable to their electorates. They recognise the minister's monitoring role, but they suggest that creating new intervention powers with the bill will go against the principle of best value, and will create a parallel process that will cause hassle, agitation and misunderstanding. What is your approach to that, given the proper roles of local authorities and the Scottish Executive?

Peter Peacock: As I am sure you know, my political origins are in local government and I continue to be a staunch defender of local discretion and decision making. What is important is that we find the right balance between local discretion and decision making and, when it is necessary, our education responsibilities, which I share with local government. I am under a new statutory duty that did not exist prior to the existence of this Parliament, and which therefore did not apply to previous Administrations prior to devolution. The fact is that there is a shared responsibility, but within that I respect that there is a clear role for local government.

Think back on the evolution of our relationship with education authorities since the creation of the Parliament. There was an opportunity in the Standards in Scotland's Schools etc Act 2000 to handle local education matters differently—that choice was available to the Parliament and to ministers. We chose to leave responsibility clearly with local authorities, but also to ensure that local authorities operate in the context of the Scottish Parliament with its democratic interests and its right of scrutiny. We had to find the right balance between local authorities and the Parliament. That

is why we have structured the improvement process in the way that we have, such that there are clear responsibilities on authorities and ministers, and it is why we have the national priorities and the inspection process that we do. That is the context in which the measured, proportionate and moderate powers that we seek would operate.

On the point about hassle and agitation, we have powers under section 70 of the Education (Scotland) Act 1980 that potentially are pretty draconian. They are also difficult to apply in certain circumstances, because on one level they attach themselves to broad descriptions of education authorities' duties, but on another level they are specific. Those powers have existed for more than 20 years, but they have created no more agitation and hassle between local authorities and the current Executive or the previous Scottish Office than any other part of our relationship with local authorities has caused agitation and hassle.

The existence of powers per se does not undermine trust in local government. We have established trust, and we think that on the whole local government does a good job. We require it to do that job locally and sensitively. Equally, we have responsibilities to intervene where we think that the educational interests of particular groups of children are put at risk by potential inaction by local authorities. That is why we are seeking the powers. That does not fundamentally undermine the point.

In its written evidence COSLA referred to the European Charter of Local Self-Government, which I was much more familiar with in years past than I am today, so I took the time to look at it. There are provisions in the charter that recognise that even within the context of devolving authority from a national level to a regional level—which is how we might be perceived in European terms—or down to a local authority level, the tier above has legitimate reasons to intervene, provided such interventions are proportionate. That is the right approach to take. Any intervention should be proportionate, which is what we are seeking to be with the bill.

The Convener: I might come back on the point about best value.

Rhona Brankin: I want to continue the discussion about the existing powers under section 70 of the Education (Scotland) Act 1980.

In its original evidence, COSLA said that it would want those powers to be repealed, but in its evidence this morning, it said that it probably preferred them to the proposed powers. Will you expand a bit on the section 70 powers? Have they ever been used?

14:15

Peter Peacock: It is difficult for the current Administration to track everything back through the past 20 years, but the powers have been used once recently, in a specific case at the back end of last year. It is important to understand that the section 70 powers in the 1980 act apply to failures in statutory duties, some of which are very specific. In the case that I mentioned, we had to use the powers in relation to special educational needs, because the local authority would not do what was required.

That is a specific case, but the powers also apply to potential failures under much more widely defined statutory duties. Take, for example, adequate and efficient education. It is much harder to establish a case for intervention on the ground of adequate and efficient education than on narrow, specific grounds. The recent use of the powers was on narrow and specific grounds, and it was the first time that anybody can recollect their being used.

Rhona Brankin: How would the situation in which the section 70 powers were used be dealt with in future?

Peter Peacock: Are you asking whether, if we acquire the new powers that we are seeking, the section 70 powers would still exist?

Rhona Brankin: Yes.

Peter Peacock: The powers would still exist. They would be used if an inspector's report on a school or an authority had shown a deficiency, if the normal discussion of action plans to remedy that deficiency had taken place, but action had not been taken, either despite an action plan having been agreed or because one had not been agreed, and if HMIE had come to the view that action had to be taken to make improvements. HMIE would have to come to ministers and make a recommendation for us to intervene if it thought that that was necessary. We would then intervene by means of a preliminary notice and, if that was not adhered to, would go on to an enforcement direction. If the school or authority failed to comply with the direction, it would be in breach of a statutory obligation, and at that point, I would be able to use the section 70 powers, which give me almost unfettered discretion to do what I think is right. However, as you can see, there are many points in that process to rectify things that are going wrong.

Rhona Brankin: On which local authority did you use the section 70 powers?

Peter Peacock: We used them on the City of Edinburgh Council.

Rhona Brankin: We had evidence from COSLA this morning that the new intervention powers go

against the principle of best value. What is your response to that?

Peter Peacock: I do not fully understand the point. Best-value considerations are an obligation on local authorities. Under the Local Government in Scotland Act 2003, they have duties to secure improvement in all their services and best value in relation to that improvement. Perhaps the point that COSLA is making is that, because there are powers under the best-value regime, the powers that we seek would not be required. However, an inspection by HMIE is not part of a best-value process per se; it sits beyond that process. That is why we are seeking the powers. If we felt that they were covered by other bits of statute, we would not seek them. We do not think, and I do not think that it is possible to suggest, that an HMIE inspection is a best-value process in the way that the best-value legislation describes the objectives that it seeks to achieve. Best-value legislation is essentially about improvement in efficiency and effectiveness over a range of services and applies a series of techniques and tests to that improvement. If local authorities fail to do those things, the best-value intervention powers kick in. The staged process that we have adopted for the powers that we seek in the bill replicates almost exactly, if not exactly, how intervention operates under the best-value powers, which were worked through with COSLA at the time that the Local Government in Scotland Bill went through the Parliament.

The Convener: COSLA's point, as I understand it, is that there will be a parallel system: a best-value intervention process under the Local Government in Scotland Act 2003, plus the new powers that you are taking on board under the bill. Is there a risk that there would be a number of different, but overlapping regimes, which would put lots of pressures on schools and local authorities? Given your existing powers and the powers that are proposed in the bill, would you use best value intervention procedures in education at all?

Peter Peacock: In principle, I suppose that that might be possible, if we take the broader view of best value that I mentioned, which involves issues about how an organisation tests its efficiency and effectiveness and compares and contrasts its performance with other organisations. However, education presents much more difficult territory in which to find those kinds of best value questions than do other aspects of local government work, because education expenditure is so heavily prescribed in terms of staffing levels and teaching and so on. I could not rule out such an approach, however.

We could not, however, use the best value powers as a substitute for the powers of

inspection—that is the key point. The inspection process is different: it considers not just quantitative, but qualitative dimensions of education and it seeks to bring about quality improvements on the best practice that is picked up in other parts of the system. If it is the inspector's professional judgment that something is not right and needs to be improved, but the improvements are not happening, we need a mechanism that can make them happen. That is why we seek the proposed powers, although I expect that we would use them only in extremis. We cannot use the best value process as a substitute for the powers in the bill.

Fiona Hyslop: No doubt you know that we have heard evidence, on the one hand, that the bill would be merely technical and would supplement the provisions in the Standards in Scotland's Schools etc Act 2000 and—on the other hand—that it would undermine trust and the relationship between central and local government. If it is not possible to predict a situation in which the proposed powers might be used, as we heard from officials, is it worth going to all the trouble of passing unwanted legislation that might not be used?

Peter Peacock: The fact that a power might not be used does not necessarily mean that it has no value. The very fact that a power exists might well help to focus people's minds in circumstances in which their minds might not otherwise be focused. I cite the powers in section 70 of the Education (Scotland) Act 1980, which have existed for 20 years, but which were not used until last year, as far as I recall. I have powers in relation to social work—the other part of my brief—which are almost completely unprescribed: I can direct social work authorities to do a wide range of things. Other such powers exist in best-value legislation, which we mentioned, in other local government legislation, in relation to interventions in the health service and so on.

The fact that powers exist but are not exercised is not in itself a bad thing. The crucial point is that the powers might need to be exercised. There is no point in my turning up at the Education Committee the day after something has gone wrong and saying when the committee demands answers, "Actually, I have no powers to do anything about this. What is more, I knew that I did not have powers and I did nothing about it." That would be unforgivable, compared to what we seek to do.

The suggestion that the existence of the powers would interrupt the good flow of relations between HMIE and local authorities underlies Fiona Hyslop's question. I have no reason to believe that that would happen and I do not regard it as a particular issue. The section 70 powers in the

Education (Scotland) Act 1980, which are potentially very tough—although difficult to apply—have not interrupted relationships between local authorities and the Executive. HMIE has strong and positive relationships with councils and individual schools. I do not think that the witnesses from HMIE perceived that the bill would create any difficulties in those relationships.

Fiona Hyslop: Why is it so important to progress this matter when there are so many other areas that the Executive could and should consider, some of which might require legislation? We heard evidence today that it might be worth delaying the matter for two or three years, while we see how the Standards in Scotland's Schools etc Act 2000 beds in.

Peter Peacock: Why should we not progress the matter now? Now is as good a time as any. We recognised that there was a gap in the powers comparatively recently. The bill is clearly and closely compatible with the Executive's commitment to drive up standards in education and to ensure that we let nothing stand in the way of that. In the final analysis, as I recall the First Minister made clear when he announced the legislative programme about this time last year, we want to ensure that no omission by a local authority or by the Executive should impede an individual child's education. Kids get only one chance at their school education; if something is going wrong we should have the power to ensure that it can be put right. That is why the powers are important and why it seems to me to be right to put them in place as quickly as possible.

Fiona Hyslop: But is not it the case that you want to be seen to be doing something rather than think about the impact of such provisions? This morning, we heard good evidence that, as a result of the on-going relationship involving local authorities, HMIE and schools, any problems should be rectified before they reach the stage at which the proposed powers would be used. After all, local authorities—not the Executive—would have to exercise the powers in question. In the end, the presence of the legislation will not necessarily have a different impact on children, which is the most important aspect and should form the basis of the test that we apply.

Peter Peacock: In the end, under the powers that we seek, the local authority would have to take action as required by ministers. We cannot knowingly leave such a gap in our armour. Your argument is rather like saying that I should not take out any home insurance because no houses in my street have burned down yet. Just because something has not yet happened does not mean that we should make no provision for the day when it does. That is partly how we regard the bill: it is not about appearances. We simply need to

ensure that when something goes wrong we have the power to take action and make it right.

Fiona Hyslop: That sounds more like an insurance policy for ministers than one for pupils.

Peter Peacock: It is not.

Fiona Hyslop: Instead of getting into a debate on that, I want to ask a technical question. The Standards in Scotland's Schools etc Act 2000 increased local authorities' statutory responsibilities to ensure that children can fulfil their potential. You are concerned that you need to fill a gap where implementing HMIE's recommendations falls short of being a statutory duty. Has widening local authorities' statutory responsibilities through the Standards in Scotland's Schools etc Act 2000 reduced any opportunity for authorities not to fulfil certain statutory duties with regard to adverse HMIE reports?

Peter Peacock: I hope that I have followed your point correctly. In inspecting a school, HMIE and local authorities would be examining not only a potential failure to carry out a statutory duty, but a failure in practice that might not be part of a statutory duty but would be regarded as correct practice for a school. We think that it is right to attempt to put HMIE at the centre of things and to allow it to use its professional judgment, because that will mean that ministers would never be tempted to take too lightly any decision on intervention. Such a decision would have to be based on a professional judgment on whether something was right or wrong or whether it was statutorily required. The findings of HMIE reports on schools and local authorities show that HMIE measures achievement not just against statutory duties but against the best practice of the day, and that it is constantly attempting to improve practice. There is no statutory link in that respect.

Ms Byrne: During this morning's very interesting evidence-taking session with representatives from the ADES and COSLA, we asked them to describe what happens at the moment if a school does not act on HMIE's recommendations. At no point in their explanation did I feel that there was a case for the proposed legislation, because they made it clear that everything that was needed was already in place. Moreover, although the witness from the ADES was not opposed to the bill, she made the interesting point that we should focus instead on good practice and on areas such as self-evaluation, quality assurance, impacts and outcomes where practice could be improved.

The witness also mentioned that the emphasis in national priorities funding had shifted from the effectiveness and accountability aspects of new initiatives, which are sometimes introduced seven months into the financial year. Where does the

balance lie? Like Fiona Hyslop, I wonder why the provisions in the bill are a priority. After all, COSLA, for one, seems to be happy to let HMIE carry on with its new regime. Why are we not looking instead at the streams of funding that are simply being thrown into schools without proper consideration, and finding out whether we are getting best value from them? To me, that is crucial to social inclusion—

The Convener: Could you form a question, Rosemary?

Ms Byrne: Why is the Executive focusing on the bill instead of on the issues that have been raised by witnesses—not members of the committee—at our meeting today? Why are we moving towards the regime that is being suggested, when head teachers have told us that naming and shaming schools is rarely good for morale? We were told this morning that that is the situation that arises when you pinpoint a school that you think is failing in some way.

14:30

Peter Peacock: As I said earlier, the reason for introducing the power of intervention is that we are absolutely committed to driving up standards in Scottish education. We are not going to let any child be failed at any point because we do not have sufficient powers to intervene if that is necessary.

I agree completely with the ADES, which argues that self-evaluation and quality assurance systems in schools are the right way forward. I also agree that that should be done in partnership with HMIE and that standards should be pushed up through co-operation, as at present. The present system is highly successful but, on the day on which it does not work, we need to have powers that will ensure that the situation is rectified.

As we have made clear, the powers that we are talking about are intended to be used as a last resort. We want to ensure that the system continues to work in the co-operative way in which it does at present.

It is not part of our agenda to name and shame schools, although people might have suggested that it is. However, at the moment, when a school gets a good report, it is named and the good report is seen by the public; when a school gets a poor report, it is named and the poor report is seen by the public. If people want to characterise the new process as naming and shaming, I point out that the only difference between it and the process that exists today is that the school would be named if it or the local authority were not improving in the way that had been decided. Who is to say that that should not be a matter of public

interest at that point? That is the context in which the matter must be seen.

On the point about why we are concentrating on the power of intervention rather than the funding streams, I say that we are doing both things. We are examining the national priorities action fund and have been having informal discussions with directors of education about how we might remove some of the barriers that exist in the funding package in order to make it easier for them to apply resources to achieve the outcomes that we seek collectively to achieve.

Ms Byrne: Driving up standards is the most important area—

The Convener: Rosemary, can you ask questions rather than make statements? I am not trying to cut you off, but I would like us to be a little more focused.

Ms Byrne: We are putting more money into the initiatives that we have been talking about but we are not scrutinising them. You have told us that you will examine them. Could you give us some details of the way in which they will be scrutinised?

Peter Peacock: I am quite happy to write to you to say what our thinking is in relation to the national priorities action fund and, more generally, what evaluation work is done in relation to programmes of spending.

Ms Byrne: Okay.

Mr Ingram: I hope that you can help me square a circle that emerged in the evidence that we have heard. HMIE suggested that the new powers would be useful in terms of HMIE having an end-point to its current inspection process. I believe that you and Scottish Executive officials agree with that view. However, practitioners, such as the ADES, COSLA and HAS have indicated that there is no end point to the inspection process because there is an on-going process of improvement. Especially with the new regime of proportionate inspections that has come in, we have a continuous improvement programme in which the inspectorate works closely with schools and education authorities.

We also heard that the quality assurance system that we have in Scotland is second to none. Why should we disturb that? The allegation that comes through is that ministers may have a hidden agenda of wanting to centralise power.

Peter Peacock: Let me deal with the last point first. We have no intention to centralise power. If we had wanted to centralise power, we would have done so by using the Standards in Scotland's Schools etc Act 2000. We made a clear decision that local authorities should have a clear role in administering education. Many decisions are far better taken at local authority level than at the

centre—centralisation is not part of my agenda. My agenda is to ensure that if in the future a school or local authority fails to do what HMIE thinks is necessary to bring about improvement, ministers have the power to intervene to require that action. Let us be clear about that.

On quality assurance, which Rosemary Byrne also mentioned, I agree with HMIE that we have a system that is second to none. In many ways, our quality assurance systems for schools are leading the world. You asked why we should disturb that quality assurance, but we do not seek to do that in any way. Quality assurance will continue to develop. However, we need as a last resort to be able to bring into order any situation in which the quality assurance system has failed to bring about improvement after the problem has been pointed out by HMIE to the school and to the local authority. Only in those circumstances, if the professional judgment of HMIE is that there has been a failure satisfactorily to reconcile the situation—this is very much a last-brick-in-the-wall approach—we need the powers that we seek in the bill to ensure that, in extremis, we can intervene to ensure the necessary action. The bill in no way cuts across what is currently happening but will add to it and complement it.

As Graham Donaldson presumably said to the committee, the inspection system needs to have a good end point. That answers Adam Ingram's second point, which was about the system's being on-going. Although it is true that there is never a pause in the search for improvement, any inspection process must reach an end point at which, if things have not improved by voluntary means, the inspectors can say, "Enough is enough." There must come a point at which we can draw a line under the matter and get it sorted out. We need the powers that the bill will provide to ensure that that can happen.

Mr Ingram: Where in the process will the trigger for ministerial intervention come and how will HMIE go about getting that? Will HMIE make a direct specific recommendation, such as "Minister, we are having trouble here and the only way round it is for you to intervene"? Alternatively, might direct intervention be presented as an option in a report that you have requested from HMIE on an on-going situation? Will a specific request from HMIE be required before you can intervene or will you have some discretion on that?

Peter Peacock: I will have no discretion to intervene where HMIE has not specifically recommended that I do so. HMIE must go through all the normal voluntary processes such as negotiation and discussion about what it wants to happen. If those processes failed—if nothing happened, that would be a trigger—HMIE would have to assess its options and decide whether the

matter was of sufficient weight that ministerial intervention should be sought. Once HMIE had made such a judgment, it would come to me with a recommendation. I will be able to act only on the basis of HMIE's recommendation.

The Convener: I want to explore further how the power will operate. Subsection (2) of proposed new section 66B that section 1 of the bill will insert into the 1980 act states that, following their report and in certain circumstances, Her Majesty's inspectors

"shall make a reference to the Scottish Ministers."

The inspectorate is given no option on that; it is a requirement. The circumstances in which that requirement will fall upon HMIE are fairly general; it must identify that there is a need for action to secure improvement. That could be anything from there not being enough pencils for the primary 1 class through to something a bit more substantial.

Given the powers of intervention against democratically elected local authorities, should there be more precision in relation to circumstances that the inspectorate will refer to ministers, or should it be able to use its discretion? For example, as was said this morning, the inspectorate might not like certain styles of working or fashions that come and go, so to require the prevailing fashion to be enforced through the procedure in the bill might not be the best way to go, even if the inspectorate took the view that it secured improvement in education at that time. Should the bill be a bit more specific about the types of situation in which the inspectorate will be required to clype to the minister, if I can put it that way?

Peter Peacock: I genuinely believe that we should leave that to the professional discretion of the inspectors. They are well established in Scotland, much more so than in many other countries in the world and they have a long track record in making professional judgments about good practice in education. Inevitably, over the years, those judgments vary and change because of changing practice. New methods are introduced and are applied; the situation is dynamic and to set down criteria in a bill would be difficult. We have to trust the professionals' judgment.

We also have to trust that judgment in the sense that I would never expect an inspector to come to me and ask me to intervene in a local authority because it does not have any pencils for primary 1 classes. The inspectorate has to assess a school and the education that is being delivered in that school, or the local authority's performance and how it is adding value to education at local level. When that is significantly short of what is required and no improvement has been made, we will seek to intervene.

The Convener: With respect, that is my point. Section 2 does not say "significantly improve"; it says "improve". There might be an issue as to whether something a bit more substantial should be a trigger, given that the inspectorate is required to make a submission to the minister.

Peter Peacock: I am happy to consider the specifics of that before we come back to the committee. These are weighty, not trivial, matters. If we can, we will help to clarify that while seeking not to compromise the professional judgments that inspectors are required to make. Remember that schools are extraordinarily complex organisations; there are many different attributes and managerial matters to be considered and addressed, such as competence in the school, use and application of the curriculum, and the flexibility and choices that pupils have. There is a range of issues about the buildings and how they operate, as well as about the facilities in the buildings. It would be difficult to be too specific about all this, but I make it clear that we are talking about either an accumulation of small items that becomes significant, or one or two significant items. If we can consider that emphasis, I am happy to do so without making any commitment.

The Convener: That is quite helpful.

As I understand the procedure, there is an inspection by HMIE then, if the improvements are not secured after the usual warnings, the inspectorate goes to the minister. The preliminary notice and enforcement direction are served, but there is nothing in the bill about what happens then. The local authority could say "Okay minister—we hear you but we are going to take no notice of you because we do not agree with you." Would I be right in saying that failure to follow the enforcement direction would be a breach of a statutory duty?

Peter Peacock: Yes.

The Convener: Would that lead to a section 70 procedure?

Peter Peacock: Yes.

The Convener: What does a procedure under section 70 of the Education (Scotland) Act 1980 allow you to do?

Peter Peacock: That procedure allows us to do almost anything, as I understand it. Of course, as you know, ministers always act reasonably, but I would be allowed to do anything that a minister might reasonably do in the circumstances. At that point, the power is very widely specified. We have introduced the bill in order to prescribe our powers and to make them proportionate to this part of the education picture. In the end, ministers' powers under section 70 are wide indeed.

The Convener: In a sense, there is going to be a loop in the middle where there is a more detailed statutory direction that, in turn, comes back to the section 70 powers with which we began. Are we not already where we want to be in that we have the breach of statutory duty, the requirements to provide an adequate and efficient education and the duty to secure improvement that already exist under the Education (Scotland) Act 1980? Why add the middle loop?

14:45

Peter Peacock: There are two things to be said. First, the bill is very much related to the improvement process that inspectors are already involved in; there is simply a gap at the end of that process, as Adam Ingram said. Secondly, it is important to recognise that, under section 70 of the 1980 act—as I touched on earlier in response to Rhona Brankin—there are some narrow, specifically defined matters in relation to, for example, special educational needs and there is, ultimately, little difficulty in interpretation when that duty is neglected. It is much more difficult to establish when adequate and efficient education as a statutory obligation on the whole authority in all its activities is not being met.

It is entirely possible to conceive of a situation in which a local authority could argue—potentially in the courts—that it was providing adequate and efficient education in the round but not in relation to the specific part of the process that required to be improved. The power that we are seeking is proportionate to address specific improvement matters and questions of managerial quality in schools, without having to establish that the whole of education in an area is not adequate or efficient. That is one of the underlying reasons why we are taking this approach.

The Convener: Just to finalise on that, because it has been raised so many times before by witnesses, can you give the committee an example of the type of situation in which you might want to intervene—a concrete example of a situation in which the power may be used? The point has been made that people are not necessarily unsympathetic to the power, but want to know what are the circumstances in which it would come into play.

Peter Peacock: When powers are being laid down that potentially allow ministers to intervene in the quality assurance of schools, it is difficult to anticipate what the circumstances might be in the future. HMIE reports on local authorities and individual schools point out whole areas of work that require attention: for example, matters to do with management of the curriculum; planning of lessons by particular staff members in relation to individual groups of pupils; discipline policy and

child protection policy in schools; and the relationship between a school and its parent body. Those things' being significantly deficient and not being altered would affect the quality of education in the school and are, potentially, the kind of areas that might provide triggers for the powers.

However, it is important to stress that HMIE should be able to work out whether sufficient improvement has been made—whether people are on a journey towards a destination of improvement—or whether it has not taken place and we require to intervene. I would not expect to use the power often, but if its use is necessary we should be able to use it.

The Convener: Would it be fair to characterise the new powers as not so much additional as a more finessed and targeted power within the existing section 70 framework?

Peter Peacock: As I say, the bill is designed to fill a gap that exists in the present process. The powers are seen as last-resort powers to ensure that we can make improvements when necessary. I do not mind how people describe it; what is important is that we have the power to act when necessary.

The Convener: I have raised one or two points. Does any member want to come back to any of that?

Mr Macintosh: I have one small question. The evidence that we have heard this morning and the evidence that we have taken in written submissions and otherwise—especially from the local government point of view—suggests that there is a centralising political agenda. You have reassured us that that is not the case. However, what we heard this morning is slightly unsettling. We heard that you believe that large authorities are better than small authorities at managing schools. Margaret Doran of the ADES cited a recent article in which that was suggested. There is an implication that the powers in the bill will be used against small authorities rather than against large authorities. Coming from East Renfrewshire, I neither recognise that view nor agree with it. I would welcome reassurance that that is not the case.

Peter Peacock: You can be reassured that there is absolutely nothing in my thinking to suggest that the power would be used only in authorities that have a population below a certain threshold. The power is for any authority that fails to do what is necessary to bring about improvement.

On your wider point, I do not believe that small authorities are bad per se and that large authorities are good per se, but I have some questions in my mind, partly as a consequence of the inspection process. It happens that a number

of small authorities have had poor reports, and I have questions about the factors that underlie that situation. Other work that I am involved in also prompts me to ask questions about the capacity of smaller authorities to meet all the requirements of delivering modern education.

I would like to encourage local authorities to work together to share services across boundaries where that is appropriate. That might include services for special educational matters, specialist resources such as psychological services and other services for the management of buildings and estates, for example. Not only could authorities gain efficiencies of scale—and there is a cost factor in that—but they could achieve greater capacity and spread the leadership that exists at local authority level to a wider range of people to bring about improvement. That is my first base—to encourage people to work more effectively together to get round any difficulties that may exist as a consequence of scale. There are challenges for smaller authorities in achieving some of the things that are required, and they will increasingly have to think about working together to achieve some of them.

Fiona Hyslop: I want to follow up the convener's question about the process and the relationship between section 70 orders and the proposed provisions. Are you saying that the Standards in Scotland's Schools etc Act 2000 has made it more difficult for the Executive to use powers of intervention than it was before the act was passed?

Peter Peacock: No, I am not saying that. The specific duty on a local authority to provide adequate and efficient education predates the Standards in Scotland's Schools etc Act 2000. As you know, that act also has as its centrepiece the fulfilment of the potential of the individual child, which brings its own challenges. However, the existing statutory provision before 2000 had the same features with regard to the application of section 70.

Fiona Hyslop: When the bill was first mooted, there was talk of hit squads for failing schools, but your officials said that that is not how the Executive wants to present it. I would be interested in your views on that. Who would deliver the improvement should you exercise the powers? Would it be possses from Victoria Quay, or would you rely on the same people who have done improvements in the past—the local authorities?

Peter Peacock: I am very clear. I have never used the term hit squads, which I do not think is helpful in this context. We are clear that, if we trigger our power, we seek to place a duty on an authority to take action to bring about improvement. It will be a requirement on the local

authority rather than a question of our sending in people to take over. I have to tell you that, ultimately, under section 70, there are very wide-ranging powers to do anything that is necessary, but it is not in our minds to get to that point. The whole purpose of the power is to ensure that we do not have to exercise those powers. In fact, as I have said, the existence of the powers should help people to focus their minds to ensure that intervention is never required. It is not part of my purpose to take over the running of schools; sending people from Victoria Quay to run Scottish schools is not part of my agenda.

Fiona Hyslop: I noticed some agitation among your officials. There was no offence intended to our visitors from Victoria Quay.

The Convener: By the same token, I take it that there is no intention to micromanage what happens in schools. The powers are quite detailed.

Peter Peacock: I have no desire to micromanage what is happening in Scottish schools. We have local authorities that are there to help schools to manage and local head teachers who are there to manage the detail of their schools. Currently HMIE makes detailed recommendations about improvements in schools and that will continue. We simply want to ensure that things happen at the end of the day that would not otherwise have happened.

Lord James Douglas-Hamilton: The Scottish Council of Independent Schools feels that there is an omission in the bill, in that it does not specify that evidence of dissatisfaction is required in respect of a complaint or a serious concern. Do you have any comment to make about that?

Peter Peacock: Could I just ask for clarification? The proposition is that we have not specified what would be the trigger point for a notice of complaint or, indeed, for setting a condition.

Lord James Douglas-Hamilton: The bill does not specify that there must be evidence of dissatisfaction in respect of either a complaint or a serious concern.

Peter Peacock: We are seeking to introduce powers that will modernise the landscape, which has become out of date and inappropriate, and to do so proportionately—we do not seek to intervene unnecessarily. For matters that relate to complaints about the operation of individual schools, we have a registrar of independent schools, who is sitting on my left. There is a strong element of judgment about the nature of complaints that are made. It is not in our mind to exercise unnecessarily the powers to serve a notice of complaint or to impose conditions. We are seeking to address real concerns that people might have. Any complaint or evidence of

dissatisfaction that the registrar receives would have to be considered and a judgment made about whether to exercise the powers.

Lord James Douglas-Hamilton: While the Scottish Council of Independent Schools supports the principle of the bill, it has suggested in a paper and in evidence a number of drafting improvements. Are you prepared to consider those suggestions sympathetically?

Peter Peacock: I am certainly prepared to consider them. We have had a good dialogue with SCIS in which we have been clear about what we seek to do. We have consulted SCIS throughout the process and, as you say, it is happy with the bill in principle. I am more than happy to consider any suggestions that SCIS has. However, you will appreciate that I cannot judge what I will say about the suggestions until I have seen them. I am happy to consider improvements that maintain the protection but provide reassurance.

Fiona Hyslop: As we heard this morning from SCIS, the policy memorandum says that future regulations will introduce a requirement that all teachers in independent schools be registered with the GTC. We have received written evidence from the Educational Institute of Scotland that we should consider incorporating an amendment to that effect in the bill. Is the measure desirable and, if so, why is it not in the bill now instead of being put off until later?

Peter Peacock: I understand where people are coming from on that issue. We did not think that it was necessary to put the measure in the bill because, voluntarily, the members of SCIS are well on their way towards GTC recognition of their teachers. That is the underlying reason—the fact that there is no particular reason to force the process to happen at a faster pace than it is happening at present. We recognise that independent schools are, by their nature, different from those in the state sector and that discretion is available in how they provide education, given that parental choice is a factor. Independent schools are making progress on GTC recognition. Rachel Edgar may have more to say on that.

Rachel Edgar (Scottish Executive Education Department): I reiterate that SCIS has made a lot of progress on the matter. However, we have found that there are more issues in independent schools that are not SCIS members and that even some SCIS members have problems with specific posts, as Judith Sischy highlighted. I understand that schools have a particular difficulty in finding GTC qualified teachers in business studies and computer studies. Before ministers consider imposing the requirement, we want to ensure that it can realistically be met.

Fiona Hyslop: Another issue that was raised concerns the definition of the term “proper person” and why that is not being extended to apply to non-teaching and support staff who work in schools. Is that omission deliberate or will you come back to the issue?

Peter Peacock: We think that the point is covered. You will be aware of the provision for the register of people who are unsuitable to work with children. We think that that covers the point adequately, so a separate requirement is not needed in the bill. We will reflect on everything that has been given in evidence to the committee to see whether there are issues that we need to think through a bit more.

Rhona Brankin: Another point that Judith Sischy made was that the care commission uses the term “fit person”, whereas the bill uses the term “proper person”. Is that one and the same thing and could the situation lead to confusion?

Rachel Edgar: We are talking about different standards. The Regulation of Care (Scotland) Act 2001 gives powers to the care commission; it is important for the two pieces of legislation to fit together, but the standard for a “fit person” to work in a care establishment is different from the standard for a “proper person” to teach in a school. We recognise that the language is different, but we are talking about different requirements. For example, ministers have indicated that they might require a “proper person” to teach in a school to be registered with the GTC, but that would not be relevant in parts of a school for which the care commission has responsibility, such as pre-school or boarding facilities.

15:00

Rhona Brankin: You have put your finger on the concern, which is whether there will be seamlessness, given that there will be two sets of standards. We seek reassurance on that.

Peter Peacock: Again, I am happy to consider that in the light of the evidence that has been given. We think that we have got it right; there has been dialogue with the care commission on the matter, but we are happy to have further dialogue to ensure that things are married together as tightly as possible.

The Convener: The substance of the meaning is the same, but we do not want joint inspections to be confused by different wording.

Ms Byrne: I believe that some independent special schools come under the provisions in the bill on GTC registration. I would be concerned if children from local authority-funded state schools were transferred to schools in which teachers are not GTC registered.

Peter Peacock: I do not have to hand information on whether every teacher in every independent school that comes under the provisions is currently registered, but we can check that and come back to you. There is no difficulty with finding that out.

Rhona Brankin: The care commission suggested that liaison and notification procedures between HMIE and the care commission could be put on a statutory basis. What are your views on that?

Peter Peacock: The relationship between the care commission and HMIE is well established and they work together on a range of joint inspections. I am not clear that there is a need for a statutory link, given that voluntary links between the two work adequately. There is a strong commitment by the Executive to ensure wherever we can that inspection regimes are as joined up as possible and reflect the multidisciplinary nature of modern inspections.

The Convener: The bill gives ministers the power to

"impose any condition on the carrying on of a registered school; or ... vary or revoke any such condition ... as they think fit".

That is probably a much wider power than we would normally be minded to give to ministers. Are you minded to consider narrowing down a bit the criteria that apply and the way in which the powers are organised?

Peter Peacock: I completely understand the point. SCIS has expressed concerns that the power could be used to set conditions that are much wider than the powers in our minds. I understand those concerns, but that is not our intention; I hope that I can reassure SCIS that our intention is to ensure that the basics are right and that we have the ability, before a school opens, to set conditions to prevent part of a building that does not meet the fire regulations from being used, or whatever. It is important to have those powers and we genuinely do not wish to use them beyond that. I am happy to reflect on whether we can make that clearer, but we would have to do so in a way that does not compromise the registrar's ability to act quickly to set a condition when that is necessary for health and safety or welfare reasons, or indeed for educational reasons. With that proviso, I am happy to consider whether we can give reassurances.

The Convener: We have a benign minister at the moment, but we might not have in future.

Peter Peacock: I am not at all sure how to take that.

Lord James Douglas-Hamilton: I understand that you think that the bill's financial impact will be

minimal. Are you aware that the Scottish Council of Independent Schools, while not concerned about the principle of the care commission's involvement in regulation and inspection, is concerned about the possibility of the bill introducing considerable additional costs? Will you look into that? SCIS obviously has a clear interest in avoiding the imposition of disproportionate extra costs.

Peter Peacock: I am happy to give SCIS the reassurance that it is not our intention to use the powers under the bill to drive up its costs, other than when that would be required for a specific action that is necessary for the safety, welfare and education of the children concerned. There is no general intention to use the powers in that way.

This goes back to the convener's point about conditions. It is by imposing conditions that costs could be driven up, but, as I indicated to the convener, we will examine that issue and I am sure that we can reassure SCIS on that point, too.

Fiona Hyslop: Do you think that part 2, on independent schools, would stand independently? Does it relate to part 1 at all, or could those two parts have been pursued as separate bills?

Peter Peacock: I think that those parts make up a neat package.

Fiona Hyslop: A neat package? Do you mean that it is convenient as opposed to being essential?

Peter Peacock: I know exactly what lies behind that question and I am not going to assist members to lodge some very difficult amendments. I am sure that Fiona Hyslop will come to her own judgment about lodging any amendments in that territory. The bill is a neat, complementary package, which helps to improve Scottish schools and helps to improve the ability to improve Scottish education.

The Convener: I am loth to let the minister go after just an hour, which seems rather bad, but I thank him for his attendance. We are grateful for your input, minister.

Peter Peacock: I will tell COSLA that the committee thought that I was very benign.

The Convener: Committee members are not finished. We have another bit to do, under item 3 of the agenda, which is to consider the emerging themes from the evidence that we have heard so as to guide the clerks on the committee's report.

The first thing that we must consider is the necessity for the bill and the issues around that. Personally, I was impressed with the minister's assertions and I thought that he fitted the provisions of the bill into the overall schema of things rather better than has been the case in the

past. I think that we have perhaps secured the justification that we were delving for earlier, but I suspect that there might be some disagreement on that. In any case, that is the first area that we need to deal with.

Ms Byrne: I am not convinced of the need for part 1 of the bill. I can accept that there are possibly technical grounds, but I have not heard anything to convince me of a need for that part.

The Convener: In answer to my own question, I think that we established the whole schema of the thing more clearly than before. The powers under section 70 of the 1980 act are a fairly blunt instrument. It is difficult to get the general statutory duties knocked down to something specific. We do not necessarily want to take over or close a school that has a little bit of an issue in one area; equally, we do not want to micromanage. In between, there is an area of middle-range things, which might not be substantial for the total performance of the school but are necessary for the improvement of the school's ability. We do not need to go down to the level of pencils for primary 1.

The provisions seem to fit in with a more targeted approach towards the statutory duty. A statutory duty is imposed—the direction becomes a statutory duty. That makes enforcement and so on a bit more comprehensible and specific.

Rhona Brankin: I thought that this afternoon's discussion of the responsibility under the 1980 act to be "adequate and efficient" helped to illustrate how blunt an instrument the existing provisions are and how there is no real end point to the HMIE process. The important thing is that HMIE will carry out the process as an agency; ministers will not interfere directly in the process. They would act only once the process has come to an end. The hope that that would not be required came over clearly. The fact that the provisions in section 70 have been used only once in the past 20 years gives us some reassurance.

The Convener: It is also worth while considering the context. The minister was quite clear that it is not his desire or intention to interfere in local authorities' running of things. The bill is not intended to alter the balance between local and central authority. We should probably reflect that in the conclusions that we reach.

Fiona Hyslop: I do not think that there is any urgent need for the bill. There is a certain logic and convenience to the provisions of part 2, which could be implemented at some point. The minister explained the relationship with the 2000 act and the fact that he is providing a tool to make it easier to use the 1980 act, to which everyone keeps referring. However, it is not our job to be a sausage machine for Executive legislation. If we were to consider the bill in isolation and nothing

else was happening in the world of education, I would agree that there is a technical logic to what it attempts to do. However, there is a political price to pay. The issue that COSLA has raised about the relationship between local and central Government must be addressed. We must consider whether driving up standards by introducing a threat, which, in effect, is what the power of last resort is, is better than leaving the system as it is and, as the witnesses from the Heateachers Association of Scotland said, allowing the system under the 2000 act and the new proportionate inspection regime to continue.

Adam Ingram's point that there is not necessarily an end point to inspection is important. There might be an end point in following legislation, but the bill is supposed to be about pupils' improvement, which it will not necessarily deliver. We are considering not just the veracity and logic of the bill but the political context. I agree that it is a waste of parliamentary time. I would prefer us to note it and to suggest that the Executive considers in two or three years' time whether it is still necessary, which would allow the Parliament to carry on with other more important matters.

The Convener: There are several themes to what Fiona Hyslop has just said. We have to remember that there is an electoral mandate and that the bill fits into the legislative programme that the Parliament agreed. Fiona Hyslop might have views on how far up the priority list the bill comes, on which I might agree with her, but leaving that political issue aside, we have to consider the purpose of the bill and whether the argument that COSLA has made that its feelings will be hurt to such an extent that it will damage its relationship with the Executive is valid. I do not think that it is. I do not accept its evidence that the bill will do that, although I accept that we have to be careful. There are fewer powers in the bill than there are in the existing framework anyway. However, members might have other views.

Lord James Douglas-Hamilton: I will reserve my position on the bill, because at this stage I am not convinced that it is strictly necessary. COSLA was clear that it thinks that it is a waste of parliamentary time. It also challenged the view that there is a gap. I do not recall the minister giving examples of cases in which ministers have not been able to intervene when they wanted to. My understanding is that when the inspectorate reports to ministers, they can take the necessary action. I am not aware of any examples in the past 10 or 20 years in which that did not happen. I am not convinced that the bill is necessary, although I understand clearly the Executive's reasoning.

15:15

Ms Alexander: It is a test for the committee to decide how to handle this. It would be a mistake to pretend that it is possible to reach all-party agreement, because that is impossible. We should not spend inordinate amounts of time trying to reach agreement, because that is in nobody's interest, and we would end up wasting time that could be spent on areas in which we can reach cross-party agreement.

I would like the report to reflect the excellent research work that the Scottish Parliament information centre did on the broad issue of failing schools. I use that term carefully, of course, because COSLA told us earlier that failing schools do not exist. The actuality of failure involves circumstances in which a child's primary school and secondary school are inspected only once during their school career. Action might be required in relation to 100 of the 300 or so schools that are inspected every year and, two years later, when those schools are inspected again, the situation might not be satisfactory in between 10 to 20 of those schools. In any sense that a parent understands, if there are 10 schools that are unsatisfactory out of 300 schools, that is a challenge that politicians need to meet.

It is perfectly appropriate for people to take the view that this piece of legislation is not the way in which to go about meeting that challenge, and it would be a mistake to expect that we can reach cross-party agreement on the issue. The convener needs to think about how that process can be managed to ensure that honestly held differences are reflected. Further, people have argued that we should refer to the political risks that are associated with COSLA's view. I would like the evidence about inspections and the number of schools with which there is an issue to be noted without making a judgment about whether the bill represents the appropriate mechanism to deal with the 10 to 20 schools that are identified every year.

There is a challenge in that. One of the most useful things that the minister said today was that his justification is twofold: there has to be an end point, which there is not at the moment; and the proposal is a way of encouraging action. One of the things that the five-year trend establishes is that there is no diminution in the extremely small number of schools that, after two years, cannot rectify the problems that HMIE has identified. If we are going to cast the net widely and write about the political price of the proposal, we should talk about the factual evidence of the number of schools that are inspected and the number that, after two years, are still deemed to be unsatisfactory.

The Convener: The central issue is the extent to which the bill is part of the solution to the

problem. I do not think that it provides an end point because, as we identified, the process goes further.

Ms Byrne: We have to bear in mind the fact that the proportionate inspection regime has been in place only since January. That is one good reason for delaying consideration of the matter. There must be a chance to gather the information that Wendy Alexander is seeking. We must create space in which the new regime can operate.

From what we have heard, the new regime is sound. I think that we should have a bit of faith in the system and return to the matter at a later date when people have had a decent amount of time to prepare feedback on the inspections.

The Convener: There are two ways of doing what you are saying. One is to delay the bill and the other is to delay implementation of the bill.

Rhona Brankin: The bill is important in filling the gap that is created by the fact that section 70 of the Education (Scotland) Act cannot be used by local authorities to implement HMIE decisions. The fact that there is no statutory duty to fulfil HMIE recommendations is important. The legislation might seem to be small but it is important. I do not have any problem with taking it forward.

The Convener: A philosophical issue might be whether the minister should get involved at that level if the statutory duty is not fulfilled. The issue must be approached in a variety of ways.

Mr Macintosh: There is a sensitivity about the relationship between central and local government; all of us in this devolved Parliament are well aware of that. We all have a duty to respect that sensitivity, which is heightened at the moment because of other bills that are being dealt with. However, I see no evidence to support the fears that have been expressed by ADES, COSLA and others. I do not accept for one second that the introduction of the bill is motivated by a desire to centralise powers, nor do I see evidence of that desire.

Moreover, the arguments that have been made in support of the bill are very much educational arguments. The argument that the bill has been introduced to support the improving framework and to improve attainment and achievement in our schools is fundamentally strong. The converse argument—that political sensitivities should be used to prevent us from putting in place legislation that improves the education of children—is not strong. That is particularly the case when one considers that the political sensitivities are misplaced, as they are in this case.

There has been a lot of discussion today about getting things in perspective. We should get the bill in perspective; it is not particularly huge, nor

will a huge amount of time be required to debate it. The bill is an interesting addition to the legislative framework that will help us to improve attainment in our schools. It might have led to political differences, but local government should be as concerned about the issue as has been shown to be the case in some of the arguments that were made today. We should press on. I do not find the bill controversial. There is clear support for part 1 of the bill and we should reflect that in our report.

Fiona Hyslop: The point about educational improvement is central. We have received evidence that shows that the bill has the potential to hamper improvement. The Headteachers Association of Scotland made the point that any school that was referred to ministers under the powers of the bill would have been failed by HMIE—which is meant to resolve the issue, along with the local authority—and by the local authority.

Naming and shaming a school as a failing school will leave it as one of the very few schools that are named in such a way. The Headteachers Association said that it did not anticipate many schools being so named. The education of the children in the school will be helped if the people who are delivering the improvement are the self-same people who would have undertaken that work in the relationship that is being developed under the new proportionate system of inspection.

As Graham Donaldson said, we cannot look backwards and we have to be very careful about the legislation that we introduce. The argument is more about what might happen at some point in the future, for which there is no current evidence, policy making or legislation. Rosemary Byrne made the point that we have to consider the scheme of inspection that is now in place, which will be far different from what has happened previously. I do not think that we are in a position to judge that at the moment.

The Convener: That is an important point and we should reflect it in our report. The background to what we are doing is that a different regime is in place. I am not sure that I agree with the conclusion, but that is another matter. Do members feel that we have had enough of an exchange on the principles in relation to part 1? I think that there is some common ground; everyone accepts that the bill is not the most earth-shattering bill ever, in terms of the changes that it will make.

In the minister's phraseology, the bill is a bill to fill a gap. It fits into the panoply of his powers and it must be judged in that regard. The minister gave examples not of what had happened in the past, but of the situations that might arise in which the power could be used. We can reflect what he said in our report.

Adam Ingram and I touched upon the important issue of triggers. It is also important that we do not have a process in which the minister madly rushes across the scenario, but that the process flows from the HMIE reports to the minister's intervention. There may be issues that we want to take up at stage 2 about whether the triggers—the sorts of things that HMIE can direct upwards—are at the right points. That is a valid area and ministers are happy to discuss it with us. We might want to highlight it in our report. It is also worth reflecting on the widening nature of the statutory duty, which is another point that came out of our discussions.

Rhona Brankin: It is interesting to note that, although the section 70 powers have existed since 1980, they have been used only once. That said, what is important is that they have been used once. We did not get the detail of that instance, but it was in relation to special educational needs. Perhaps our report should reflect the fact that, although the powers will not be used often, it is important that they are in place. I do not know the details of the instance in which they were used, but I am sure that their use was warranted.

Ms Alexander: I accept the points that have been made about the importance of due process. We must be clear, however, that the need for due process should not lead to unreasonable delay. Certainly, in the current system—even under the new system—the timetable for intervention does not seem to have changed at all; a pupil might be in primary 4 before their school is inspected. If the school is seen as a failing school and is not inspected again for two years and then found still to be failing, the pupil would be through primary 6. Let us assume that we are talking about a school—secondary or primary—of 500 pupils. We could be talking about 5,000 children in Scotland who have spent their entire primary or secondary careers in a school that HMIE deemed, not once but twice, to be unsatisfactory. Even under the new system, there is no speed-up in the process and if HMIE had to come back to ministers the process would take a long time. We must be careful that we balance the need for process with the need to avoid building further delay into the system. Indeed, the opposite point could be made that, in the case of the small number of schools that are at issue, the need is for a mechanism to be put in place to ensure that there is no delay in intervention being made.

The Convener: I do not disagree altogether, but Wendy Alexander overstates the point somewhat. For the minister to give a direction does not solve the problem; it still has to be solved on the ground. In that context, process is important. We have democratically elected local authorities, which—dare I say it—will be even more democratically elected if and when the Local Governance

(Scotland) Bill is passed. They have a mandate from their electorate in this regard.

We have to keep in mind the fact that the local authorities run the schools and that the minister is to come in with monitoring powers and all that, through HMIE. I accept that process should not cause delays, but process is extremely important and it is also important that it is based on the rule of law. The triggers at which ministers can exercise their powers can be defined, but ministers will do so within criteria that are appropriate to the cause of the problem.

Ms Alexander: I would like to see a factual clarification of how long the process would take.

The Convener: I have no difficulty with that.

Fiona Hyslop: Wendy Alexander overstates the case. We heard, from people who are very supportive of the bill, that a school that was anywhere near being affected by the powers in the bill would have had constant recommendations and contact from HMIE and support for the implementation of those recommendations. Even the supporters of the measures in the bill do not see children being abandoned for two years without any contact being made with the school.

Ms Alexander: We are dealing with a legislative environment in which the official process recognises that, in the circumstances in which schools do not operate properly, a significant number of children's education could continue to be affected for another two years after the first-round inspection. We need to be clear about the timescales for the improvement process that we have heard about today.

If HMIE's first inspection finds an issue at a school, what is probably of interest to parents is how long it will take for the situation to be fixed. If HMIE says, for a second time, that the problem remains, the question again is how long it will take for the problem to be fixed. One of the problems is that we have not yet heard evidence from the parental interest; it has been entirely from the producers' side. I wonder what the Scottish Parent Teacher Council or the Scottish School Board Association might have said if we had taken evidence from them. I cannot speculate; the decision was taken that we would not hear from them.

The Convener: Time is important, but we might want to engage further on the inspection regime. Some good points were made in that respect in the evidence that we heard this morning.

Rhona Brankin: What came over to me was the continuing engagement between HMIE and the schools—indeed the engagement now includes the authorities, which is a huge improvement. There is a need for an end point, otherwise the

process could go on and on. Ministers have a duty to secure improvement in schools. The problem of the gap in the process remains: ministers cannot do anything about a situation in a school when HMIE tells them that a local authority is not fulfilling its responsibilities.

The Convener: I think that we have got enough from our discussions. To an extent, there is a balance of views across the committee on some of the issues. I hope that the clerks can disentangle our views and come up with a good draft report. The process is important and we should not lose track of it in the overall manner in which we approach the subject. Do members have individual issues to include in our stage 1 report? We touched on triggers but, beyond that issue, I do not think that there is much by way of major detail that needs to be included.

Fiona Hyslop: The bill includes quite a few generalities. You made a point about the general nature of subsection (2) of proposed new section 66B that will be inserted into the Education (Scotland) Act 1980 by section 1 of the bill. You said that the new section could be about anything, albeit that it was a benign measure for the minister to use. You made another point about powers with regard to part 2.

15:30

Lord James Douglas-Hamilton: There is also the minister's statement that the Executive's intention was not to enforce disproportionate resources on independent schools as a result of the reforms.

The Convener: A number of points were made in the SCIS submission—about powers and about the care commission and the joint inspection regime—but I do not think that we need to rehash them. There was also an issue about GTC registration.

Fiona Hyslop: There is also the argument around the Local Government in Scotland Act 2003. Whether one agrees with the argument or not, its subtext is the perceived centralisation of powers. We should alert the Local Government and Transport Committee to the issue.

The Convener: I do not accept that that is the position.

Fiona Hyslop: I think that, whatever your opinion—

The Convener: The central issue is whether the bill increases powers in that way. We cannot entirely answer people's perceptions of the bill, but we can ask the question whether the bill will increase powers in a centralising way. I am not sure that that argument can be made all that strongly.

Rhona Brankin: Some generalised statements have been made, but no detailed evidence has been given to support those assertions.

The Convener: We might want to match the arguments with the assurance that we heard at the end of the minister's evidence about not micromanaging.

Rhona Brankin: It is important that we do that.

Fiona Hyslop: Our report must reflect not only the oral evidence, but the written submissions that we received, in some of which there is specific evidence about the Local Government in Scotland Act 2003. The response from the minister today was interesting. He countered the argument that has been made on the parallel nature of the systems and inspections. We should cover what he said in our report.

The Convener: We have to make a judgment on the evidence. Just because someone says that something is the case, that does not make it so. We have to judge whether the statement is factual and valid. I accept that perceptions can be important in some instances, but the central questions are what is the present situation and what does the bill do. That should be our starting point.

Fiona Hyslop: There is an issue of whether the bill cuts across the powers of the Local Government in Scotland Act 2003.

The Convener: That is to do with the parallel regime business.

Fiona Hyslop: Yes. It is the question whether there is a relationship and, if so, whether it is parallel or different. The minister said that the 2003 act does not cover the inspection regime; he made a reasonable case in that regard. We should reflect in our report the number of submissions in which that issue was raised. I am not in a position to make a judgment on them.

The Convener: But that is what we require. We have to judge the substance of the arguments. I thought that the minister answered the question. However, the issue may have loose or fuzzy edges. If it is thought to be a big issue, we will need to explore it. I think that we were told that the best-value regime relates to a process that is almost like an audit, rather than to the educational objectives of the bill. I might have got that wrong, but that is what I took from what the minister said.

Fiona Hyslop: We need to examine the relevant parts of the Local Government in Scotland Act 2003 to find the answer to the question.

Lord James Douglas-Hamilton: It is impossible to know whether the bill will increase powers in practice. The COSLA submission says:

"the Minister and HMIE have stated that the intervention powers may never be used in local authority schools"

Although that might be wishful thinking, if it leads to naming and shaming on a considerable scale, a substantial extension of powers would be involved in comparison with what is happening at present.

The Convener: The HMIE reports are published and one can read HMIE's comments on whether certain aspects were fair or good. We receive the reports weekly or monthly from the inspectorate. That fact hardly ever gets publicity, but it could do. The powers have become a political issue merely because they have gone to ministerial level. It could be argued that if the issue has gone that far down the line, it ought to be the subject of public debate.

Ms Alexander: Could the clerks clarify something for us? The convener said that the first round of inspection reports is always published. However, I do not recall seeing one of the follow-up reports that are produced two years later.

Mr Macintosh: I can say categorically that they are published. I have one on my desk that I received only this week.

Ms Alexander: On the new procedure, what degree of transparency will there be in the continuous intervention mode?

The Convener: The point should be made that it is not necessarily the case that publicity on all of the process is a good thing.

Ms Alexander: Indeed.

The Convener: We will get a draft report for consideration in due course, which I hope will reflect our discussion in the clerks' usual brilliant style. We will reach our final conclusions on the bill at a later stage.

I thank everyone for their attendance at today's lengthy meeting.

Meeting closed at 15:35.

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