

EDUCATION COMMITTEE

Wednesday 9 February 2005

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2005.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Wednesday 9 February 2005

Col.

PROTECTION OF CHILDREN (SCOTLAND) ACT 2003	2173
--	------

EDUCATION COMMITTEE

4th Meeting 2005, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

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

*Fiona Hyslop (Lothians) (SNP)

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

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Michael Matheson (Central Scotland) (SNP)

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Euan Robson (Deputy Minister for Education and Young People)

Maureen Verrall (Scottish Executive Education Department)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Education Committee

Wednesday 9 February 2005

[THE CONVENER *opened the meeting at 09:46*]

Protection of Children (Scotland) Act 2003

The Convener (Robert Brown): Welcome to this meeting of the Education Committee. We have only one item of formal business on the agenda, which is our resumed consideration of the guidance on the Protection of Children (Scotland) Act 2003, on which we heard from Executive officials and ministers before Christmas. I am pleased to welcome: Euan Robson MSP, the Deputy Minister for Education and Young People; Maureen Verrall, the head of the children and families division; and Louise Donnelly, a solicitor with the Scottish Executive's Legal and Parliamentary Services.

Euan Robson wants to update us on this rather complicated matter and the issues that we raised before Christmas.

The Deputy Minister for Education and Young People (Euan Robson): I will briefly pick out one or two salient points from the note that we circulated, after which I will be pleased to answer the committee's questions.

Members will see that meetings were held on 17 January and 1 February with a group of voluntary sector organisations and that work is in progress to produce drafts of practical guidance on initial assessments of whether an individual needs to be police checked and the summary of the voluntary sector pack.

The committee will recall that a number of seminars were held in July and early October 2004, but that they were oversubscribed. After consideration, we think that another set of seminars would be valuable, so we have made available funding of about £33,000 for an additional six seminars, which are to be in Glasgow, Dundee, the Borders, Aberdeen, Edinburgh and Dumfries. We hope that the seminars will deal with the oversubscription issue and ensure that those who are interested can attend a further seminar. I hope that that is a welcome development.

We considered carefully the issues in relation to the Police Act 1997 and I have had informal discussions with members who were concerned. Members will see the references to the matter in the note. We have asked the voluntary

organisations in detail whether they have difficulties and we are in on-going discussions about that.

Further down the page, members will see that we have met the Scottish Parent Teacher Council. Developments have taken place—the council has forwarded to the Executive letters from local authorities and we are discussing with the Convention of Scottish Local Authorities the issues that have been raised.

Members will see that there have also been useful meetings with the voluntary sector, covering who represents whom. During the process, we have learned more about where the various constituencies are and how they are represented to us. For example, members will see that the Scottish Council for Voluntary Organisations represents voluntary sector bodies with a written constitution. We had not understood that before, so that is a helpful development. The note also mentions a series of meetings with the central registered body in Scotland—the CRBS. I am sure that members are familiar with its activities.

We have had discussions with COSLA on the interpretation of the act. It has convened a meeting of local authority representatives and YouthLink Scotland to discuss the various different interpretations. We are all concerned that interpretation should be consistent across local authorities. The intention is to work towards agreed guidance to all authorities so that there is a secure reference point.

The note also indicates that officials have been talking to the Association of British Insurers. I have made contact with the British Insurance Brokers Association. Diaries permitting, I intend to see its representatives in the week after recess. I think that the meeting will be on Wednesday 23 February, but we are finalising the date—as members know, it is not always easy to find space in our diaries. We have also asked specific questions of voluntary organisations about insurance problems that they have encountered. We will have a preliminary discussion with the ABI and the BIBA. My intention is to write to the committee in due course to explain where we have got to and what our deliberations have led to. The BIBA has said to me that it is anxious to establish a permanent link with the Executive and how we do that will be important for the future. We will keep the committee fully informed.

We have circulated the summary from the survey on volunteering, which Volunteer Development Scotland conducted in October 2004. That summary might be of interest to members.

Members will see that the minutes of the meeting with the voluntary sector organisations on

17 January have been circulated to the committee. It is our intention to send to the committee the minutes of the meeting on 1 February. We have not yet done so because they are in draft form. Once the next meeting has taken place and the voluntary organisations concerned have approved the minutes, it will be appropriate for the committee to get them to see in detail how the meetings are proceeding.

I hope that that has been a useful introduction and I welcome the committee's questions.

The Convener: Thank you. The committee will be pleased with the extent of the work that has been done since our December meetings at which the issues were raised.

I will kick off by asking a couple of questions. One relates to the guidance. The note says that officials were to follow up work on additional guidance, with a draft being produced within seven to 10 days of the meeting, which I think took place on 1 February, although I might be losing track of the dates. We are getting confused, or at least I am, about the documentation. I have been given a nicely printed document that is about guidance for organisations. However, that is not the guidance that is referred to in the note, is it?

Euan Robson: It is not.

The Convener: I have always thought that the guidance to the more amateur or informal organisations is very important. Where are we on that? Is that guidance ready yet? Will it be available in the next couple of weeks?

Euan Robson: I will ask Maureen Verrall to answer that question. She has been involved in the detailed discussion on the guidance and can give the committee a full update.

Maureen Verrall (Scottish Executive Education Department): We agreed at the meeting on 17 January that guidance would be produced; it is much more informal guidance. I call it a plain English guide. The guidance establishes whether an organisation is covered by the act and, if it is, whether the organisation needs to have the post checked—that depends on whether the post falls within the definition of a child care position. If it does, the guidance explains how the organisation goes about doing that.

People are given an example to work through of the positions that would need to be checked. It is made clear that, even if an organisation is covered, a person might not need to be checked for the position to which they are being appointed if it does not fall within the definition of a child care position.

I drafted the guidance with Maureen Mallon of YouthLink Scotland, after discussion with her and George Thomson of VDS. It was circulated to

everybody in the group and was discussed at the meeting on 1 February. The guidance was largely agreed; the substance was no difficulty at all, but people asked about changing the heading and putting some sections in bold. The redraft following the 1 February discussion is to be circulated for discussion at the group's next meeting. As soon as our lawyers clear it, we will be able to issue it.

Before today's meeting, I checked with the clerk whether it would help members to see the draft, because the substance is pretty much ready, but the difficulty is that it is not the final draft, so if we presented it as a public document, people might think that it was the final draft. However, it is well on the way to being there.

The Convener: That has considerable importance. I have a linked question. The note mentions the capacity of the central registered body for Scotland and says that the information from VDS is that

"only around 10% of the organisations requiring disclosures ... had already registered with CRBS."

That statistic is surprising. I suppose that it refers to the number of organisations, rather than the number of people, but even if we allow for that, it seems a major challenge to reach the 90 per cent of informal bodies of one sort or another that are not part of networks, scout councils or whatever. Will you give us an insight into how you are dealing with that tricky challenge?

Maureen Verrall: That is one issue that is being taken forward by those who are involved in what are termed the framework meetings. The first such meeting was on 25 January and was jointly organised by the head of the Executive's voluntary issues unit and the head of my group.

The purpose of asking the SCVO to produce at that meeting a paper about whom it considers itself to represent—the people to whom it has access and gives guidance—was to identify what now appears to be quite a large group of the voluntary sector with which the SCVO has no contact because it does not recognise anybody without a written constitution. Once we have identified that group, we need to work with people to figure out how we can best support it. We are starting with a series of meetings with the CRBS, which is pulling together and making contact with groups and associations of people who are not yet registered with it. We have asked to join those meetings, which will allow us to start to make contacts, too. The first of those meetings takes place on the morning of the 22nd of this month.

The Convener: I would have thought that local authorities are best placed to know who lets their halls, sports fields or whatever. What bodies are we talking about?

Maureen Verrall: I understand that we are talking about any organisation that falls outside the definition that the SCVO applies, which covers bodies with a written constitution. Such a body could be a local football club or league, or a local set of craft or photography groups that meets and takes children through classes. We do not know. The 10 per cent figure is a CRBS figure that is based on its understanding from its database. The CRBS is not really sure precisely who is involved, which is why it wants to establish the series of meetings that we are joining.

The Convener: I suspect that we might be interested in having a report on that matter, which seems quite awkward.

Lord James Douglas-Hamilton (Lothians) (Con): Will the minister confirm that Disclosure Scotland should be able to cope with the influx of retrospective checks?

Euan Robson: Members will recall from our last meeting that we have, in effect, parked retrospective checks, because we are dealing with current issues. On retrospective checks, we need to assess the Bichard report, which we are doing. Officials are discussing with the Home Office what the report's implications might be for Scotland.

There is no point in proceeding with the retrospective checks at this point; we need to get all the other work out of the way. In the summer and autumn, we will be giving full consideration to the relevant provisions in the act and whether and when they will be implemented.

Lord James Douglas-Hamilton: Has there been any update from the Criminal Records Bureau on procedures for disclosure checks on overseas staff? Are there any updates on the continuing negotiations concerning access to overseas conviction data?

10:00

Euan Robson: I am not aware of any, although I had highlighted that issue as one for our consideration. I think that I am right in saying that officials have been contacting the relevant Whitehall departments. There are implications about the quality and type of information that will be received from overseas Governments. We will need to give detailed consideration to the matter. It was pointed out before, I think by Lord James, that we receive people from overseas to work with children, and we need to be as assured as we possibly can be about the safety of the children concerned. That work is on-going, and we will need to return to the committee in due course, perhaps by means of a letter, to tell members how far we have got in that regard.

Lord James Douglas-Hamilton: If further difficulties are experienced by the voluntary sector, might the Scottish Executive consider a further deferment of section 11?

Euan Robson: No. Section 11 is to come into effect on 11 April in respect of new appointments. As I have just explained, we do not intend to implement the provisions on retrospective checks. The on-going work is helping the voluntary sector considerably. Indeed, we are learning a considerable amount about the sector through engaging with it, which has been helpful. However, we do not intend to move away from our position on 11 April.

Fiona Hyslop (Lothians) (SNP): Thank you, minister, for the progress report. The paper that we have received identifies many of the issues that we raised with you previously. Paragraph 3.3 of the note of the meeting with representatives of the voluntary sector is on the capacity of Disclosure Scotland and the CRBS. We have paid a lot of attention to the capacity of Disclosure Scotland in the past. In relation to the CRBS, paragraph 3.3 says:

"The capacity to absorb the outstanding 90% was of concern."

From the meetings that I have had, my understanding is that that is probably an understatement. There is considerable disquiet on the matter. How many members of staff does the CRBS have? Given that a figure of 90 per cent has been mentioned, a huge number of organisations will have to go through the system.

Euan Robson: I do not have figures to hand for the number of people who are employed at the CRBS. I have a figure in my memory, but I do not want to give that to you, as it may well be wrong. We can supply the right figure to you later. In the case of Disclosure Scotland, we made resources available to bring down what were unacceptable times. We are quite prepared to assist the CRBS if necessary. The CRBS is assessing the scale of the difficulties and, as you have heard, discussions with officials are continuing. We require a better understanding of what the CRBS might need in order to cope. The Executive will help in whatever way it can to ensure that the CRBS can complete its tasks.

Fiona Hyslop: We will want to forecast potential bottlenecks, as we might be facing a serious one. Where is the budget line for resourcing that? You have said that the Executive will help to resolve any difficulties if the CRBS needs to gear up with respect to staff or in any other way. Who is responsible for that? Is the Justice Department involved?

Euan Robson: The budget line is held by the voluntary issues unit in the Development Department.

Fiona Hyslop: The other matter that I want to raise also involves what we might anticipate happening and it touches on retrospective checks. What will happen if somebody is in position and a disclosure check finds that there is a concern that they should not be working with children? My understanding from discussions with Lothian and Borders police is that they expect to find that a number of people are in that position. There may be issues for large local authorities about their responsibilities under employment law and questions will arise about whether the person can be sacked or whether they must be moved within the organisation. However, what will happen if that situation arises in a small voluntary organisation that employs only a handful of people?

Is the guidance that is being issued only about the need to comply with the law or does it address what should happen when an organisation finds that somebody is inappropriately employed? How do the individual's rights under employment legislation relate to the Protection of Children (Scotland) Act 2003? Obviously, if we find that somebody is inappropriately employed, we do not want a situation in which the organisation—whether it is a voluntary organisation or a local authority—cannot remove them because they are protected by other legislation.

Euan Robson: Clearly, there are duties on employers—forgive me, I am not an expert on employment law.

Fiona Hyslop: I am trying to flag up some of the issues that may arise.

Euan Robson: The concern is relevant, but I would expect any voluntary organisation that found that it had such an employee first to remove the employee from direct contact with children. There may be opportunities to move the person, pending discussion about their employment situation, to another part of the organisation—for example, to a purely administrative role that does not involve contact with children. Ultimately, the responsibility rests with the organisation to ensure that it complies both with employment law and with the 2003 act. We could certainly suggest that the SCVO and others develop a guide to good practice for that situation. However, there is no escaping the fact that those who are responsible for employing people must abide by both employment law and the 2003 act.

Fiona Hyslop: I hope that the Protection of Children (Scotland) Act 2003 will have primacy over employment law. Otherwise, we are not protecting children, which is the whole point of the exercise.

Euan Robson: I suppose that if there were conflict between the two statutes, the matter would proceed to court. There are practical ways of dealing with such matters, but I think that we should take up the point with the organisations.

Maureen Verrall: If it was found that somebody was on the list of people who have been disqualified from working with children, there would be no conflict in law at all. There would be a requirement on the organisation to remove that person from a child care position; the organisation would commit an offence if it did not do so. I think that Fiona Hyslop's concern is about the soft intelligence that the police might hold, which might be disclosed as a result of a disclosure check but which is not part of conviction information and has not led to the person being on the list of those who are disqualified, even though there are concerns.

We are not in a position to offer clear guidance on the various primacies between employment legislation and the 2003 act, but I would have thought that employers who found themselves in that position would be quite justified in saying that they could not have had access to that information until the relevant provisions of the act were implemented and until they were in a position to do a disclosure check. They would argue that, once they were in a position to do a check, they were given information that caused sufficient concern for them to move the person from a child care position. If the employer was unable to move the person into a position that did not involve child care—perhaps because of Fiona Hyslop's point that small organisations would not have the opportunity to do that—they would feel that they had no option but to dismiss the person. That is my sense of how the situation would work. Employers could not gain access to the information, because the 2003 act's provisions on retrospectivity have not yet been triggered.

The Convener: I suspect that the situation would not be very different from one in which a disciplinary offence came to light in some way. Employers would follow the usual procedures for dealing with such a case, if the situation was not clear cut.

A parliamentary question on staff at Disclosure Scotland, which was asked by one of Fiona Hyslop's colleagues, was answered about three weeks ago, if I am not mistaken.

Maureen Verrall: In most circumstances, an employer would ask a candidate for employment whether there was anything that they should know about that might indicate that the person should not be appointed. That would happen if a child care position was being filled. I think that a candidate's failure to disclose something would be a defence for the employer.

The Convener: If no other member wants to comment, I have a couple of questions. First, paragraph 2.4 of the paper on the meeting between Executive officials and the voluntary sector refers to the supervision of new recruits pending disclosure and raises the issue of the demand for retrospective checks on people who are in post, so that they can supervise new recruits. I presume that the demand will be spread over time and will not cause an impossible clogging up of the system.

Euan Robson: I do not think that the demand will clog up the system.

The Convener: Although retrospective checks are not currently required, people quite often request them.

Euan Robson: Yes. As you say, I do not think that such checks will necessarily clog up the system. The specific issue is being addressed in the meetings with voluntary sector organisations, as the paper indicates. Those discussions are continuing. I recall that the issue had some salience before Christmas but it is being addressed appropriately and organisations are coping quite well.

Maureen Verrall: Two separate issues in two separate bits of guidance have been conflated. I think that Jim Duffy from the Scout Association raised the matter. He said that he thought that the Minister for Education and Young People had provided guidance to the committee that said that someone could be appointed to a supervised position pending a disclosure check only if the person who would supervise them had been disclosure checked. We think that Jim Duffy was referring to a letter from the minister to the committee, which contained a clear statement about people who help out very intermittently—for example, on school trips. The letter said that, provided that the person in charge and the other people present had had disclosure checks, there would be no reason to run disclosure checks on people who occasionally helped out.

The second, separate issue is the appointment of someone to a voluntary position pending their disclosure check. The guidance that we issued says that, if an employer has carried out the other checks by interviewing the candidate and following up references and is simply waiting for the disclosure check to come through, it is for the employer to assess the risk and decide whether they should appoint the person to a supervised position. We think that Jim Duffy confused the two elements of guidance, which apply to different circumstances, and concluded that anyone in a supervisory position would have to be checked, even retrospectively—he thought that he might have done that, but he went away to check after I raised the matter with him at our most recent

meeting. Jim Duffy's understanding might not be correct, so his concern might not be justified. The paper reflects the fact that his concern is being followed up in the meetings.

The Convener: From our correspondence with the Scottish Parent Teacher Council, it appears that local authorities are taking quite a strong view—I will not put that more strongly—on how far they must go to gold-plate their responsibilities under the 2003 act. There is concern about the extent to which that approach is causing problems. COSLA and the Government do not have powers in that context and can at best only advise. Are you confident that you will get a helpful response from local authorities on the matter?

Euan Robson: We must ensure that we get a helpful response. The message about consistency is clear, as I said. The SPTC has helpfully sent us copies of the correspondence, which have just arrived. We will analyse what is in the letters and speak to COSLA directly about the matter. There must be a will on COSLA's part to address the different interpretations that are being made and I detect from officials that that is the case. We need to continue discussions, which are at an early stage. It is important that there is a consistent approach, so that people know where they stand. The draft guidance, which is mentioned in paragraph 3 of the update on action that we sent to the committee, provides a useful reference point for people, as I said. It will also help if COSLA can build up expertise in the area and offer a contact point.

The Convener: The committee appreciates the complexities of the matter—we certainly have a greater insight into them. We would appreciate being kept in touch with developments with COSLA on the final version of the informal guidance and other such matters.

Euan Robson: I welcome the committee's helpful comments and interventions. We will be pleased to keep you informed. We will do that by letter, although, if there is a need for me to come back to speak to the committee, I will be only too pleased to do so as and when the committee requires.

The Convener: We are grateful for that. We are obviously interested in the development of the issue about retrospective checks.

Euan Robson: Indeed.

The Convener: That matter is the looming cloud that lies behind everything as time goes on.

I thank the minister and his officials for attending and I close the meeting. I remind members that a private workshop will follow the meeting.

Meeting closed at 10:17.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Thursday 17 February 2005

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Astron Print Room.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Ttypetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron