MEETING OF THE PARLIAMENT

Wednesday 4 March 2009

Session 3

£5.00

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

CONTENTS

Wednesday 4 March 2009

Debates

Scottish Parliament

Wednesday 4 March 2009

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

Time for Reflection

The Presiding Officer (Alex Fergusson): Good afternoon. The first item of business this afternoon is time for reflection. I am genuinely delighted to welcome today, to lead our time for reflection, my good friend the Rt Hon the Lord Elis-Thomas, the Presiding Officer of the National Assembly for Wales.

The Rt Hon the Lord Elis-Thomas (Presiding Officer of the National Assembly for Wales): Thank you, Presiding Officer, for inviting me to lead time for reflection in Parliament at the beginning of Lent, immediately following the feast of St David—Dewi Sant—the patron saint of Wales.

Some 1,420 years after Dewi's death, sceptical politicians, who discover differing versions of truth in our daily media, will not be surprised to find hagiography and mythology abounding in the written lives of the age of saints. I am drawn to the description of Dewi preaching to an assembly in Llanddewibrefi: to improve his visibility to his congregation, he is uplifted as the ground on which he stands rises beneath him, forming a hill, and a dove lands on his shoulder. Such elevation of leadership before the public rarely, if ever, happens to political leaders.

It was by popular vote that Dewi became patron saint of Wales—more than 60 of the ancient pre-Norman parish churches of Wales are consecrated in his name—with St Teilo being the runner up, with 25 votes. Those early Christian settlements all begin with the Welsh word "Llan". Even to this day, many villages and towns begin with this prefix, whose cognates are found in all Celtic languages, including the oldest—the Brythonic or British that was once spoken in this very part of the world. "Llan", which initially described an enclosure where produce is grown, came to mean a sacred enclosure, a monk's cell, a church and then the surrounding village or town at whose very heart, in the root of its name, is a spiritual space.

Such is our common history. In 10 years' time, we will be celebrating 100 years of the disestablishment of what was once the Church of England in Wales—the old mother church of yr Hen Fam, as she used to be described in Welsh. That was the beginning of 20th century devolution.

Wales in its devolved institutions takes the form of a secular state with no state prayers or even time for reflection at the start of its National Assembly meetings and no primacy for any one religious organisation. Churches Together in Wales—Cytûn lives alongside other faith communities and with all other aspects of civil society as another voluntary body. In a truly interfaith society, all faiths are regarded as equally valid and valuable by each faith community, and each community of faith shares its spiritual space with the community of communities of nation and world.

The Presiding Officer: I am particularly pleased that Lord Elis-Thomas was able to come to Parliament today, as it is the closest possible sitting day to St David's day.

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

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-3506, in the name of Adam Ingram, on the Education (Additional Support for Learning) (Scotland) Bill. I must ask members to stick pretty closely to the times that they are given. I call Adam Ingram to speak to and move the motion. Minister, you have 13 minutes.

14:34

The Minister for Children and Early Years (Adam Ingram): I begin by thanking Karen Whitefield and the Education, Lifelong Learning and Culture Committee for their careful and considered scrutiny of the Education (Additional Support for Learning) (Scotland) Bill and for preparing their stage 1 report. I also thank the groups and individuals who provided oral and written evidence to the committee and those who provided information and opinions to the Government—not least in response to our consultation exercise on the proposed changes to the Education (Additional Support for Learning) (Scotland) Act 2004. The bill deals with complex matters and I am sure that the whole Parliament acknowledges their contribution.

The 2004 act commenced operation more than three years ago, and the intention has always been to revisit the additional support needs legislation and the code of practice to reflect on what we have learned from our experience of implementing the 2004 act. The bill does not alter the ethos or the fundamental building blocks of the 2004 act, which is aimed at a broad group of children and young people with additional support needs. The bill amends the 2004 act in the light of reports by Her Majesty's Inspectorate of Education, rulings from the Court of Session, annual reports from the president of the Additional Support Needs Tribunals for Scotland, stakeholders' views and informed observations in the light of practice.

The proposals in the bill will strengthen the rights of children with additional support needs and their parents.

Rhona Brankin (Midlothian) (Lab): Will the minister please provide some clarity? A commitment was made to review the legislation. When giving evidence on the bill, the excellent witnesses told the committee that a wider-ranging review than the bill affords is needed—bigger and wider issues need to be examined, such as the fact that only a fraction of youngsters have co-ordinated support plans. Does the minister mean that he is not prepared to have a wider-ranging review of the legislation in the future?

Adam Ingram: No—I propose to build on the evidence that has resulted from three years of implementation of the original 2004 act. As I said, our intention has always been to consider the options for review. What we propose is the appropriate option to present to Parliament. We have given significant consideration to the evidence that was presented to the committee and we will lodge amendments at stage 2 that we hope will reflect the weight of that evidence. I am always prepared to listen and to consider other amendments that are lodged. Our response is entirely appropriate and proportionate.

The bill will give parents and young people access to mediation and dispute resolution from the host authority following a successful out-of-area placing request. Most important, it will strengthen the rights of children with additional support needs and their parents by providing the parents with the same rights as others have to make placing requests to local authorities that are outwith their area. The bill will increase the rights of parents and young people to access tribunals to deal with failures by education authorities.

As members may know, when giving evidence to the committee, I shared with it three additional amendments that I am minded to explore further. The first would enable all appeals about placing requests for special schools to be heard by the tribunals. The second would ensure that parents have a right to request an assessment of their child's needs at any time. The third would enable tribunals to specify when a placing request should start.

The code of practice will be amended in due course and will be laid before the Scottish Parliament. The redrafted code will place the 2004 act in the context of our current policies, such as the getting it right for every child programme, the early years framework and the curriculum for excellence.

I am aware that a number of those who provided evidence to the committee asked for clarification of the term "significant", as used in the phrase "significant additional support", the need for which is one of the criteria for a co-ordinated support plan. Our intention is to develop further the redrafted code and to clarify the definition of "significant". We are working with stakeholders to develop further guidance on the meaning of "significant". The code will also clarify the process of making placing requests.

As members may be aware, we held an extensive consultation on the draft bill. I also met the Convention of Scottish Local Authorities and various other stakeholders. Most stakeholders

were very supportive of the proposed amendments to the 2004 act. I was pleased to note that, in its report, the committee, too, said that it was content with our consultation.

I warmly welcome the committee's broad support for the amendments to the 2004 act. I am grateful for its support for the general principles of the bill and its recommendation to the Parliament that the general principles be approved. I am pleased to note that the committee recognises that the Government's intention has always been for parents of pupils with additional support needs, regardless of whether those pupils have a co-ordinated support plan, to be in the same position as others in relation to placing requests—not only requests to the home authority but out-of-area requests.

I note the committee's recommendation that the Scottish Government is to have regard to stakeholders' views in its revision of the "Supporting Children's Learning" code of practice and any secondary legislation that results from the implementation of the bill. I assure the Parliament that an extensive consultation will be conducted in due course.

However, I recognise that making parents aware of their rights is a key issue, particularly with regard to services for resolving disagreement. To help to address that, consideration is being given to amending the Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 to place local authorities under a duty to publish information on the procedures for dispute resolution.

Members may also be interested to know that the Scottish Government already provides substantial funding to support Enquire, our national additional support for learning helpline and information service, whose key aims include outreach to support effective implementation of the 2004 act and consideration of new ways to heighten the profile of additional support needs issues among parents, young people and children. At present, we are funding the service to the tune of around £400,000 per annum.

We are currently working with Enquire to refocus our marketing strategy with the aim of improving parental awareness of their rights under the 2004 act. To assist us with this aim, Sir Jackie Stewart, the motor-racing legend, has very kindly offered his services and involvement in any action that we take forward to make parents aware of their legal rights under the act. His international stature and well-known commitment to improving the lives of children with additional support needs will certainly help to raise the profile of any such promotional work.

Similarly, I was delighted to hear that Muriel Gray, the broadcaster and journalist, has become the first patron of Scotland's additional support needs mediation services forum. The forum, which is part of the Scottish Mediation Network, helps to resolve disputes between parents or young people and education staff. I recently attended the communication is the key mediation event that was held in the Parliament. I was encouraged to hear Muriel Gray and a panel of speakers stress that effective communication can be the first step on the route to resolving any disagreement. I assure members that I, too, share that view.

The committee requested that I clarify my position on Lord Wheatley's ruling, in which he states that additional support should be related only to "the teaching environment". Our policy intention is clear: the purpose of additional support is to allow children and young people to benefit from school education. The nature of that support should not be limited to the support that is offered in a school environment; it can involve not only educational but multi-agency services such as health and social work services and those provided by voluntary agencies. However, given that Lord Wheatley's opinion cast doubt on the interpretation of the 2004 act, we are considering lodging an amendment to clarify the definition of additional support.

Margo MacDonald (Lothians) (Ind): Who will decide whether extra school support should be provided and what form it should take?

Adam Ingram: That is part of the process of identification and assessment of children's needs that local authorities are under a statutory duty to accomplish. The member may or may not know that we are also extending the rights of parents to request an assessment for their children at any time.

As I said, we are considering lodging an amendment to clarify the definition of additional support. We intend to make the 2004 act as clear as possible to meet the policy intention reflected in the "Supporting Children's Learning" code of practice—that additional support is support that enables a child to benefit from school education, and that such support is not confined to the teaching environment.

As members know, the purpose of today's debate is to discuss the general principles of the bill, not to provide a detailed response to all the points that have been made. However, I assure members that we will consider and reflect carefully on the committee's report and the points that members make in today's debate.

I hope that all members present in the chamber today will follow the recommendation of the

Government and the committee and support this piece of legislation.

I move,

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

The Presiding Officer: I advise members that I have just been informed that a bit of time is available in the debate. Members should feel free to take interventions, if they wish. If that becomes a problem, time can be added for speeches.

14:47

Karen Whitefield (Airdrie and Shotts) (Lab): It is fair to say that almost everyone agrees that the Education (Additional Support for Learning) (Scotland) Bill is needed. It is probably also fair to say that almost everyone agreed with the general principles of the Education (Additional Support for Learning) (Scotland) Act 2004, which were effectively the same as those that underpin the bill that is before us today. It will, therefore, come as no surprise that the Education, Lifelong Learning and Culture Committee supports the general principles of the bill.

As members will be aware, the bill seeks to amend the 2004 act in such a way as to ensure that the spirit of the act is reflected in the actions of local authorities. Many of the criticisms that were made of the 2004 act were not about its aims or aspirations; rather, many people thought that local authorities were following the letter, rather than the spirit, of the law. There was also a court ruling that required the Government to act. To put it bluntly, there was an urgent need to improve the letter of the law.

I understand the problems that local authorities face in relation to additional learning support, almost all of which boil down to funding. However, funding problems should never be allowed to impact on the quality of education that is provided to children with additional learning support needs.

Before commenting on the detail of the bill, I begin, as tradition demands, by thanking all those who helped the committee to prepare its stage 1 report. First, I thank all those who gave evidence to the committee, both in writing and at committee meetings. I also thank the individuals and organisations that attended our round-table discussion session, which helped to focus committee members' minds on the task in hand. I thank the Minister for Children and Early Years and members of the bill team for their co-operation and assistance in what has been a fairly consensual process—something of which the Education, Lifelong Learning and Culture Committee cannot always be proud. I thank the staff of the Scottish Parliament information centre for their assistance in getting committee members up to speed on the background to the bill and the key issues that it tackles. Last, but by no means least, I thank the committee clerks for their efforts in helping the committee to bring its report before the Parliament today.

The policy intention behind the bill is to clarify the 2004 act and strengthen its ability to deliver the original policy intention, which was to provide for any need that requires that the child or young person be given additional support to enable them to learn. Since the act was implemented in 2005, it has become clear that it fails to deliver fully on its key policy aspirations and, as our report makes clear, although local authorities have generally made provision for children with additional support needs under the act, they have not always been in tune with what some witnesses considered to be the spirit of the act. There was broad committee support for that conclusion. Evidence from organisations such as Independent Special Education Advice (Scotland)—ISEA—and Govan Law Centre clearly showed that, despite the 2004 act, families of children and young people with additional support needs, and, indeed, the children and young people themselves, felt less than empowered when dealing with local authorities. That is why the committee welcomed the proposals in the bill and the additional commitments that the minister gave during its stage 1 scrutiny.

Rhona Brankin: Would it be true to say that many of the witnesses said that they would like there to be a wider review of the legislation but, because of the scope of the bill, it was not possible for the committee to take such evidence?

Karen Whitefield: There were witnesses who made representations for the whole issue to be scrutinised properly. The committee may return to the matter, particularly to do post-enactment scrutiny of the bill to find out whether it delivers what we hope it will deliver.

It is worth pointing out that concerns were expressed that the bill might make an already complex area of law even more complex. That is a particularly important point when we consider how disempowered parents already feel in relation to accessing additional support. Govan Law Centre stated that it had

"a general concern that the ASNTS [Additional Support Needs Tribunals for Scotland], associated procedure and applicable education law seems to be getting more and more complex. As an over-arching principle, we should strive to make the law as simple and accessible as possible at all times. This is fundamentally important if parents, pupils and educationalists are to be able to understand and apply the law. The level of detail and complexity in this field of law is in danger of becoming beyond the reach of most people."

As it was often beyond the reach of committee members, too, we need to consider that point.

Members will be aware that the main proposal in the bill is to allow parents of children with additional support needs—including those with statutory co-ordinated support plans—to make out-of-area placing requests. The key issue is that the parents of children with additional support needs should have the same rights as others to make such placing requests for their children. Despite the concerns that some local authorities raised, the committee agreed with the Scottish Government and the policy intention behind the 2004 act that all parents should have equal rights to make out-of-area placing requests.

The committee took a great deal of evidence on the process of appealing such placing requests, and many organisations commented that the bill's proposals on that did not go far enough. Therefore, the committee welcomed the minister's announcement that the Scottish Government would consider lodging an amendment at stage 2 to ensure that all appeals for out-of-area placing requests that relate to special schools would be heard by a tribunal, regardless of whether a CSP was involved. The charities that represent children with additional support needs have also welcomed that announcement.

However, following Govan Law Centre's comments, the committee remains concerned that, despite the proposed improvements, the out-of-area placing request procedure and appeals mechanisms will remain complex and difficult to understand. Therefore, it is vital that the parents of children and young people with additional support needs have a clear understanding of which body will hear an appeal and under what circumstances. That is why we asked the minister to consider the following proposals: that the tribunal takes placing requests relating to special schools only; that it takes all placing requests when the child has additional support needs; and that it takes placing requests when the reason for the request is the child's additional support needs.

The committee also heard evidence on the proposal in the bill for a CSP to be reviewed following a successful out-of-area placing request. As members will be aware, the bill proposes that the host authority is responsible for reviewing any CSP in such circumstances and that that will take place as soon as is practicable after the date of transfer. However, concerns were raised by organisations such as ISEA about potential delays created by that approach, particularly when the host authority is unwilling to work in partnership with professionals and the home authority. The committee noted the potential benefits of the approach set out in the bill and ISEA's concerns, and recommended that the Scottish Government consider those concerns before drafting any secondary legislation. It is important to note that the committee understood and recognised the difficulties that local authorities could face, so it asked the Government to take on board the points that were raised by the Association of Directors of Social Work and the Association of Directors of Education in Scotland on this area.

On mediation and dispute resolution in relation to an out-of-area placing request, the committee heard strong evidence that certain groups in society are not aware of their rights. I welcome the minister's support for raising awareness of rights and the involvement of our great racing legend in that endeavour. It is particularly important that we ensure that certain groups are aware of their rights, notably low-income families, looked-after and accommodated children, Gypsy Travellers, and children with parents in the armed forces, who all require special attention to ensure that they are fully aware of their rights. In our report, we specifically request that the Scottish Government addresses that issue as a matter of urgency.

The committee also felt that, in providing parents with support in the tribunal system, the emphasis should be on advocacy, mediation and dispute resolution rather than on legal support. Concerns were also raised about when a placement should commence following a decision by the tribunal. We welcome the stated intention of the Government to lodge an amendment at stage 2 to allow tribunals to specify when a placement should start, but we recognise that some flexibility is likely to be required. Finally, the committee noted concerns raised by Govan Law Centre relating to the provision of additional support needs outwith educational support, and we have asked the minister to clarify his position on that.

There are issues that come before Parliament in which party politics plays little part, and I believe that this is such an issue. We all agree that parents of children with additional learning support needs deserve to have all the support and assistance that the state can provide, although we can disagree on some of the fine detail about how to achieve that. Realistically, we all know that, regardless of which party is in government, that is never going to be a cheap or easy endeavour. However, we agree on the key aim of providing proper support to parents so that their children have every opportunity to live fulfilling and rewarding lives.

The committee believes that some issues must be re-examined during stage 2, and I highlighted some of them during my speech. However, I am pleased to state that the Education, Lifelong Learning and Culture Committee supports the general principles of the Education (Additional Support for Learning) (Scotland) Bill.

14:59

Ken Macintosh (Eastwood) (Lab): I confirm Labour's support for the general principles of the bill. In fact, as I suggested in committee, I am happy to acknowledge the constructive approach that the minister and all committee members took during stage 1. It was reassuring to find during our final evidence session that the minister had identified three issues that the committee had also identified and that he was willing to lodge amendments at stage 2 to address those concerns.

I will return to those amendments, but before this turns into a love-in I should highlight that Labour also believes that clarification is required on several issues before stage 2. Furthermore, we have concerns about issues that are missing from the bill altogether, such as funding and the need for a wider review of the additional support for learning legislation. Let me outline a few of our concerns.

First, the bill has quite a narrow focus. It has been introduced in response to a number of court decisions that we all agree have been against the spirit and intention of the original Education (Additional Support for Learning) (Scotland) Act 2004. It is interesting to note that several of the organisations that gave written or oral evidence expressed their support for the principles behind the 2004 act but emphasised that, in practice, the act was not working in the way that had been envisaged. For example, it emerged during our witness sessions that the number of pupils with a co-ordinated support plan is very low—far lower than had been anticipated. The Scottish Parliament information centre advises that there are currently just under 1,900 CSPs, as opposed to the 11,000 to 14,000 that were originally expected.

Furthermore, the 2004 act appears not to have provided a vehicle to help identify the number of pupils with hitherto hidden or unrecognised needs. Children in Scotland points out that, to date, the number of children who officially receive services and support under the 2004 act has risen modestly, from 5.1 to 5.6 per cent of all students. That increase—of approximately 2,000 pupils nationwide—is far below the number of new beneficiaries that was expected.

A second point that emerged from the committee's evidence is that, although there has been a clear reduction in confrontation between parents and local authorities over special needs, the new appeal tribunals can still be the pinnacle of a system that is overly adversarial. That reflects what has been described as an imbalance of arms—that is, too many lawyers against the parents—in the system. Many of our witnesses said that they wanted a greater emphasis on mediation and dispute resolution and that parents should be made more aware of, and be able to assert, their rights. In his evidence to the committee, the Minister for Children and Early Years was sympathetic to that approach. He suggested that, at stage 2, he would consider

"strengthening the obligation on authorities to provide information"—[*Official Report, Education, Lifelong Learning and Culture Committee*, 21 January 2009; c 1916.]

to parents. Can he clarify whether he intends to lodge such an amendment at stage 2?

Adam Ingram: I think that the member caught in my remarks the fact that we are considering amending other regulations to put local authorities under a duty to publish information on mediation and dispute resolution services.

Ken Macintosh: That is very encouraging. The minister hinted that to the committee, but it is good to hear that confirmation, which I think will be welcomed by all committee members.

Another issue that is not addressed in the bill is funding, which remains the big, unspoken subject that many families feel unduly influences decisions. Local authorities are both the providers of support and the gatekeepers to it; they are, and will remain, the guardians of the public purse. Many families worry that decisions are too much based on resources—for example, on what provision is available locally—rather than on the needs of their children. That can create further inequities in who can access support. It is difficult to be sure who wins that lottery, but it is certainly true that the least articulate, the most put upon and the most vulnerable can lose out. That brings me back to the point that we are still failing to identify and support too many young people in our schools.

As members will know, in 2007 HMIE published a review of the implementation of the ASL legislation that highlighted the low and variable number of CSPs. The report emphasised the need to provide better information to children and parents—the point that the minister has just addressed—and concluded that local authorities across the country were inconsistent in their approach to additional support. My colleague Rhona Brankin made a series of freedom of information requests that highlighted the disparity and the postcode lottery. Therefore, let me repeat the question that my colleague put to the minister. When and how does he intend to make good on the Government's promise to review the wider landscape? I am aware that the minister has established a working group on co-ordinated support plans. Has that group now concluded its work? Is the minister in a position to share its findings and let us know what further amendments he intends to lodge to the bill or the code of practice?

Adam Ingram: The working group is still working; the third meeting is tomorrow. I hope that any report and recommendations that come to me will be fed into the legislative process, as I indicated to the committee at our recent meeting. I can give no undertakings about what will be in the report, but the committee will be informed of the recommendations.

Ken Macintosh: I welcome that assurance. The reason why I ask the question again now, and the reason why the timeframe matters—a point to which I will return—is that as we go into stage 2 we need to know whether we need to amend primary legislation rather than put something into the code of practice. The suggestion that the minister made in committee and is making today refers to the later stages of the legislative process. I am not sure whether that means leaving it until stage 3, or until the code of practice, which is also part of the legislative process. The committee would welcome as much information as possible—even early thoughts—on those issues as we go into stage 2.

Presiding Officer, may I check my time please?

The Presiding Officer: You may carry on until I tell you to stop, Mr Macintosh. [*Laughter.*] I can happily give you another two or three minutes.

Ken Macintosh: I am in the fortunate position of having to give our winding-up speech, to the depression of my colleagues on the back benches.

Those who gave evidence to the committee repeatedly expressed anxiety about the code of practice. Well-intentioned though that document is, what really matters to parents and practitioners is what is filed in statute—the legal rights that parents and pupils enjoy.

Earlier, the minister quoted the example of the on-going disquiet over the term "significant". As the minister stated, to open a CSP, it must be demonstrated that a child's needs arise from complex or multiple factors that require significant additional support that goes beyond the educational. In its response to the consultation, ISEA, one of the most effective parental advocacy groups in the field, described the term as the

"most contentious issue within the legislation".

ISEA highlighted the variation between local authorities about the meaning of the term "significant", and the even more varied interpretation in the other agencies involved. Other witnesses also suggested that the threshold used for the term "significant" by health boards in particular is too high. ISEA concluded that

"the word significant is the main reason why so few children and young people have a CSP".

In his evidence to the committee the minister said that the working group would consider the question of an agreed definition, and he went on to say—and confirmed in his opening remarks today—that he was minded to deal with the issue through the code of practice. Can he assure us that he will, if he can, bring forward a definition before stage 2 for the very simple reason that, as I argued earlier, we need to know whether it should be in legislation or not?

A number of outstanding issues are to be addressed and resolved before the bill becomes law but, given the Government's and the committee's approach to date, I am optimistic that we can do so, and that we can meet the needs and aspirations of families across Scotland. I am happy to offer Labour's support for the general principles of the bill.

15:09

Elizabeth Smith (Mid Scotland and Fife) (Con): First, I put on the record how much we support the principles of the bill. It is absolutely vital that we get it right. At a time when so much of the media is focusing on the other aspects of the Government's education policy, it would be a great tragedy if we took a back seat on the issues in the bill, because it is one of the most important issues that we face and we must get it right.

There can be no disagreement about the need to ensure that each child with ASN receives the appropriate help in an efficient and timely manner, and that that support extends to the home and local community, as well as to the teaching environment. It was good to hear the minister's assurance on that. Support must be holistic and fully co-ordinated across social, health and educational areas.

We must acknowledge that specialist care also means the provision of specialist services. It is not always possible to ensure that those can be provided in every local authority, so it is important that there is a facility for out-of-area placing requests. At the same time, we must ensure equality of opportunity, equality of treatment before the law and recognition of the administrative and financial responsibilities for parents, for the host and home local authorities and for the support carers.

We fully support the Government's intention to reduce the complexity of the legislation; to speed up the decision-making process; to ensure that the various parties are fully aware of their rights and responsibilities; to provide better mediation and advocacy; and to provide better cover for those who are at school but who may be over 18, and for those who are the most vulnerable excluded pupils—for example, looked-after children or

young carers. We must not forget them in this process.

Margo MacDonald: The member referred to children who are still in care but who are over the age of 16. Is she satisfied that the bill properly addresses the issue of those people who need support post-school?

Elizabeth Smith: Ms MacDonald asks a good question. I am not satisfied—there are issues that go well beyond differences in age. It is always difficult to provide clear definitions, but the issue extends well beyond those people who are in a school environment.

We need to focus on two things. First, we need to ensure that the bill is as watertight as it possibly can be with regard to reducing the loopholes in current legislation. Secondly, we need to reduce the wide variation in local authority interpretation of the code of practice. I make it clear that the second is just as important as the first, particularly with regard to reducing the scope for buck-passing and addressing the perverse financial incentives that sometimes lead to the wrong decisions being made.

With regard to the bill, it is essential that there is legislative tightening up of important definitions, not only of the term "significant", but of the term "complex needs". There needs to be a clearer understanding of the difference between long-term and temporary needs. Evidence from HMIE, West Lothian Council, the City of Edinburgh Council, the Scottish Government schools directorate and Consumer Focus Scotland—and from the Minister for Children and Early Years—makes it clear that the lack of tight definitions often cloud the issue of whether a CSP is required, which can be crucial in providing the correct support.

That is one of the most important concerns that we face, and the minister has promised that the working party on CSPs will further inform the later stages of the bill process.

Robert Brown (Glasgow) (LD): I hear what the member says—and she is right—about definitions and getting the legislation right. Will she accept, however, that the central issue—which we should keep our eye on—is not whether people have CSPs, but whether they get the right support in school when they need it?

Elizabeth Smith: The member is right—the issue concerns not only CSPs. If we were to get the situation right, we would not, in an ideal world, have quite as many CSPs in the beginning. If earliest intervention took place, there would perhaps be no need for some of that.

I turn to some of the detailed evidence that was given to the Education, Lifelong Learning and Culture Committee. It is clear, as the committee's convener said, that the current legislation is too complex in relation to establishing who is responsible for what, specifically with regard to the costs that are involved. That was one of the strongest pieces of evidence that we heard, and came from groups such as Govan Law Centre, School Leaders Scotland, Barnardo's Scotland and Sense Scotland. Those organisations made it clear that there are issues about responsibility and costs.

Three other aspects of the legislation need improvement. The first concerns the issue of representation and advocacy. Throughout the process of evidence taking, we heard several times that, under the current situation, children are often not well represented, both because their parents do not have access to good advocacy—partly because they do not always have the right information or financial resources—and because section 11 of the 2004 act does not confer on them a statutory right to advocacy. When that is set against the situation for local authorities, which often have the ability to pay for representation, there is a problem. It is appropriate at this stage to flag up the fact that the child at the centre of a placing request is currently unable, in a legal context, to express their own views, which is very much at odds with other aspects of Scots law.

The second issue is that the tribunal process is viewed as unnecessarily adversarial, which can be a disincentive for parents to come forward. We heard worrying accounts of that, and I hope that we can address the matter.

Thirdly, we heard compelling evidence from Children in Scotland, the Royal National Institute for the Blind and Sense Scotland that the current legislation should be amended in order to ensure that the responsibilities and duties of local authority education departments continue beyond the time when the person reaches 18, so that there is an affirmative obligation to develop a transition plan for the older student to pursue into the post-school environment.

It is all very well to improve the current legislation, but we must also ensure that its interpretation within the local authority code of practice also improves. From the beginning of this debate, it has struck me that there is presently far too much scope for buck passing and for local authorities to hide behind some of the complexities of the legislation instead of facing up to their true responsibilities.

Let me be quite clear—and this might go back to the point that Robert Brown raised. If there were a proper, graduated response to the needs of the child in the very first instance, and if there were a proper relationship between parent and partnership officer from day 1—as there is in many local authorities in England and in countries such

as Australia—then there would not be quite such a need for so many CSPs to be brought in, especially when the problem is already too far down the road. We should not forget that the cost of tribunals—of around £8,000 or £10,000—could instead pay for 20 hours a week of classroom support for the child. That is a strong message for us to hear.

During one evidence session at the committee, I was appalled to hear that some local authorities do not provide comprehensive information to parents about their rights and the support available. Such information was lacking, so it was good to hear the minister's comments about raising the profile of that information.

Rhona Brankin: Does the member agree that some local authorities—notably, the City of Edinburgh Council—will take Queen's counsel to tribunals, at huge expense to council tax payers, thus putting parents at a huge disadvantage?

Elizabeth Smith: Ms Brankin makes that point clearly. It is true, and we must address it. The playing field is not level. In other countries around the world, the situation is a bit better than it is in Scotland. There are lessons to be learned. It is unacceptable that wide variations exist in local authority provision. As I say, we can do something about that.

I said in my opening remarks that this bill is one of the most important before Parliament. I firmly believe that to be the case, because of the enduring principle of promoting the best interests of the child in providing them with the holistic support mechanism that gives them the best possible chance in the future. As the convener of the Education, Lifelong Learning and Culture Committee said, this is not a party-political issue—for once. It is about our commitment to the futures of those children and of the families and carers who support them. That is why the Conservative party will support the Government.

15:17

Margaret Smith (Edinburgh West) (LD): I welcome the opportunity to speak in the debate, and I put on record the support of the Liberal Democrats for the bill.

I would like to thank all the individuals and organisations who have given both formal and informal evidence to the Education, Lifelong Learning and Culture Committee to date. I include the Minister for Children and Early Years, whose input has been very constructive. I welcome the three amendments that he identified before committee members had the chance to twist his arm. I look forward to his lodging those amendments at stage 2, together with some others that I will mention later. The minister has also shown willingness to address other concerns relating to CSPs, the Wheatley judgment, and other matters.

Most of the people who gave evidence to the committee support the bill, as does the Education, Lifelong Learning and Culture Committee itself. However, many people also want the bill to go further. Even if we amend the bill, the need to keep the legislation under constant review has been highlighted to us, to ensure that the systems that we put in place actually work, throughout the country, for children with special needs and additional support needs, and for their families.

The people whom the committee heard from included parents who know exactly how stressful bringing up a child with additional needs can be—parents who time and again have to fight and hassle and harry local authorities and health services for the support that they need so that their children can enjoy a decent quality of life.

As the minister said, there is clearly a need to strengthen and clarify the ability of the 2004 act to deliver on the original policy intention to provide for any additional support to help a child or young person to learn. Such clarification is needed in the wake of a number of Court of Session judgments as well as in the wake of the first few years of implementation.

We must make the bill as watertight and understandable as possible, and there is a reasonable call from many parents and others, such as Govan Law Centre, for a simplification of the process. I am sure that my committee colleagues would agree that it is not simple at present. It is incredibly complex for us all, and I can only guess how complicated it is for parents who are caught up in the middle of it all, given the other stresses and strains on them.

Despite the best efforts of Enquire and other organisations, there is a real concern that parents are not aware of their rights under the present legislation, even though there is a statutory duty on councils to inform parents of them. We urge the Government to address that and to ensure the provision of proper advocacy and mediation support for children and their families. The Liberal Democrats warmly welcome the involvement of Sir Jackie Stewart in trying to get that message across to parents.

The committee also identified the particular needs of key groups, such as looked-after children, who are in the unique position of having the local authority as their corporate parent, as well as the needs of young people beyond 16 and at points of transition. Some members thought that those should be reason enough for taking matters to a tribunal if people have concerns.

We welcome the main proposal of the bill, that parents of children with additional support needs—including those with CSPs—will be able to make out-of-area placing requests, bringing them into line with other parents. That seems to be eminently sensible and fair. It also makes clear the intent of the 2004 act.

The bill also proposes that, when there is a CSP or when one is under development, appeals on placing requests should go to the tribunal. That is a complex area, but we need to clarify the position in the light of the Dorian judgement. Some witnesses expressed concern about the central role that is given to the CSP in decisions about where requests and appeals are held, given the on-going concerns about the low number of CSPs in existence compared to the number that were anticipated by the 2004 act. The committee has asked the minister to give further consideration to whether all placing requests relating to special schools should go to the tribunal, as suggested by the tribunal president, or whether all ASN placing requests should go to the tribunal. Both of those options have some merit if we are serious about trying to simplify the system.

I welcome the fact that the minister has set up a working group to look into CSPs. A number of people have raised concerns about the production of CSPs, the timescale associated with that and the way in which councils are handling requests for CSPs to be put in place. If there is any sense in which the CSP is seen as the key that unlocks additional services and that, as a result, parents are being denied those services, that does not fit with the spirit of the 2004 act, the spirit of the bill or the views of the members of this Parliament.

There remains concern about the councils' role as gatekeepers in some instances, and HMIE highlighted the fact that different approaches are taken around Scotland. Frankly, we must address that.

Adam Ingram: I emphasise the fact that we do not view CSPs—nor should they be viewed—as passports to services. The passport to services is the identification and assessment of additional support needs. CSPs can help with the co-ordination of that support. I make it very clear that CSPs are not a replacement for the record of needs, or the statement of needs in England.

Margaret Smith: I welcome the minister's statement of that position. We will be in a slightly difficult position if we start to make CSPs part of the reason why certain matters do or do not go to tribunals. That issue was raised—perhaps surprisingly—by the City of Edinburgh Council. We have already heard about that, so I will not dwell on it today.

We touched also on the need for proper and timely co-ordination between councils when a placement has been given the go-ahead. That is very important, as are the cost implications, which I will not dwell on in detail. That is an important matter that we will have to return to.

We would like the tribunal to be given the power to state when a placement will start, and I welcome the minister's willingness to lodge an amendment on that. I also believe that a strong case can be made for parents' being able to refer cases back to the tribunal if action has not been taken. We heard enough about the current system of dispute resolution through section 70 of the Education Act 1980 for us still to have some concerns about how that is working for parents.

We are particularly keen for the issue of definitions to be reconsidered by the Government. The issue was raised with me only a few days ago by a parent of a girl whose need for support had been questioned on the basis of a lack of a definition of the term "significant" in relation to additional support needs. The 2004 act was quite clear that it did not wish the tribunals to be dominated by legal arguments or to be adversarial. However, that is where we have ended up and the situation is very unfair. Both committees that have dealt with the matter grappled with the issue. In the situation that we have arrived at, parents are not armed with legal help but, as we have heard, they are up against QCs on behalf of councils. It is ludicrous that councils are doing that. The Education, Lifelong Learning and Culture Committee identified a need to ensure that a different spirit informs the approach that is taken. There might be merit in the suggestion of the president of the tribunal that the tribunal might be given extra legal resources so that any legal arguments from local authority solicitors or QCs might be examined fully without parents and the child being disadvantaged.

We are also concerned about Lord Wheatley's decision in relation to the definition of additional special needs. He has narrowed the definition, which means that additional support is defined as simply education support offered in a teaching environment. That matter must be addressed by the Government, and I welcome the fact that it has been considering the issue and that the minister has—in the committee and in the chamber today—reiterated his understanding that the 2004 act covers any support that allows a young person to benefit from school education.

I look forward to hearing what the minister has to say about that important issue and others at stage 2. We will be able to address many issues as part of the legislation, but many issues of importance to parents and children will have to be left for another

day. We remain, however, committed to addressing those as well.

I have great pleasure in supporting the bill at stage 1.

15:26

Aileen Campbell (South of Scotland) (SNP): I am pleased to be taking part in this debate, largely because I am a member of the Education, Lifelong Learning and Culture Committee, which is the lead committee for scrutinising the bill, but also because, like many of us, I have constituents who will benefit from the proposed changes.

I would like to put on record my thanks to all the organisations that provided excellent briefings ahead of this debate and who eloquently put forward their ideas about how they want the bill to progress.

It is fair to say that we in the Education, Lifelong Learning and Culture Committee have had our fair share of disagreements, political differences and quibbles. However, the situation with regard to the bill was different, I believe because we all want to help the Government to move the bill forward, as it is the right thing to do and will help families the length and breadth of the country. As Karen Whitefield and Liz Smith said, the issue is above party politics.

I do not believe that the bill will change the spirit of the 2004 act; rather, it will expand the provisions so that parents of children with additional needs get more rights and protection. During our scrutiny, many witnesses told us that the 2004 act does not always meet the needs of families who need help or support. We heard about parents being pitted against teams of lawyers representing the council, about parents having to struggle to get their child the help that they need, and about cases dragging on for long periods of time. It was vexing to hear about parents who already have to cope with the added life pressures that having a child with additional needs places on them also having to fight to get the help and care that they require. What we heard, unfortunately, confirmed what many members of the committee had encountered in the regions and constituencies that we represent.

Constituents of mine wanted me to attend meetings with the social work department because they were scunnered—scunnered of having to fight for their rights, scunnered of having to face more and more delays, and scunnered of not being given the support that they deserve. That is why I am pleased that the Government will try to rectify the legislation so that it adopts an approach that is more about common sense and less about the letter of the law.

The bill covers a lot of issues to do with additional support for learning and needs, so I will limit my comments to the areas that particularly interested me during the course of the committee's scrutiny.

One recurrent theme was parents' lack of awareness about their rights. Despite there being an obligation on local authorities to inform people of their rights, it appears that some local authorities are often not very forthcoming with relevant information. It was, therefore, pleasing to hear the minister's thoughts about amending the information provisions in the 2004 act and working with Jackie Stewart and Muriel Gray.

ISEA noted that about 75 per cent of parents are unaware of the fact that they can request mediation and that 80 per cent have no or poor information on their right to request dispute resolution. Furthermore, ISEA's questionnaire, which gave rise to those statistics, showed that parents do not know that when they attend a meeting, they can get papers, agendas and reports. It is regrettable that such knowledge is limited, as that no doubt severely curtails parents' abilities to play a full and informed part in discussions about their child.

Lorraine Dilworth told us during an evidence session that some councils are good at getting literature to parents and directing them to websites where information is easily accessible, but that one local authority's website was so poor that she could not find the name of the director of education on it. It is clear that the Government should do all that it can to improve the way in which parents are informed about their rights, to ensure that there is consistency throughout the country and that basic methods of sharing information are followed.

I hope that the Government will also consider the specific problems that are faced by Gypsy Traveller children, children whose parents are in the armed forces and looked-after children. The convener of the Education, Lifelong Learning and Culture Committee, Karen Whitefield, mentioned those groups. A particular issue for Gypsy Traveller children and the children of army personnel is that they experience interrupted learning and access. I can only assume that my point about the lack of parental knowledge of rights is exacerbated for those families, which have to deal with many more local authorities.

We should also be aware of looked-after children, who do not have a diligent parent fighting their corner. I welcome the moves that the Government has taken so far, such as the launch of the guide "These Are Our Bairns: A guide for community planning partnerships on being a good corporate parent", to ensure that looked-after children are not disadvantaged. I know that the

minister intends to continue to develop policies to ensure that that remains the case.

Local authorities told us that they are aware that they need to take responsibility for ensuring that all families get equal access. That is encouraging, and I hope that that approach will continue.

I am pleased that the Government is looking to reclaim the ethos of the 2004 act. We all have a duty to ensure that no child is failed by any system and that all children are treated fairly, regardless of their background, culture or need. It is clear to me that many parents feel let down, are bewildered by procedure and jargon, and do not get the information and support that they so desperately need. Of course, that is true in relation to children who have parents, but we must not forget looked-after children, who depend on us to get the legislation and rules absolutely right.

There is a will throughout the Parliament to get things right for our children. I hope that we manage to work together to ensure that we do what is right for our bairns and for parents and young people. I want to be able to tell my constituents who have scars because the 2004 act let them down that no one intended it to be that way. I want to let them know that we are on their side and that we want to support and help them to make the situations in which they find themselves as stress free as possible. Not everyone will be entirely happy with the changes, but if we start to improve things now, the benefits will last forever.

I am happy to support the principles of the bill. I look forward to hearing what others have to say in the debate and as the bill makes its way through the parliamentary process.

15:32

Claire Baker (Mid Scotland and Fife) (Lab): The Education (Additional Support for Learning) (Scotland) Bill is the first bill that I have worked on at stage 1 since I entered the Parliament. I found stage 1 to be constructive and focused, if quite technical for a first-time legislator such as me. Of course, I do not have the advantage of having been on the Education Committee when the Education (Additional Support for Learning) (Scotland) Act 2004 was passed, although sometimes the discussion between Ken Macintosh and the Minister for Children and Early Years became a prompting exercise on who voted for what the first time around.

During the complex committee process, I welcomed the pleas from many witnesses for the process to be simpler, clearer and more parent friendly. Useful evidence and briefings were provided during the committee's consideration and ahead of today's debate by Govan Law Centre, the National Deaf Children's Society and a large number of other children's and disability groups that contributed concise, well-thought-out arguments.

It is clear that we need to return to the 2004 act and ensure that the system is working as well as it should. The 2004 act, aspects of which the bill seeks to clarify, is an ambitious piece of legislation that aims to deliver equal educational opportunities for children and young people with additional support needs. Its fundamental principle is that decisions must be made in the best interests of the child.

There is no doubt that, in many cases, the 2004 act has delivered and is working well. However, in evidence, the committee heard concerns that the original intentions of the legislation are not always implemented. That was evidenced by a desire for a full review of the legislation, as other members have pointed out. At the informal round-table meeting of the committee and children's organisations, there was a sense of frustration that the bill's scope is fairly limited. We heard that other issues need to be addressed, in particular those that arise from the Court of Session's rulings and the recommendations for improvement in the HMIE review. The revised code of practice might address some of those issues, but there are still concerns about its ability to provide the absolute clarity that is required in many areas.

The minister helpfully indicated to the committee areas in which the Government will lodge amendments at stage 2. The committee welcomed his commitments, but we are keen that he should reflect on the complexity of the process for parents and consider lodging amendments that would further simplify the circumstances in which a parent has recourse to an additional support needs tribunal.

The increasingly adversarial nature of the tribunals was a consistent theme among witnesses. In evidence to the committee, Jessica Burns, the president of the Additional Support Needs Tribunals for Scotland, reported an increase in the number of cases in which local authorities brought in a legal team when the tribunal was dealing with a placing request, although she acknowledged that that happens in the minority of cases. She said:

"Authorities … have begun to feel that a large number of successful placing requests will take a lot of money out of their education budget, and one can understand their motivation in seeking to protect their budgets."—[*Official Report*, *Education, Lifelong Learning and Culture Committee*, 10 December 2008; c 1767.]

Ms Burns reported that in such circumstances, representatives of organisations such as ISEA, which represents the majority of parents, often feel at a disadvantage, because although they have significant experience in additional support needs

they are not legally qualified. It is clear that there is an imbalance in such hearings.

Although I am assured that Ms Burns and other tribunal members work to create a culture in which everyone is treated as a witness to the tribunal and one side is not pitted against another, it is difficult to achieve such a culture when there is a mismatch of resources. Ms Burns suggested that tribunals should have the power to appoint legal representation for parents, in limited circumstances. The committee appreciated the frustration of the ASNTS in such cases. The proposal should be given careful consideration. However, we are keen to minimise the adversarial nature of tribunals.

Ms Burns mentioned costs and funding, as did Govan Law Centre and local authorities. Although Govan Law Centre thinks that there is sufficient clarity about who bears the cost, there are concerns that worries about the additional cost to a host authority can make the authority reluctant to accept placing requests or reticent about letting parents know that they can apply to a neighbouring authority. A witness from a local authority told the committee that the system for recovering moneys from authorities is confusing and is

"neither clear enough nor robust enough to withstand what may well be increased pressures between authorities."—[*Official Report*, *Education, Lifelong Learning and Culture Committee*, 14 January 2009; c 1862.]

The Government acknowledged that, but argued that the system should be clarified in the code of practice. The committee remains concerned about the matter, and we encourage the Government to consider lodging an amendment at stage 2 to confer on host authorities a statutory right to reclaim costs.

An increasing number of local authorities are using independent mediation services. I welcome that approach, which is best practice, particularly when the needs of looked-after children are considered. The committee supports the proposal to make the host authority responsible for mediation and dispute resolution in relation to out-of-area placing requests, but we are concerned that parents do not always understand their rights in that regard. I welcome the minister's acknowledgment of that.

Like the minister, I attended the Scottish additional support needs mediation event that was held in the Parliament during stage 1. It can be easy to get lost in the technicalities of section 70 of the Education (Scotland) Act 1980 or section 27 of the 2004 act, but the event served as an important reminder of what the bill is about: parents who are trying to do the best for their children. A panel member emphasised that it is all about people and relationships. They said that it is about communication between parents, teachers, social workers and council officials, and if all partners could be supported in making those relationships work, more adversarial routes could be avoided. The discussion brought the legislation to life for me.

I welcome the revisiting of the 2004 act and the Scottish Government's proposed stage 2 amendments. However, like other members of the committee, I think that more improvements to the 2004 act could be considered, to enable parents to get the best for their children and to ensure that all the agencies, officials and organisations that are involved are aligned in such a way as to make the process as easy, simple and constructive as possible.

15:39

Mary Scanlon (Highlands and Islands) (Con): I am not a member of the Education, Lifelong Learning and Culture Committee, so I was surprised when a bill to address additional support for learning was introduced less than five years after the Education (Additional Support for Learning) (Scotland) Act 2004 was passed. I hope that the Parliament will not have to consider the matter again in another five years' time because the system is still not working.

As others have said, the bill must be as watertight as it can be and understandable for local authorities, parents, schools and nursery schools. I hope that lessons have been learned about providing adequate resources to ensure that additional support for children is implemented in full.

I have also found myself in front of council officials—not Queen's counsel, thankfully—with parents who have felt intimidated by the process that Aileen Campbell mentioned. Parents were battling to get support for their children and to do the best for them, but the council said, "What is passed in the Parliament is all very well, but we haven't got the money." Such resources are perhaps less accessible in many rural communities in the Highlands and Islands and throughout Scotland than they are in urban areas, so it is doubly important that those communities do not feel left out.

I spoke in the debate on the previous Education (Additional Support for Learning) (Scotland) Bill in 2004, and I am quite surprised that the points that I made then are equally relevant today. I want to ask again a question that I asked then, because I have not heard any member mention the issue: are we really doing enough to ensure that nursery staff and teachers are trained to pick up signs of learning difficulties and slow development? I welcome the recent moves by the General

Teaching Council for Scotland to provide more professional training within the teacher training programme—which I understand have been well received by teachers—but unless there is early diagnosis and early intervention, children will miss out on teaching and understanding. I am aware that sometimes children cannot catch up if they miss out at a crucial time, irrespective of what is done a few years down the road.

Adam Ingram: I could not agree more with the member's sentiments, which is why we have spent a great deal of time and effort putting together our early years framework, the core principle of which is early intervention. Early intervention is, of course, about identifying children who need additional support. It is clear that the health service has a particular role to play in that context, but all the other services also have roles to play. The services need to work together to address the issues.

Mary Scanlon: I was the convener of the cross-party group on mental health in the first two sessions of the Parliament and I worked closely with the minister. I have no doubt that he has brought to bear that experience and other experiences, and I welcome the point that he makes.

The point was made in evidence in 2004—it was also made by someone whom Aileen Campbell mentioned—that the system in the bill was essentially the same as the system that was in place at that time, and that had that system been policed and enforced as it should have been, it would have been workable. The point was also made that the Parliament should not only pass legislation but ensure that local government implements it and is accountable. Have we not heard that said about many other acts that we have passed? It seems that local authorities and others have found ways to pass the buck, as Elizabeth Smith said, and that for many children, five years has passed with little progress and much detriment to their development and opportunities in life.

The Education Committee's report on the session 2 Education (Additional Support for Learning) (Scotland) Bill stated:

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

We are all much more grown up now. In the light of experience, it is clear that that expectation was not fulfilled in many cases. The crucial issue is what is viewed as a statutory obligation as opposed to simply an expectation. It is clear that the Education, Lifelong Learning and Culture Committee has taken that issue on board from several key witnesses.

There is something that I almost get angry about. Is it not unacceptable 10 years into devolution how often we are told that not only the national health service and local authorities but education and social care services, the police and the voluntary sector are still not working together as they should on child protection? If services are led by children's needs, there should be no need for the Parliament to tell agencies to work together.

It is clear from the bill and the experience of the past that, first and foremost, there must be early intervention. Parents need to know and understand their child's condition so that they can play their part in understanding and coping with their child's behaviour and assisting with their learning. Schools and education authorities must put in place resources to meet the unique needs of each and every child. As Elizabeth Smith said, if that were done, parents would not face constant battles with teachers and others to get their child the support that they need. It would also assist with discipline in schools and reduce exclusions, and reduce the need for mediation, advocacy and the costly and intimidating tribunals. To expect a parent to work out whether their child's needs are complex or significant in comparison with those of other children is simply unacceptable.

If all that I have asked for were in place, six-year-old boys would not be excluded from school for four months, as happened in Inverness last week because all the specialist centres in Inverness were full; the cuts in education staff that the Highland local association of the Educational Institute of Scotland highlighted would not continue, thereby enabling services to be provided; and the parent of a child who had an appropriate support system at nursery would not have to battle for it all over again when the child entered primary, or have to start another big battle to get what their child needed in secondary school.

I welcome the bill, but I hope that I am not back here arguing the same points in five years. I welcome what members have said, the minister's comments and the consensual nature of the debate.

15:46

Anne McLaughlin (Glasgow) (SNP): The way in which I came into the Parliament was a great shock for all of us. Before I start my maiden speech, I say that, notwithstanding the tragic circumstances, I am pleased and honoured to find myself here. I do not underestimate for a second the great privilege that it is to be elected to my country's Parliament, and I intend always to work constructively with members from all parties to achieve what each of us, regardless of party divides, is ultimately striving for: a better Scotland.

I thank members of all parties for their many words of support. I imagine that that is me had my quota now.

When discussing additional support for learning, it is important to note that the term "additional support needs" is broader than many parents realise. For example, children with autism, a visual impairment, a particular gift or a mental health problem, or children who are being bullied or have been bereaved, can all be deemed to have additional support needs and they all deserve support, as do the children on whom I will focus. I may live to regret this, but I illustrate my point by saying, "Doamnă Profesoară, mă simț rău!" Or how about,

استانی صاحبہ میری طبعیت خراب ہے

Finally, thankfully, there is, "Pan, mam nudności." That was a demonstration of just three of the 86 ways in which children in Glasgow schools today might tell their teacher that they are feeling unwell. Yes, 86 languages are spoken as a first language in our schools in Glasgow. The ones that members have just heard were supposed to be Romanian, Urdu and Polish. I thank the Presiding Officer's office for giving me permission to use those languages to demonstrate my point. I should probably also thank my colleague Bill Kidd for advising me not to use six.

Members will be unsurprised to hear that I will talk about English as an additional language. In 2005, Glasgow had about 6,500 children for whom English was not their first language. In the next three years, the number increased by between 3,000 and 4,000—it is difficult to get precise figures—so that now between 9,000 and 10,000 children need support. That is 15 per cent of the school population. In the same period, the number of teachers of English as an additional language dropped from 165 to 140 and the focus switched, unintentionally, from Scottish-born bilingual learners, who are mainly but not solely children with Pakistani parents, to the new migrant children, who are primarily but not only from eastern Europe.

I do not believe in sitting about waiting for things to happen. I happened to be in Brussels when I realised that children from eastern Europe accounted for most of the increase in the number of children in Glasgow schools for whom English was not their first language, so I arranged a meeting with the European Commission to find out whether Glasgow could access European funding. I am delighted to say that, at that meeting, Commissioner Orban, the European Commissioner for Multilingualism, accepted my invitation to come to Glasgow.

Last week, the commissioner and I met Glasgow education officials to consider how we can progress an application for funding to support English as an additional language provision in our schools. Of course, it is early days, but we have at least identified the funding and started the process. Having spoken to members of the Scottish National Party group in Glasgow City Council, I will certainly work with them to ensure that we do everything that we can to bring the money to Glasgow. I am very hopeful of getting cross-party support for that.

The fact that 86 languages are spoken by children of 110 nationalities in Glasgow schools should not be seen simply as a challenge; it is also a tremendous opportunity for our children to take advantage of a vibrant, culturally diverse and enriched schooling.

Where Glasgow gets the balance right, it really does work. Yesterday, I received letters from 16 children from Victoria primary school in Govanhill. They are running a tremendous campaign to save their school from closure and they have invited me to visit the school, because, as one pupil told me, "You're really into Govanhill."

Those children are not the only ones who are fighting to save their school in Glasgow. Given that we are talking about additional support for learning, it is worth saying that, as my colleague Bob Doris will testify, the review of Glasgow schools simply forgot that Ruchill autism unit was attached to Ruchill primary school, which is earmarked for closure. The sooner the parents and children who use the autism unit know what is happening the better.

The children at Victoria primary school have told me in the past couple of weeks that part of the reason why they love their school so much is that they have such a diverse mix, with the right level of support for children from Romania, Slovakia, Poland, Somalia, China, Pakistan and India. As I said, when that works, it works. However, the bill is about when it does not work. Its intention is to give parents who have children with additional support needs the same rights as those whose children have no such needs. More important, its intention is to give children with additional support needs the same rights as their school friends. It is that simple. The bill expands the provisions of the Education (Additional Support for Learning) (Scotland) Act 2004 so that parents have even greater rights and protections, including even better rights of appeal.

I do not want to see parents using the new legislation at all, because I want them to get the right support for their kids. It is crucial that children have the language to communicate such basics as feeling unwell—I hope more effectively than I did—but that is not enough. Every child has the

right to achieve their full potential in education. It is our job to equip teachers to ensure that that happens. It is our job to give parents the legal rights to support their children. Above all, it is our job to ensure that no child slips through the net. I know that that is idealistic, but we should never shy away from idealism when it comes to our children and young people. If there is a barrier to learning, it is our absolute duty to ensure that it is lifted and that the child concerned is fully enabled to learn. We bring these children into the world and a decent education is the very least that we owe them.

15:53

Helen Eadie (Dunfermline East) (Lab): I am grateful for the opportunity to contribute to the debate. I congratulate MSP McLaughlin on her maiden speech, which was excellent, and I warmly welcome her to the Scottish Parliament. It is a privilege to serve alongside such an able member. I also congratulate the members of the Education, Lifelong Learning and Culture Committee. I have never been a member of an education committee in the Parliament, and I always stand in awe of the work that such members do. Every member of the committee who has spoken today is a credit to the work that the committee does. This important bill is worthy of the contributions that they have made.

There is only one aspect about which I do not want to be consensual. It has nothing to do with committee members or the minister; it is to do with COSLA, whose evidence came across my desk today. All it could do was talk about the cost of the bill. We know that anything to do with equal opportunities or removing barriers and creating access costs money. I had the privilege of chairing Fife Regional Council's equal opportunities committee for several years. During that time, one point that came home to me was that, if we want to remove barriers for people with disabilities or deal with inequalities, we must invest. Money is needed and having it is important. COSLA is now not at the top of my Christmas card list; in fact, it has just been eliminated from the list.

Many comments about the bill have landed on our desks or appeared in our inboxes in the past 24 hours from a wide spread of organisations throughout Scotland, led by Govan Law Centre. Many organisations have commented and I have been impressed by the commitment in Scotland to disability issues. I am sure that other members echo that view.

I highlight the views of Children in Scotland, the for Scotland's disabled children—FSDC—campaign and the National Deaf Children's Society. That is not to belittle what others said, but those organisations' comments chimed with my experiences as an MSP. It is worth while to remind ourselves how important it is for all committees when considering legislation to read and hear what witnesses say, because their contributions are born of experience at the coalface.

We heard what Mary Scanlon said about the 2004 act. The act has been around only since 2004, which seems a relatively short time to operate before being amended. We need to remind ourselves that the act has been excellent and important and that it has done much good by giving priority to the provision of additional support for learning. Tens of thousands of children and young people with additional support needs are being helped now by thousands of dedicated and highly competent professionals and by many family members and community groups.

It is right always to review policy and to see where improvements can be made. However, we should remind ourselves of the 2004 act's origins. The act was aspirational and visionary because it extended rights to and eligibility for additional support for learning to all children and young people anywhere in Scotland who need extra help with their learning. It created a high standard that has not yet been fully met.

The act sought to reach out to children and young people—and to their parents—who face obstacles to success in school for short-term or long-term reasons that go far beyond those that the old definition of special educational needs captured. The Scottish version of additional support for learning still covers physical conditions and behavioural difficulties, but it also covers a range of personal obstacles to success in school, which include limited English, being a young carer, being bullied, depression, living in secure accommodation, interrupted schooling for Gypsy Traveller and Traveller children, substance abuse and family problems. The act covers any circumstance that impedes a child's success at school.

I was fascinated by and interested in MSP McLaughlin's point about eastern Europeans. Right away, I have discovered a common interest with her. She says that she hopes to find common ground. As my good friend Lord Foulkes knows—he shares my interest in Europe—I am just back from Macedonia. I intend to go to Bulgaria for the seventh time at Easter and I have been to Romania several times. What she said was absolutely right. We in Scotland need to do much more to help eastern Europeans who settle here and for whom English is a second language. I was surprised to learn from surveying all the universities in Scotland that Bulgarian is not taught in a single university. Perhaps we can address that in the time ahead.

I am rapidly running out of time for my speech, so I will mention just one amendment that I hope

that the committee will have sympathy for and which chimes with me because of my work as an MSP. Children in Scotland has proposed an amendment on a right to support for advocacy. Children in Scotland makes some very important points. It says:

"In practice, 'support' is about helping parents (broadly defined) and pupils to understand exactly how the ASL Act applies in their particular case and to gain the knowledge, skills and confidence to effectively request and secure the additional support for learning needed. This level of support significantly exceeds Enquire's current remit and there is no other national service in place to help parents and pupils to handle specific, complex cases from start to finish."

I hope that the Government will lodge an amendment to the bill that couples the right to support with a new duty on the Government to provide or fund it. Getting the support side right from the start will avoid conflicts and legal costs. I hope that the minister will take that on board.

16:00

Robert Brown (Glasgow) (LD): I join in the congratulations to Anne McLaughlin on her maiden speech. She did a good service this afternoon by hitting a particular nail strongly on the head. The issue is one with which a number of members have had dealings.

The Education (Additional Support for Learning) (Scotland) Act 2004 is something of an old friend to me, as Ken Macintosh will recollect. Given that I was the convener of the Education Committee when the bill passed through the Parliament, it was perhaps appropriate that I went on to play a part in implementing it as the Deputy Minister for Education and Young People. As we tend to see, things have a habit of coming round again. I have learned in the Parliament that 10 per cent of the challenge is to pass a good law and 90 per cent is to make it work effectively on the ground. All members will share in that experience.

On the whole, as Helen Eadie rightly said, the 2004 act was an aspirational piece of legislation. The bill was well conceived and well prepared by Peter Peacock, who was the Minister for Education and Young People at the time, and carefully considered by the Education Committee. The act has been supported by significant funding and has made a step change on the ground in both culture and practice by effecting support for young people with additional support needs. However, as members across the chamber have said, a number of the practical issues on the ground that we wrestled with during the passage of the bill have led to patchy practice across Scotland. The challenge remains to spread good practice to bring the standard throughout the country up to the level of the best. The situation is still more mixed than it ought to be.

I have some important caveats to make by way of introduction, which echo the experience that we had at the outset. The first is the issue of individual rights, such as the right to appeal to the tribunal and the right to access mediation. All of that is all very well in its place—it is important and necessary—but we have to be careful that the resource that ought to go to sorting everything out at the beginning is not sucked into procedures that do not advance the educational cause in which we are all interested. Similarly, all the stuff to do with definitions and so on is all very well, but we have to embed the things that we want to see in practice in schools. Ultimately, co-ordinated support plans and all the rest are not the most necessary of measures. They are often perceived to be the drivers, but they are not the principal vehicle in that regard. Processes and facilities need to be put in place to support young people who need support.

The bill picks up on a number of issues that have emerged in practice, and I am happy to support the provisions to address those. I also welcome what the minister said about lodging amendments at stage 2.

I have a couple of other points to make on the bill. First, given Lord Wheatley's decision in the case of SC v City of Edinburgh Council last year, we need to reinstate the concept of additional support outside the classroom as intrinsic to the additional support that is required under the bill. As we know from what he said today and in previous debates, the minister is favourable to the proposal. I hope that he will commit to lodging effective amendments on the subject. I have always thought that the school community should be regarded in the round. It is the whole lot. Obviously, it is the teachers and other educational staff, but it is also the nursery, the breakfast club, the after-school club, the school clubs, and the other bodies that work to make the school a wider and richer educational experience.

Additional support needs are an important issue for children who suffer from autism and require extra social support. As Anne McLaughlin said, the issue is important, too, for children who are not native English speakers and require extra help outside school. Indeed, in other situations, psychological and speech and language support is also required.

There are financial implications. Some of the matters that relate to additional support for learning overlap with health and other services. However, at the end of the day, the intention of the 2004 act was for children with additional support needs to get the educational and social support that they need as individuals in a way that is seamlessly backed by all services. The term "seamlessly backed" was at the heart of what we

tried to do in the 2004 act and it remains at the heart of issues that members have raised in the debate to do with how the act is working in practice.

Another issue that I want to raise is transition to work and further and higher education. The 2004 act put a strong emphasis on advance planning and building on successful arrangements at school as the young person moves forward into another, more adult sphere. Margo MacDonald highlighted the situation of young people between the ages of 16 and 18—and perhaps even beyond that—who have been in care. We need to consider specific arrangements to carry them forward, because they are the most deserving and needy group.

It is disturbing that HMIE reported that

"in most authorities, staff did not consult meaningfully with children and young people."

Some people suggest—and the committee supports—a reference to the tribunal in such situations. That may be helpful, but I am not sure that, ultimately, it is what is needed. The key is building into the ethos of each school a focus on transition planning that works, because a remedy after the event is not the answer. The issue might bear close study by a ministerial working group or something of that sort, especially in light of the challenges that are posed by the current economic crisis, which bears most heavily on young people with disabilities or support needs.

My final point relates to out-of-area placements. It is not surprising that the issue has arisen in the committee, given Ken Macintosh's particular interest in the East Renfrewshire-Glasgow situation. The bill deals with out-of-area placements but, as far as I can see, it does not resolve totally the issue of whether the receiving local authority can be compensated for costs, which can be quite significant for smaller councils, in particular. There needs to be a clear rule on the matter to avoid fractious disputes between councils, which are expensive, among other things, and cause worry for families who are caught in the middle. It is ludicrous that we should spend public money on such arguments. If I recall correctly, at one time there were 18 pending cases on the issue between Glasgow City Council and East Renfrewshire Council. I may be exaggerating slightly, but there were quite a few.

The principle of the Education (Additional Support for Learning) (Scotland) Act 2004 has stood the test of time and the act has made a substantial difference for many young people. The bill provides some helpful tweaking, and I hope that the minister can give the chamber comfort on some of the other issues that have been raised. However, as legislators, we should never lose sight of the fact that at the centre of these matters are individual children and mums and dads with anxieties and sensitivities about their children. Many of those mums and dads have sometimes had to batter their heads against brick walls to get things moving forward. Our job is to improve their situation. In that spirit, I back the general principles of the Education (Additional Support for Learning) (Scotland) Bill.

16:07

Ian McKee (Lothians) (SNP): I join the rest of the chamber in congratulating my colleague Anne McLaughlin on an outstanding maiden speech. I now realise what a great mistake it is to agree to speak in a debate for the SNP following her; I am sure that I will avoid doing so in the future.

If I may adapt an observation by Winston Churchill in the House of Commons in 1910—I am sure that he was quoting someone else, perhaps from ancient times—one of the tests of a civilisation is the way in which it treats those who are dependent on its services. For that reason, I express great pleasure in welcoming the bill that is before us today.

As Claire Baker said, the Education (Additional Support for Learning) (Scotland) Act 2004 was a step forward in attempting to ensure that those with additional support needs and their parents have the same rights as others. However, time has shown that, in practice, the legislation has not always achieved its intended outcome. For example, rulings at the Court of Session have shown that obstacles are placed in the way of parents who are seeking to have a child with a co-ordinated support plan placed outside the area that is served by their home local authority, even if that is their earnest wish.

The bill allows the Additional Support Needs Tribunal for Scotland to consider a placing request at any time before the final determination by the appeal committee or sheriff. When there is a dispute, the local authority that is providing education, rather than the local authority of residence, as at present, will be responsible for dispute resolution connected with that education. That seems to be a sensible step forward, given that the local authority of residence may know little or nothing about the circumstances of the dispute.

The local authority of residence will lose its responsibility to review co-ordinated support plans, which will be transferred to the authorities in the area where education is being provided. It will become easier to appeal when the responsible local authority has failed to meet a request to review or modify a co-ordinated support plan or when timescales have not been maintained. Tribunals will gain the power to review their own decisions, eliminating the greater bureaucracy and

delay of a Court of Session appeal. Those are all wise steps.

I would now have turned to points that are raised in the excellent briefing from FSDC had not the minister already made it clear that he is willing to consider reasonable stage 2 amendments. I am sure that the ones that he mentioned today are extremely welcome, especially in light of Lord Wheatley's ruling on the 2004 act.

FSDC also made some cogent points about the inadequate and inaccurate data on children with additional support needs. For example, it argues that no one knows the number of disabled children in Scotland. In my research for this speech, I certainly found a lack of consensus on a variety of important statistics, to put it mildly. I suspect that the confusion between terms such as "complex needs" and "long-term needs" has something to do with that. Unless we tighten up our definitions and gather robust data centrally and locally, we will always be one step behind when it comes to helping vulnerable families. I gather that there is likely to be a question on disability in the 2011 census, which may help, at least as far as national statistics are concerned.

I said that one test of a civilisation is the way in which it treats those who are dependent on its services. Civilisation is not the Scottish Government—no matter how civilised our present Administration—the Westminster Government or Brussels, nor is it defined by legislation. Civilisation is defined by how we all behave, not only politicians. Therefore, I conclude by praising a body that was set up by ordinary folk, not politicians: ISEA, which has already been mentioned many times today. ISEA was set up by parents in Dalkeith in 1998 to provide free independent advice, information and support to parents of young children with special needs via its independent specialist advocacy service. It now works in all 32 local authority areas, represents families at tribunals and generally provides them with support that is manifestly lacking from more official organisations.

I take my hat off to ISEA and its body of dedicated volunteers. The families of children with special educational needs are under great stress. Many relationships founder, the outside world becomes a difficult place with which to deal and sleep is often disturbed. As a result, such people can seem at first sight to be difficult, angry or unreasonable. Who can blame them when they have so many fights against bureaucracy and an uncaring society? We must be civilised enough to have the compassion to understand a little of the pressures that they face and to give them credit for the daily strain of their lives as they cope with such challenges.

The bill is extremely welcome, but it is not the entire solution and it does not pretend to be. We must help affected families in every way possible, not only by progressive legislation.

16:13

George Foulkes (Lothians) (Lab): I, too, add my sincere congratulations to Anne McLaughlin on an excellent multilingual maiden speech. Like Helen Eadie, I share something with Anne. Although hers are rather more tragic circumstances, we were both somewhat surprised—but absolutely delighted—to become members of this Parliament.

I welcome the opportunity to say a few words in the debate. As the Presiding Officer may remember, way back in the 1970s, I was chair of the education committees of Lothian Regional Council and the Convention of Scottish Local Authorities. I am thankful that education in Scotland has changed mostly for the better and that it has moved forward a lot since then, although I hope that I will be excused if I do not understand some of the modern jargon and some technicalities.

There have been particular improvements in provision for those who have special educational needs. I am certain that we would not have been able to give the matter such detailed consideration without a Scottish Parliament, because before devolution we would never have had the time to go into it in such detail at Westminster. That is one of the advantages of devolution.

Much has been done, but the bill acknowledges that much more needs to be done. One point that worries me is the possibility that the system might become too complicated and difficult for parents to understand, and that some young people might slip through. It is essential that the system is sympathetic, as simple as possible—as Margaret Smith described well—comprehensive and parent friendly. In addition, it should establish clear rights and be proactive. In that respect, I was impressed by Children in Scotland's representations.

Everyone has talked about consensus and being consensual. I remember saying to Donald Dewar that George Galloway was his own worst enemy, and Donald replying,

"Not while I'm around, he isn't."

Some people might think that consensus might just break down when George is speaking—I mean this George, not the other, baldy-heided one—but I hope that members will forgive me for that. However, it is the duty of the Opposition and back-bench members to point out deficiencies in existing and proposed legislation. Children in Scotland points the way forward in that regard. It

rightly says that the Government amendments do not go far enough and proposes further amendments to improve the bill. In particular, I agree with Children in Scotland about the danger that only the most confident and articulate parents will know their rights and be able to secure support and advocacy. As other members have said, we must remember the parents who are in particularly difficult circumstances.

Children in Scotland also makes other good points: that councils and schools must become more active in informing parents, carers and pupils about their rights; that the definition of "parent" should be widened in line with new United Kingdom gender equality duties; and that there should be a quick and fair system of resolving disagreements, as members have said, with the tribunal being seen as the last resort rather than the first.

As my friend Helen Eadie and other members have said, consideration should be given to funding advocacy rights so that parents are not disadvantaged financially when they are trying to make their case. Consideration should also be given to more routine and meaningful consultation during the system's operation. Finally, the duty of education authorities to plan for young people when they leave school before 18 should be strengthened. Those are good ways in which the bill can be improved, even beyond the amendments that the minister has already agreed to.

Like others, I was greatly disappointed to receive only this morning—as Helen Eadie pointed out—representations on the bill from COSLA. All the other representations on the bill have been helpful. As I said, I used to be the COSLA education chairman, so I found its representation to be disappointing, to say the least. "This is going to cost money, so don't consider it," is a summary of what COSLA said, which is rather unfortunate.

I know that Scottish National Party members will say, "George is about to return to type but it is true that the council tax freeze is already resulting in dangerous cuts to local services. As clearly as night follows day, it follows that cutting the money that is available to local authorities forces them to cut services. What we see now is that local authorities are using the council tax freeze as an excuse to try to undermine much-needed improvements in services to a particularly vulnerable section of society. I hope that Parliament and, above all, the Education, Lifelong Learning and Culture Committee will put the interests of children and their families first and not accept the constraints that COSLA is trying to impose. I know that Karen Whitefield will do that and I hope that her committee will. As many members have said far more eloquently than I can, the parents of children with special needs must be considered most sympathetically. We should not accept councils pleading financial constraints, which are artificial in some cases, as a reason for not doing something that is vital.

16:19

Christina McKelvie (Central Scotland) (SNP): I am delighted to take part in this stage 1 debate. I add to the chorus of congratulations to my colleague Anne McLaughlin on her fine maiden speech—well done to her for that.

Let me also add to what George Foulkes said about the concerns around financing. The £500 million-worth of cuts that are coming from Westminster to the Scottish Government will also have an impact, which should be borne in mind in any discussion about cuts across the board.

As others have said, additional support for learning is a complicated issue, on which the committee took lots of detailed in-depth evidence from witnesses from across the board. As the issue not only causes great concern to parents and education staff, but has the potential to cause concern for the pupils involved, it is important that we get it right. Therefore, I congratulate the Cabinet Secretary for Education and Lifelong Learning and the Minister for Children and Early Years on their efforts in introducing the bill. I also record my thanks for the excellent verbal and written evidence that we received from all the organisations and individuals who contributed. For me, the committee's round-table exercise was invaluable in providing an insight into how people deal with the issues at the chalkface. Let me also—this will probably come as a surprise to some—commend all my committee colleagues. We had a tough job in taking lots of evidence and doing a lot of detailed work, but we have come to the end of it with consensus on a plan that puts children at the centre.

The 2004 act was passed as consensual legislation—or so I am told, as I was not then a member of the Parliament, although I was aware that it was happening—but concerns were raised by parents at the time about some elements of it. Clearly, the act was a huge improvement on the previous legislation, but there is substantial anecdotal evidence that the legislation is not perfect and needs to be improved. That is why I think that it was right for the cabinet secretary to carry out a consultation and to introduce the bill to improve matters. I appeal to the Government to maintain its scrutiny of the implementation and effects of the 2004 act. I also appeal to parents and teachers to do what they do and continue to remind us about all those issues.

In the five years since the passing of the 2004 act, we have had time to see how the legislation has performed, so I hope that we will be able to see a spirit of consensus infusing our consideration of the new bill. I hope that Parliament can once again distinguish itself in its conduct in the way that it legislates. To pick up another positive point that was made by my colleague George Foulkes, we should be aware that the Scottish Parliament has really stood out on this issue and we should be proud of that. I note that the tone of the committee's deliberations provides hope that consensus in our consideration of the bill will be achieved.

Concern is, I am sure, shared by all parties about the implications of Court of Session judgments that have interpreted the 2004 act. I was particularly concerned about the possible implications of the 2007 judgment in the case of WD v Glasgow City Council, in which the court ruled that the tribunal does not have jurisdiction to hear appeals on out-of-area placing request decisions, and that parents of children who have co-ordinated support plans cannot make out-of-area placing requests. I am sure that that was not the intention of the ministers who introduced the original bill, nor of the members who took evidence and deliberated on it.

I suspect that the court judgment also poses difficulties in cases where specialist support provision for a particular set of additional support needs cannot reasonably be provided by every local authority, which means that the proper support can be provided only by travelling across local authority boundaries. I can offer as an example Donaldson's deaf school, which I visited with a delegation of committee members on what was an absolutely fantastic day. What a fine example that school provides of an institution that is at the forefront of dealing with children who have issues with hearing. As the school has recently moved from Edinburgh to Linlithgow, the implication of the WD v Glasgow City Council ruling is that Edinburgh parents, who could until recently have made a placing request on which the tribunal would have had the jurisdiction to hear an appeal, would no longer have that right because the issue would have been removed from the tribunal's jurisdiction. Such a result could not have been the intention of the members who worked on the original legislation.

As someone who has always had an interest in issues affecting looked-after and accommodated children—on which colleagues from other parties have also expressed concerns—I am particularly concerned about how corporate parenting can become an issue. If a young person in care has only the corporate parent to champion their rights, any appeal that is made to the local authority involves the corporate parent appealing against the corporation. That poses some concerns for me. Such children need a champion who will speak on their behalf, as Aileen Campbell said.

Another thing that I have noticed over the years—my background is in social work—is that, for some children, at issue is their behaviour in the classroom rather than what causes that behaviour. A particular example is children who have dyslexia, who might not be able to participate in the classroom, which results in disruption that puts the focus on their behaviour rather than on supporting the child. I am therefore delighted that Jackie Stewart, who has been a true champion for the dyslexia awareness cause, is involved. Another piece of worrying evidence that came to the committee was the disproportionate number of children with problems such as dyslexia coming from financially challenged households. We need to bear that in mind.

The fundamental principle that underpins the 2004 act is that the best interests of the child should be served rather than the interests of the authorities, education and support staff or, indeed, the parents. That should be the underpinning principle that carries us through our deliberations today and during the following stages of the bill.

I was pleased to note from COSLA's briefing, which arrived at noon, that COSLA underscores its support for the general principles of the bill, but warns of the possible consequences of putting too many new burdens on local authorities. I am sure that, although the minister intends to accept reasonable and balanced amendments at stage 2, he will keep caution in mind during his deliberations. I am sure that he and my colleagues on the committee will seek to balance the concerns of COSLA and the understandable aspirations of children in Scotland. It is the balance that is really important. We need gold-plated legislation. If we can get the balance right, that will come about.

Similarly, the position of other interested organisations, such as the for Scotland's disabled children liaison project and the National Deaf Children's Society, will have to be weighed at stage 2. The process will have to be delicate and thorough in order to ensure that we emerge at the other end with improved and effective legislation. We should also keep in mind the principles of the United Nations Convention on the Rights of the Child.

This morning, I had the privilege of opening a conference for teachers in Glasgow on continuing professional development. The opening act was a group of children from Merkland school. They sang songs and were fantastic, and I pay tribute to the staff and pupils at that school. I acknowledge that some schools are doing fantastic work.

In supporting the proposed legislation, I acknowledge that there is a job to be done. I am sure that, if we work together, we will get the legislation through. I look forward to working with the committee on a consensual basis at stage 2.

16:27

Hugh O'Donnell (Central Scotland) (LD): In many ways, this is not a contentious subject and not a contentious debate. It can be a good thing that Parliament revisits legislation and adjusts it where necessary, if it is found to be wanting. Based on the evidence that the committee heard and the knowledgeable speeches that we have heard from around the chamber today, there is little doubt that the legislation is wanting and, as my colleague Margaret Smith said, the Liberal Democrats are happy to support the bill at stage 1.

Although I was not elected to Parliament at the time, I remember that the genesis of the 2004 act was the inequity of access to services and the complicated, convoluted record of needs process. As the minister said in his opening remarks, that was the key to the opening of access. Part of the intention of the 2004 act was to do away with that.

Regrettably there is—as George Foulkes said—anecdotal evidence that for inconsistent and patchy financial reasons we have backed up the gatekeeper from being the old record of needs to being the assessment process. There is an issue about the extent to which having the right to ask for an assessment and achieving that assessment needs to be addressed. I have anecdotal evidence of people being diverted down a different path, so the legislative framework needs to be clear that we are going to address that. We know why it happens, and the COSLA briefing for the debate illustrated it quite carefully. The danger is that we make the current situation complicated, which we tried to avoid when we passed the 2004 act.

Liz Smith and other members referred to the fact that parents have had to face QCs. That is neither equitable nor fair, and I say with all due respect that ISEA, which I know of from long ago, does not have the expertise to act in such circumstances. One almost gets the impression that, regardless of the statutory obligations, the objective of local authorities at the outset is to defend their purse strings. That is not the case with the front-line service staff, who work long and hard—as I have experienced first hand—on behalf of the people with whom they deal. We are, however, in danger of creating a situation in which parents will still be going through the same hoops, notwithstanding the tribunal system.

The original legislation has led to a tortuous path for parents and children, and the objective has often appeared to be to obstruct access to services. I am sure that that was not the intention of the 2004 act, but the situation has to some extent moved in that direction.

The committee made a number of recommendations to the minister on the bill, and I am aware that the minister has written to Govan Law Centre and other organisations about amendments that they have suggested, so there is no point in my dealing with those.

I will comment on a couple of things to which other members have referred in passing. The issue of out-of-school support is fairly substantial, and although I take some comfort from the minister's remarks on it, there are major challenges. My fundamental concern is that when a professional team is working with a young person during the course of an educational day, week or term, that work cannot come to an end at half past three on a Friday or on the last day of term. Not only is there no continuity, but one can go back on the Monday or at the start of term and revisit the same process on which one had been working on the previous Friday on the previous term—it becomes like groundhog day.

Continued support outwith the educational day—in terms of education in its broadest sense, whether that is social or personal—will reduce the problem, and probably release resources that would have been taken up by revisiting the same agenda yet again. It was good to hear the minister say that the Government will lodge an amendment to support the reinstatement of that position.

A couple of members briefly mentioned the transition period. It is hard to get access to mainstream education services within the statutory framework for education, but it becomes a major challenge once people move out of the framework. It almost seems as if the education authorities abdicate responsibility. They might not have a strong responsibility, but those young people, who are at a difficult and stressful stage in their life, end up in a game of pass the parcel, and their parents, supporters and carers are put under enormous pressure.

We need to ensure that the planning for transition is carried out early. It comes as no great surprise that the young people must come to the end of their statutory education at some point, so there is no reason for rushed case conferences or last-minute decisions to involve the colleges. The co-ordinated support plan for the young person has to be flexible, and the relevant bodies need to be brought in and taken out in relation to provision of support mechanisms. In order to make that work, we need to give the tribunals the teeth that will allow them to enforce local authorities' responsibilities in respect of transition.

16:34

Murdo Fraser (Mid Scotland and Fife) (Con): The debate has been largely consensual. I welcome the contributions from all members, and I particularly welcome the excellent maiden speech that we heard from Anne McLaughlin. She set a very high standard for her future contributions, which we will look forward to in the weeks ahead.

The debate gives us an opportunity to assess developments in the delivery of additional support for many children, young people, parents and carers. The original bill, which many of us remember, brought about welcome progress, but confusion still surrounds a number of issues. Five years on, it is surely right to try to redress the situation.

As other members have said, there has been a spirit of co-operation among the parties on this bill. That spirit has been based on the overarching principle that the needs of the child are paramount—a principle that informed the ethos of the original Education (Additional Support for Learning) (Scotland) Act 2004. We must ensure that the new bill meets the needs of children and parents, and addresses some of the discrepancies that have emerged since the 2004 act. Some of those issues were highlighted in the very fine speech from Mary Scanlon.

I will use the time available to focus on certain issues that a number of members raised. Specific concerns have been raised in relation to tribunals, mediation and advocacy. We have to be sure that the legislation on those areas is sufficient.

Currently, the tribunal process is often seen as adversarial, and parents are at a disadvantage when it comes to advocacy services. Organisations such as ISEA that are experienced in additional support needs but do not have legal experience can often be at a disadvantage when complex legal points are being argued by the parties. That often gives local authorities an unfair advantage. In evidence given to the Education, Lifelong Learning and Culture Committee, Lorraine Dilworth of ISEA stated that more and more local authorities are employing advocates to represent them at tribunals, along with their in-house solicitors and senior officials. Earlier, Rhona Brankin mentioned that the City of Edinburgh Council employed QCs. Now, I have nothing against lawyers. I am a lawyer myself and—who knows?—I might have to work as a lawyer again at some point in the future. However, it seems completely unfair to have, on the one side, parents and their advocates who are not legally qualified, and, on the other side, a highly paid legal team, put together at considerable cost to the council tax payer, fighting a case on a strict legal interpretation. That cannot be right. The issue has to be addressed.

The tribunal process must be made more user friendly. We must end a situation in which some councils are being heavy handed because they have the power, the money and the resources to do so.

What can we do to address those problems? As Cameron Munro from Glasgow City Council stated in evidence to the committee, serious consideration needs to be given to tribunals having procedures, instead of simply having a set of rules. The tribunal may well be a formal place, but it should be framed and run in a way that is clear, with each process being clearly defined and explained to parents along the way. As Elizabeth Smith said, the cost of running tribunals is high. We therefore need to ensure that our mediation services are strengthened so that more disputed cases are resolved before they reach the tribunal stage.

That leads me to my second point, which relates to advocacy and mediation. Often, children are not well represented because their parents do not have access to the right information or financial resources. That ultimately means that they will not have access to good advocacy. Children in Scotland stated as much in its evidence, referring to the lack of a guarantee on the right to advocacy for parents and children. Children in Scotland therefore described the right as nothing more than a “fairly hollow right” for parents and carers who cannot afford to pay for lawyers themselves. That leads to a further deepening of inequalities for parents and carers.

Afasic Scotland acknowledged in evidence that the mediation structure may have been well intentioned initially, but felt that it now leaves many parents and children in an unequal position. Many children and young people who have speech and language impairments are among those who are least able to advocate on their own behalf. As such, they are most in need of provision. We must therefore support the proposal in the bill that will ensure that young people and parents are given the right to advocacy and are provided with accurate and clear information on how to use those services. On this side of the chamber, we welcome the appointment of Muriel Gray as patron of ASN mediation, which is a positive step towards ensuring that that happens.

We must remember that we can improve legislation as much as we like but, in the end, success will depend on strengthening the code of practice so that we provide much better support within local authorities. I hope that such an approach would reduce the scope for children to fall through the net.

We support the Scottish Government in its intentions. I hope that this afternoon’s debate will go some way towards reducing the complexity in

the legislation, simplifying the tribunal process and improving mediation and advocacy services. I reiterate the importance of the bill that is before us. We have an opportunity to ensure that the underlying principles, which seek to protect the best interests of the child through providing appropriate and specialist services in an efficient and holistic manner, are paramount.

16:40

Ken Macintosh: This has been a remarkably consensual, good-humoured and informed debate. I do not know why I sound surprised, but perhaps Ms McLaughlin should not get used to this.

Although we have yet to complete stage 1 of the bill, a number of practical amendments have already been proposed by parents and voluntary sector organisations, many of whom have come together to share their experience and expertise. Some of those amendments have been adopted by the Government, in that the minister has agreed to lodge his own amendments at stage 2. The minister has agreed to ensure that parents have the right to request an assessment at any time. He has agreed to give tribunals the power to determine the timeframe within which an out-of-area placing request should begin. He has also agreed that all appeals on out-of-area placing requests for special schools should be heard by the tribunal.

On that last point—as on all those points—I believe that the minister is doing the right thing. However, as George Foulkes and Margaret Smith pointed out, the process is still inordinately complicated and potentially confusing. I hope that the minister is willing to follow the committee's recommendation to look once more at the options before him with a view to making the process as simple and straightforward as possible, although I acknowledge that that will not be easy.

There are other amendments that the minister has not yet adopted, but which reflect the concerns of parents and which I hope the minister will still look to support. Several members have referred to the judgment of Lord Wheatley, who ruled that the ASL legislation applies only in an educational setting. As members have said, that does not entirely make sense, as the whole point of co-ordinated support plans is to co-ordinate the actions of otherwise potentially disparate agencies. I was pleased to hear that the minister is considering a further amendment—a fourth amendment, as it were—to clarify that issue. Nevertheless, I would welcome his comments on why the proposals that have been put forward by Govan Law Centre, which address that particular concern, would not necessarily work.

Although I am summing up the debate, I would like to introduce some new issues or issues that have been mentioned only in passing. The first of those is inter-authority payments, an issue that I am well aware of because of an on-going dispute between my local authority, East Renfrewshire Council, and Glasgow City Council. I raise the matter not to be parochial or self-indulgent, but because it has highlighted a clear weakness in the existing law. In particular, it has shown that the mechanism for resolving such disagreements does not work.

As committee members are aware, despite the bill that is before us today, the procedures, responsibilities and lines of accountability for pupils with additional support needs who are educated in another local authority remain complex. Home and host authorities are supposed to share the responsibility fairly, but that does not always happen in practice. A number of local authorities that responded to the consultation on the bill highlighted their concern and suggested that we may be making the picture even more confused. Some expressed concern that the proposals do not stipulate who should be responsible for the funding of additional support needs provision when an out-of-area placing request has been accepted, particularly given the fact that, under the bill's proposals, home authorities will no longer be responsible for reviewing the CSP.

A few local authorities questioned whether the home or the host authority will be responsible for other costs for things such as clothing, housing and free school meals. My experience of funding is that, if we do not spell that out in the bill, some local authorities will hide behind the confusion. Under the record of needs legislation, it was clear that home authorities had to make a financial contribution to host authorities for the extra costs of meeting additional needs. On the day that that legislation was replaced, Glasgow City Council stopped all payments in support of its children with special needs who were educated in East Renfrewshire.

In evidence, the minister—and his officials before him—referred to section 23 of the Education (Scotland) Act 1980 as providing the way to resolve such matters. There have been several adjudications—Robert Brown referred to the 18 outstanding cases—and they have all been decided in favour of the host authority and have concluded that the home authority should make a contribution. Nonetheless, Glasgow City Council has ignored them. The decisions have also been upheld since then by the Court of Session, but still no inter-authority payments have been made. As several members pointed out, we should not be wasting resources on QCs, court battles and the process when those resources could be used to

support our children. This bill gives us an opportunity to resolve the situation once and for all.

The issue of transition has been raised in passing today. Many witnesses spoke to the committee about the importance of supporting young people at that point. It is deeply worrying that support often stops abruptly with the end of compulsory schooling. Many of us have heard families describing the child's transition to adulthood—and the loss of support—as being like falling off a cliff. The committee recommended that the minister consider further whether a council's failure to meet its duties on transition should be grounds for a referral to the tribunal. I would like to hear the minister's comments on that point.

Helen Eadie referred to the excellent submission that was received from the NDCS. I, too, was struck by it. It pointed out that deafness is not, in itself, a learning disability and that there is no reason why, with appropriate support, deaf children should not achieve on a par with their hearing peers. However, it is clear from all the surveys that have been done that that is not happening. Research that was conducted by the Royal National Institute for Deaf People showed that only 63 per cent of deaf and hard-of-hearing people are employed, compared with 75 per cent of the population as a whole. That reflects the lower attainment and achievement rates of deaf pupils at school.

The available information about support for deaf children paints a problematic picture. The NDCS points out that in one local authority area alone, although there are more than 180 deaf children who are identified as receiving support from the authority, less than a fifth of them have a CSP or an individualised educational programme. Deaf children or children with hearing impairments are offered other forms of support, such as personal learning plans, additional support plans, individualised learning plans, individualised school plans and co-ordinated care plans, but none of those has any statutory bearing under the terms of the 2004 act.

We need to address the matter not only in terms of the statutory right to support, but in terms of how much information we have to plan and develop policy. The umbrella organisation for Scotland's disabled children points out that, although there are approximately 70,000 disabled children and young people in Scotland—that is an estimate, as there are no national data to provide a definitive figure—recent Scottish Government data suggest that only 24,782 pupils are assessed or declared as having an impairment that gives rise to additional support needs. That figure does not even tally with the number of school-age children who are in receipt of disability living allowance, of whom there are 27,550; I should note that children who get that allowance are classed as having high or medium care needs, not low care needs. Further, more than 37,000 disabled children receive support because of an impairment or disability. In other words, the data that we have present us with a mixed picture. What is clear, however, is that some children who have support needs are not being identified and are therefore missing out.

FSDC suggests that the minister should commit to including in the bill a provision that will enable information on all children with additional support needs, particularly disabled children, to be gathered and published.

I want to make a couple of other points.

The Deputy Presiding Officer (Alasdair Morgan): You should wind up now.

Ken Macintosh: Okay.

I congratulate Anne McLaughlin on her maiden speech. She made a welcome contribution that illustrated how language can be a barrier to learning. I was particularly struck by the consensual tone of her speech. However, I should warn her that I could not tell whether Mr Doris, who was sitting right behind her, was grimacing or smiling. In any case, long may Anne McLaughlin continue in that vein.

Several members referred to the 2004 act. Like Mary Scanlon, I wonder whether, if we looked back at our speeches from that time, we would think that our arguments still apply. There are many difficulties to be overcome, but I do not think that it is just the optimist in me that says that things have moved on since 2004. There are intractable problems that will always be with us, and there will always be families with additional support needs but, as Robert Brown said, our legislation has made a difference. However, those families continue to need the support of Parliament.

16:50

Adam Ingram: I am pleased that we have had an opportunity to debate the Education (Additional Support for Learning) (Scotland) Bill. I thank the members who spoke in the debate, which was thoughtful and constructive, for bringing a degree of consensus to our deliberations. I am glad that there is widespread support for the proposals throughout the parties as I believe that that reflects the views of stakeholders.

As I said earlier, I am considering lodging amendments at stage 2 to enable all appeals in respect of placing requests for special schools to be heard by tribunals, to ensure that parents have a right to request an assessment of their child's

needs at any time, and to enable tribunals to specify when a placing request should start. I said that I want to address by way of a stage 2 amendment the issue that was raised by Lord Wheatley's opinion, and I am also considering amending the Additional Support for Learning (Publication of Information) (Scotland) Regulations 2005 to place authorities under a duty to publish information on procedures for the resolution of disputes.

There have of course been some minor disagreements, and some points of detail have been raised for us to consider further at stage 2. Time is short, but I will address one or two of the more important points now. No doubt we will have further discussions about them at stage 2, and I look forward to a healthy debate at that time. I continue to be willing to listen to any constructive arguments that will help us to improve the bill as it proceeds through its parliamentary stages.

Karen Whitefield rightly pointed out Govan Law Centre's view that we must make the law as simple and understandable as possible. In particular, it has been said that the system for out-of-area placing request appeals is complex. We will address that in the code of practice, which will make the process clearer and leave parents and authorities in no doubt about the action that should be taken. In addition, I am reasonably certain that the tribunal's jurisdiction on placing requests is now the right one, including all parents of children who have CSPs and being extended to include all appeals of decisions to turn down requests for placements at special schools.

Ken Macintosh and Elizabeth Smith emphasised the importance of getting the definitions right, including the definitions of "significant" and "complex". Lord Nimmo Smith produced a useful definition in the Court of Session of the areas that we need to focus on. I intend to introduce our proposals on that issue at stage 2, but it is important to remember that education authorities are required to have regard to the code of practice and that both the tribunals and the Court of Session refer to the code. I therefore propose to the Education, Lifelong Learning and Culture Committee that we put the definitions into the code rather than the primary legislation, but we can discuss that further at stage 2.

Margaret Smith: The tribunal president said that it would be useful for tribunals to be able to monitor and consider enforcing decisions that they have taken. I am sure that we all know parents who have had their cases decided by tribunals, and the situation can be stressful and very involved, especially if they get a decision in their favour but the council does not act on it. Does the minister believe that there is scope for what the tribunal president proposed?

Adam Ingram: No. Going back to the tribunal would introduce an unnecessary layer of bureaucracy. I am talking to the tribunal president about how, when she issues decision letters, she can make it clear to parents that they have direct recourse to the Scottish ministers in the form of a section 70 complaint and how they can take up that option.

A number of members made plain their views on the role of local authorities as gatekeepers to the budgets. I make it absolutely clear that cost is not an excuse: the needs of the child are the primary consideration and local authorities have received a record level of funding under the Scottish Government.

Helen Eadie and George Foulkes referred to COSLA. As I understand it, and to be fair to that body, it was referring in its e-mail to the provision of a universal advocacy service for all parents of children who have additional support needs, which is currently unaffordable—as I said to the committee. We are committed to representative advocacy at tribunals.

Ken Macintosh: I have not had a chance to see the whole of COSLA's submission, but from my brief glance at it I gathered that it suggests that amendments be directed at the code of practice, which says everything that needs to be said about the importance of the code compared with that of the legislation.

Adam Ingram: A number of issues remain to be debated at stage 2. I will be happy to consider all amendments that are lodged and all arguments that are made.

During his speech, Ken Macintosh said that the proportion of children who receive support has increased from 5.1 to 5.6 per cent. That is a considerable underestimate: more children receive additional support than those statistics indicate. The figures relate only to children who have individualised education programmes or CSPs, but many more children receive assistance below that level.

There is an issue about the gathering of accurate statistics. The Scottish Government is in discussion with education authorities on the development of proposals for the collation of more robust statistics at national level through ScotXed—I could go on about that, but I will not.

Liz Smith asked about access to advocacy. We will aim to ensure that parents have access to advocacy at tribunals and that parental awareness is increased. We charged Govan Law Centre with coming up with proposals on building capacity for advocacy throughout the country. The centre reported recently, but I have not had time to study its proposals, which will be brought to the committee for its consideration. We have also

provided extra funding to ISEA Scotland to take it up to the end of the financial year.

The Presiding Officer (Alex Fergusson): I must ask you to close, minister.

Adam Ingram: Oh, right. I hoped to cover many more points, but we will return to the issues at stages 2 and 3.

The Scottish Government is committed to improving the lives of children who have additional support needs. I ask members to support the motion.

Policing and Crime Bill

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-3512, in the name of Kenny MacAskill, on the Policing and Crime Bill, which is United Kingdom legislation.

Motion moved,

That the Parliament agrees that the relevant provisions in the Policing and Crime Bill, introduced to the House of Commons on 18 December 2008, relating to football banning orders, extradition and the proceeds of crime, insofar as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.—[*Kenny MacAskill*.]

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

Business Motions

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of a business motion. I ask Michael McMahon to move S3M-3600, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 11 March 2009

2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 3 Proceedings: Damages (Asbestos-related Conditions) (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

Thursday 12 March 2009

9.15 am	Parliamentary Bureau Motions
followed by	Scottish Liberal Democrat Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Europe, External Affairs and Culture; Education and Lifelong Learning
2.55 pm	Parliamentary Bureau Motions
followed by	Stage 3 Proceedings: Health Boards (Membership and Elections) (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

Wednesday 18 March 2009

2.15 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Scottish Parliamentary Corporate Body Question Time
followed by	Stage 1 Debate: Offences (Aggravation by Prejudice) (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business

Thursday 19 March 2009

9.15 am	Parliamentary Bureau Motions
followed by	Scottish Government Business
11.40 am	General Question Time
12 noon	First Minister's Question Time
2.15 pm	Themed Question Time Health and Wellbeing
2.55 pm	Scottish Government Business
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business—[*Michael McMahon*.]

Motion agreed to.

The Presiding Officer: The next item of business is consideration of a further business motion. I ask Michael McMahon to move motion S3M-3601, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 2 of the Sexual Offences (Scotland) Bill.

Motion moved,

That the Parliament agrees that consideration of the Sexual Offences (Scotland) Bill at Stage 2 be completed by 1 May 2009.—[*Michael McMahon*.]

Motion agreed to.

Parliamentary Bureau Motion

17:01

The Presiding Officer (Alex Fergusson): The next item of business is consideration of a Parliamentary Bureau motion. I ask Michael McMahon to move motion S3M-3602, on the designation of a lead committee.

Motion moved,

That the Parliament agrees that the Health and Sport Committee be designated as the lead committee in consideration of the Tobacco and Primary Medical Services (Scotland) Bill at Stage 1.—[*Michael McMahon*.]

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

Decision Time

17:01

The Presiding Officer (Alex Fergusson): There are three questions to be put as a result of today's business. The first question is, that motion S3M-3506, in the name of Adam Ingram, on the Education (Additional Support for Learning) (Scotland) Bill, be agreed to.

Motion agreed to,

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

The Presiding Officer: The second question is, that motion S3M-3512, in the name of Kenny MacAskill, on the Policing and Crime Bill, which is United Kingdom legislation, be agreed to.

Motion agreed to,

That the Parliament agrees that the relevant provisions in the Policing and Crime Bill, introduced to the House of Commons on 18 December 2008, relating to football banning orders, extradition and the proceeds of crime, insofar as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

The Presiding Officer: The third question is, that motion S3M-3602, in the name of Bruce Crawford, on the designation of a lead committee, be agreed to.

Motion agreed to,

That the Parliament agrees that the Health and Sport Committee be designated as the lead committee in consideration of the Tobacco and Primary Medical Services (Scotland) Bill at Stage 1.

Louis Braille Bicentenary

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S3M-3371, in the name of Robert Brown, on the bicentenary of the birth of Louis Braille. The debate will be concluded without any question being put.

Motion debated,

That the Parliament celebrates the 200th anniversary of the birth of Louis Braille, inventor of the unique communication system for blind people that has been instrumental in unlocking knowledge and potential, creating opportunities and supporting independent action from the time of its invention to the present day; notes the importance of providing braille and other forms of accessible information to people with visual impairments across all sectors and in all areas of activity to create a fair and inclusive society; also notes the potential of modern technology to give full effect to Louis Braille's vision of effective communication for blind and visually impaired people, and considers that the Scottish Government has an important role as an exemplar of best practice in relation to the accessibility to visually impaired people of public services and information provision across Scotland.

17:03

Robert Brown (Glasgow) (LD): I have come somewhat breathless to the chamber, as there was a slight deficiency when the text of my speech was printed out. It is not inappropriate to start by saying that, because perhaps it opens one's mind in a small way to some of the difficulties that are faced by people who cannot read speeches or have access to the written word in the normal way.

It is a great pleasure to open this debate on the 200th anniversary of the birth of Louis Braille and to welcome to the gallery several members of the cross-party group on visual impairment and representatives of their supporting organisations, not least the Royal National Institute of Blind People and the Guide Dogs for the Blind Association Scotland. It is slightly invidious to pick out particular groups, because a substantial number of smaller and larger organisations operate in the field. Some of those organisations are national and some are regional, but they all provide support, advocacy and help or self-help for people who have suffered blindness or visual impairment.

Louis Braille was born in 1809 on the outskirts of Paris, when Napoleon was Emperor of France and the influence of the French revolution, with all its good and bad effects, had swept across Europe. I imagine that there was a sense of modernity, progress and the rights of man—and, I hope, of woman—in the air at the time.

Louis Braille's father was a saddler, which is a French revolutionary-sounding type of occupation for which there is not too much call these days. Braille lost his sight completely by the age of four, following an accident involving one eye and an infection in the other—a phenomenon that is not entirely unknown. He was sponsored by a local landowner to attend the Royal Institution for Blind Youth, which was one of the first schools for the blind in the world. Even our august Royal Blind School and the various bodies to which I referred do not go back quite as far as that.

Braille found that his school taught practical skills, such as slipper making and chair caning, which were seen as useful for future careers. Again, there is perhaps not too much call for those skills now. Reading was taught using raised type, which sounds an innovatory technique for its time. When he was 12, he was introduced to the idea of using raised dots. An ex-Napoleonic soldier, Charles Barbier, visited the institution and told people there how he had invented a method of night writing for soldiers to communicate with one another at night using dots and dashes. Not for the first time, innovation was stimulated through the needs of war.

Braille spent the next few years coming up with a simpler system using six dots to represent the standard alphabet. By the time he was 15—there was obviously an element of child prodigy—he had come up with 63 ways in which to use the six-dot cells in an area no larger than a fingertip. He began teaching the system to other people and became a teacher at the institution, where he also worked on translating books into Braille. He died just short of his 43rd birthday. It was not until 1952 that his contribution was recognised by France and he was reburied in the Panthéon, the resting place for national heroes, which he rightly was by that time. Indeed, he was not just a national hero, but an international one.

Since the Braille system was invented, it has become the recognised method of communication for blind people. It has been added to for funny foreign languages with more or different letters. It is used for taking notes and for various devices such as watches, signage, sheet music and restaurant menus. I even have a business card in Braille provided by the Scottish Parliament, which is anxious to be as inclusive as possible. The Parliament is also fairly good on Braille signage. In the reception that follows the debate, we are to be entertained by young visually impaired musicians whose music sheets are in Braille, which is phenomenal.

In Scotland, the Scottish Braille Press, which was founded in 1891, provides publications in quality alternative formats such as Braille, large print and audio. The RNIB has the largest national library in the United Kingdom for the visually impaired.

It is right that we celebrate the 200th anniversary of Louis Braille's birth and his vital invention of the Braille system, which has helped to widen the lives of many visually impaired people over the years. Research has confirmed that Braille also increases their employability. However, the proposition that I put to the Parliament tonight is that Louis Braille's vision was much wider than just the Braille system, important though it is. Today, technology brings us many opportunities for better communication and opportunities to transcribe and represent books and other material in various formats. We have large print, various font sizes and more suitable colour contrasts, which, as we know from the report on the most recent elections, is important for visually impaired people. We also have audio versions, interactive materials and much more. We can access those in schools, libraries, colleges, workplaces or at home.

Braille was an innovator of his time and, if he was here today, he would be leading the right to read campaign and arguing that we should use the full potential of the technology. He would demand the immediate availability in alternative formats of curriculum materials for young learners and of books, both classic and newly written. He would work to overcome the barriers of copyright law or Government bureaucracy—I should say that the Government is represented by Mr Neil tonight. Braille would also argue that we need an inclusive vision of the rights and contribution of visually impaired people in today's world. It would be remiss of me not to remind the Minister for Housing and Communities of the campaign for a national transcription service and to ask for an update on progress on maximising national resources of material in Braille and large print and of audio versions. That is an important backdrop to the debate.

There are said to be 3 million people in the UK with visual impairment. Of them, about 20,000 can use Braille, which is not a dissimilar number to the number of Gaelic speakers. Evidence suggests that 161 million people throughout the world have a disabling visual impairment, including 6 million or more children. Sadly, fewer than 10 per cent of them receive an education. Therefore, the potential of systems such as Braille is vast, not just here, but throughout the world.

I return to Braille—the technique, rather than the man. The time may come when Braille is under threat or is no longer required because of new technology, but that has not happened yet. Even in Scotland, there are still people who can benefit from the use of Braille. It is up to the Scottish Government, public authorities and those of us in public life to ensure that best practice is adopted and used in relation to the accessibility of information, particularly information on public services throughout our country, so that this and future generations—particularly young people—are able to make the most of their lives.

Canada and Mexico have introduced Braille on their bank notes, which is both totemic and practical. If any banks survive the current financial meltdown, it would be very good indeed if Braille could be used on bank notes in the UK.

As I move towards the seven-minute mark—I am two seconds away from it—I will sum up. The issue is important. The campaigning organisations have done an awful lot to raise the profile of Braille, and this Parliament has had a number of debates about it over the years. Successive Governments have shown interest in it. Progress has been made. In recognition of the anniversary of Louis Braille's birth, let us ensure that progress continues to be made and is accelerated, particularly with regard to young people in the blind and visually impaired community, who are the future of our nation and others throughout the world.

17:11

Stuart McMillan (West of Scotland) (SNP): As a vice-convener of the cross-party group on visual impairment, I congratulate its convener, Robert Brown, on securing the debate. The motion and the debate are certainly timely. I, too, welcome members of the cross-party group to the public gallery.

Throughout my time with the cross-party group, I have been fortunate enough to meet some extraordinary people who live with the pressures of being blind or visually impaired.

I am proud of the many things that Scotland has given the world, including the engineering feats of Inverclyde's own James Watt in improving the steam engine. However, we must thank the French for giving us the pasteurisation process by Louis Pasteur, the stethoscope by René Laënnec—forgive my pronunciation—and, of course, Braille, as we know it today.

It is testament to Louis Braille that his communication system has lasted as the most effective tool for blind people. As Robert Brown said, the Braille method revolutionised communication for blind people. Without it, many would lead an extremely isolated existence.

Blind from the age of 4, Louis Braille would have appreciated the difficulties of day-to-day living with no sight. As well as that, he experienced difficult social conditions and suffered severe illness for most of his life, which makes it all the more important to recognise his achievements.

The freedom and independence that the Braille system can give people with sight problems is extremely important to them. The young musicians

who will be playing at the reception this evening, who use Braille to read their music, are a fine example of that. As a musician, I can only imagine how difficult it would be for someone who is blind or has a visual impairment to learn an instrument. That is difficult enough for people who have sight, but it must be so much more difficult for people who are blind or visually impaired. I recognise fully that someone who is blind or visually impaired and can play an instrument has a talent that is extremely welcome.

It is difficult for many of us to imagine the everyday difficulties that blind and visually impaired people encounter. We are lucky enough to be able to access with ease the information that we require when we require it. That is not always possible for many people in Scotland today.

The effective system that Louis Braille developed has not changed much over the years, but new technologies have kept Braille evolving with various software developments. The advent of the digital age has provided more flexibility for Braille users.

It is my view—and that of many others—that education is a basic human right for everyone, regardless of whether they are sighted, blind or visually impaired. On that basis, it is incumbent on all Governments to ensure that everyone's rights are upheld.

I know that RNIB Scotland and the Scottish Government have been working together to improve educational facilities—campaigns are on-going. There have been improvements in materials for blind and visually impaired people, but, as everyone in the chamber will be aware, there is still much to do. Progress is imperative for people of all ages with visual impairments. I look forward to noting the progress made by both RNIB Scotland and the Scottish Government on this issue and other such issues.

17:15

James Kelly (Glasgow Rutherglen) (Lab): I welcome the opportunity to speak in the debate. I congratulate Robert Brown on his motion to celebrate the 200th anniversary of Louis Braille's birth. It is appropriate to discuss that at this time. I also congratulate on their work Robert Brown, as convener of the cross-party group on visual impairment, and the other members of the group, many of whom are in the public gallery.

The debate gives us the opportunity not only to celebrate Louis Braille's life but to consider some of the work that campaigning organisations do throughout Scotland and to reflect on action that the Scottish Government can take to improve the lives of people who are visually impaired or blind.

Just before Christmas, I attended an event in my community at which I came across a man who was active in the community and who liked to attend and participate in the various events that are organised. He recently became blind because of an accident. When I spoke to him, I was struck by how much that had affected his life. That made me reflect on what it is like for people to lose their sight or never to have had sight. We all become caught up in our own hectic lives, but when we reflect on such situations, we realise the struggles that blind and visually impaired people must face and the situations that they must overcome.

The advent of the Braille system has helped people to read, to communicate and to experience much more in life. The life of Louis Braille shows that he was used to struggling against adversity. It is obvious that he was a strong character to overcome his circumstances. Robert Brown and Stuart McMillan spoke about that. At the age of 10, Louis Braille left his village in France to go to a school in Paris, which must have been daunting and intimidating. He was determined to learn to read. The school that he attended had only 14 books with raised-type letters. He read them all, but he encountered difficulty in reading the sentences, because the letters were so large that by the time the end of the sentence was reached, it was sometimes difficult to remember what the sentence conveyed. As a result, he became determined to produce a more concise system, so he developed the coded format that we have now.

Society owes a lot to Louis Braille's work. We are glad that Scotland has a number of campaigns and campaigners who continue the work on behalf of the blind. I pay tribute to two campaigners in my constituency—Jimmy and Margaret O'Rourke—who are steadfast workers on behalf of such organisations.

As for what the Scottish Government can do, it can consider several issues. It is important to learn the lessons of the previous elections and to consider the report on them. In more than 25 years in which I have been involved in elections, several times when blind people have turned up to vote, people at polling stations and—it must be said—representatives of political parties have been unsure of how to deal with them. I am struck by how a blind or visually impaired person feels about that. Are they likely to return to vote and to participate in the democratic process? The lesson is that we must put in place the correct procedures if we are to encourage people to come and vote.

I am aware that I am running out of time, Presiding Officer, but I want to mention two further important areas: access to health and social care, including support for the Scottish vision strategy; and education and the right to learn campaign.

I welcome the motion that Robert Brown has brought to the chamber and the opportunity that it has given to celebrate Louis Braille's life. I commend the work of the many campaigners and campaigns in Scotland in taking forward that work and in trying to improve the quality of life of those who are blind and visually impaired. I am happy to support the motion.

17:20

Mary Scanlon (Highlands and Islands) (Con): I, too, congratulate Robert Brown on securing the debate on the bicentenary of Louis Braille and commend him on his commitment to the issue. Indeed, I commend him and other politicians for their work on our cross-party groups. Given that that work is not done on the floor of the Parliament, it is unsung and few people get to hear of it.

As Robert Brown said, Louis Braille lost his sight when he was only four. It is difficult for many of us to imagine life without sight. Undoubtedly, losing his sight so early must have been tough but, as other members have said, within 10 years the young Braille was inventing the system that is still in use today. The Braille system allows blind and partially sighted people across the world to read, write and communicate to the same level as sighted people. In 2008, almost 20,000 people in Scotland were registered as blind. There is no doubt that Braille empowers people to operate as normally as possible in their everyday lives.

David Blunkett has not yet been mentioned in the debate—I thought that previous speakers would have done so. I have always admired him for participating in our profession of politics, including at the highest level when he was a minister. He may not be a member of my party, but I admire him as a fellow politician who so competently carried out his duties with the aid of Braille. That has to be commended.

As Robert Brown said, Braille was developed almost two centuries ago. Nowadays, there is no doubt that it is not being utilised to its full effect. The frustration for blind and partially sighted people is that they continue to be disadvantaged because of the underusage of Braille and other methods that could assist them.

The RNIB briefing for the debate sets out the problems that people with sight impairments have with the health service. Problems arise for them even with simple tasks such as visiting their general practitioner surgery. For example, given that many GP surgeries use automated screen-based systems to call patients for their appointment, people with sight impairments are left unaware that they have been called. Simple measures could also be used to address the difficulties that people with sight impairments have in moving around their GP surgery.

In a recent survey of blind and partially sighted people, there were disappointing results for patients' opinions on the service that they receive from the national health service. Worryingly, 95 per cent of respondents said that their preferred and requested format had never been used in GP letters, health advice leaflets or other information that they had received. Even test results had not been issued in the requested format. The NHS states that it meets the needs of everyone, but the survey makes it clear that, in many respects, it is not meeting the needs of blind and partially sighted people.

A friend of mine who has had diabetes for many years is now—and it happened suddenly—registered as a blind person. There has been a huge increase in the number of people with diabetes and that will put extra pressure on a service that is not even able to meet present needs. The provision of Braille and other communication formats needs to be improved in future if it is to meet the needs of people with diabetes who incur blindness, in addition to addressing the needs of the blind and partially sighted.

Another problem for patients arises when they leave the GP surgery. Prescriptions are produced with print that is too small for those who are partially sighted to read, let alone those who would prefer Braille. As the RNIB mentions in its briefing, patients have taken the wrong dosage, which can have serious side effects. We are talking not only about the health service; we have to ensure that pharmacies, too, understand the communication needs of those who are blind and partially sighted.

I commend Ian Rankin for his recent launch of a campaign to make more books available to the visually impaired and to raise funds for rehousing the Scottish Braille Press. I wish him success in his efforts both to increase the use of Braille format and, as Robert Brown said, to produce more books in larger print, audio books and other materials.

The invention of a talented young man at an institute in Paris in 1821 has undoubtedly benefited the lives of millions of blind and partially sighted people for generations. However, tonight we have found that more people could benefit from the use of Braille. We are in a position to ensure that they do.

17:26

The Minister for Housing and Communities (Alex Neil): Like other members, I pay tribute to Robert Brown not just for securing this debate and making a fine speech at the start of it, but for the

work that he does as the convener of the cross-party group on visual impairment and in relation to macular degeneration and related issues. He is to be commended for his work in all of those areas.

This has been a short but helpful debate; being new to my job, I found it informative. I invite Mary Scanlon to write to the Cabinet Secretary for Health and Wellbeing about some of the points she made, as I am sure that the cabinet secretary would be interested to hear about the experiences that people are having. We want to be absolutely sure that we are providing the maximum quality and range of services for people with any kind of sight impairment.

Mary Scanlon mentioned that there are 20,000 blind people in Scotland. In total, 180,000 people in Scotland are blind or visually impaired. We must try to maximise the quality and range of services that are available to those people. I take Mary Scanlon's criticisms on board, but recent developments in the health service such as the provision of free eye examinations will, in time, contribute to the prevention of some cases of blindness and enable us to treat certain kinds of blindness before it is too late. The Government and I are keen to do that.

I am particularly interested in stem cell research as a means of providing solutions not just to blindness but to some of the wider health problems that we face. I requested as part of my briefing for today's debate a note on current developments in stem cell research and on the contribution it can make to tackling the problem of blindness. Scotland is leading the way on stem cell research in that area. Along with Scottish Enterprise and the UK Stem Cell Foundation, the chief scientist office in the Scottish Government is co-funding a grant application to examine the development of safe and effective corneal stem cell transplantation. That is a welcome development. I hope that we are successful in getting funding for the project, because it could help us to make substantial progress towards preventing blindness. More important for many people, we are close to getting a cure for certain types of blindness. We want to play a part in ensuring that that becomes possible.

The project for which the Scottish Government, Scottish Enterprise and the UK Stem Cell Foundation are seeking funding has the potential to restore sight in some people. Recent press coverage has highlighted some of the astonishing advances that have been made in medical treatment based on stem cell technology. Last week I read in the *Daily Express* about a lady who started to lose her sight in her 20s. As a result of stem cell technology, she has received an implant in one eye, in which she has already regained 70 per cent sight. The Government and I are keen to pursue progress in that area, as it offers the solution to the problem and is part and parcel of our wider strategy, along with the provision of Braille services.

We also fund the communication aids for language and learning—CALL—centre at the University of Edinburgh, which Robert Brown is aware of. The centre provides specialist advice, expertise and training in technology for people in schools throughout Scotland who work with children who have speech, communication and/or writing difficulties. CALL is working with Learning and Teaching Scotland to produce an online database of adapted curriculum materials. We are encouraging that development. The Scottish books for all database will be available to all schools via glow—the Scottish schools intranet—or Scran and will allow teachers to obtain adapted curriculum materials and make them available to any pupil in Scotland.

I am glad to say that we also support the Royal Blind School, which has grant funding of more than £5 million from 2008 to 2010 as a grant-aided special school in Scotland. The school teaches Braille to pupils who are not print users. It has up-to-date technology: there are computers in each classroom, and special programmes and peripherals mean that all pupils gain skills. Pupils are provided with any equipment—such as large-print materials, computers and sloping boards—that is necessary for them to access the curriculum.

Mary Scanlon: I hear what the minister says about the Royal Blind School, but is there provision for children to learn Braille in each local authority in Scotland?

Alex Neil: I do not think that there is universal provision but, through Learning and Teaching Scotland, we are trying to make more provision not only for Braille but for other learning aids in school. It is right that we do that and, I intend to look at that area once I have been in this job a wee bit longer to determine whether we can make more substantial progress. I will call on Robert Brown and the cross-party group to advise me on what some priority areas might be, in which we can try to improve the quality and range of services for blind people, including young people in school.

We all agree about the importance of independent living for all our citizens, including those who are blind or have a visual impairment, irrespective of where they work and live or any other factor. This is by no means a party-political issue. Everybody is entitled to live independently, and it is a right for every blind or visually impaired person to enjoy as far as possible the quality of life that the rest of us enjoy. That objective is clearly shared by everybody in the Parliament.

I welcome the debate. I have read a short biography of Louis Braille, which I had not done before. It was interesting indeed. He must have been a strong-willed and capable individual to achieve what he did.

I reaffirm our commitment to equality, inclusion and, particularly, the disability equality duty. We will try to deliver the best quality of service to people in Scotland who are disabled in any way. This is the first debate that I have handled as a minister, and it is a particular pleasure to participate in a debate that is of such importance to so many people.

Meeting closed at 17:33.

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:

Wednesday 11 March 2009

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 Document Supply.

Published in Edinburgh by RR Donnelley 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

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
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 RR Donnelley