

MEETING OF THE PARLIAMENT

Wednesday 20 May 2009

Session 3

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Scottish Parliament

Wednesday 20 May 2009

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

Time for Reflection

The Presiding Officer (Alex Fergusson):

Good afternoon. As always on a Wednesday, our first item of business is time for reflection. Our time for reflection leaders today are Liam Beattie, a secondary 6 pupil at Hawick high school and a member of the Scottish Youth Parliament, and Rachel Connolly, an S6 pupil at Hawick high school.

Rachel Connolly (Hawick High School):

Visiting Auschwitz—let alone going there and back in one day—is something that many young people would never consider doing. No amount of pictures, videos and books about Auschwitz and other concentration camps prepares you for seeing the sites where millions of innocent people were killed. What hit me the most was witnessing the vast cabinets with the discarded shoes and the real hair of 40,000 people. My reaction after seeing the harrowing images was to cry. I was not crying for myself; I was crying at how sad it was that all that suffering had been caused by the selfish drive of one man. Auschwitz II might have been the biggest of the three concentration camps, but today its site has the least to see physically. The remains of the vast huts where prisoners were cramped together, the barbed wire that was left and the overbearing presence of the watchtower as you enter gave me a cold shiver up my back. I do not live my life any differently, but to have seen Auschwitz through my own eyes puts a whole new perspective on how little human life was valued there.

Liam Beattie (Hawick High School): The lessons that I learned from visiting Auschwitz are ones that I believe I can pass on to others. The Holocaust touches so many social issues that still cast a shadow over our society. It saddens me to think that there is still racism, anti-Semitism, homophobia and unfair discrimination in this nation of ours. It has been 64 years since world war two came to an end, but so many people still believe that there is little to be learned from the events that unfolded during the Holocaust. When Rachel and I visited Auschwitz, we learned how simple name-calling can escalate into something as terrible as the Holocaust, and we need to ensure that the majority protects society's minorities by putting equality and fairness at the core of our society. A fact that I learned while visiting Auschwitz was that if people stayed silent

for a minute for every person who died as a result of the Holocaust we would be silent for six years. I would like to finish with this quotation from George Santayana, who said:

“Those who cannot remember the past are condemned to repeat it.”

Business Motion

14:33

The Presiding Officer (Alex Fergusson): The next item of business is consideration of motion S3M-4184, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Education (Additional Support for Learning) (Scotland) (Bill).

Motion moved,

That the Parliament agrees that, during Stage 3 of the Education (Additional Support for Learning) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 to 3: 45 minutes

Groups 4 to 7: 1 hour 25 minutes

Groups 8 to 10: 1 hour 55 minutes.—[Bruce Crawford.]

Motion agreed to.

Education (Additional Support for Learning) (Scotland) Bill: Stage 3

14:33

The Presiding Officer (Alex Fergusson): The next item of business is stage 3 proceedings on the Education (Additional Support for Learning) (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2—SP bill 16A—the marshalled list and the groupings, which I have agreed.

The division bell will sound and proceedings will be suspended for five minutes for the first division this afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate and 30 seconds for all other divisions.

Section 5A—Additional support

The Presiding Officer: Amendment 15, in the name of Margaret Smith, is grouped with amendment 16.

Margaret Smith (Edinburgh West) (LD): The bill has been deemed necessary partly to restate some of the key messages of the Education (Additional Support for Learning) (Scotland) Act 2004 in the wake of various court judgments, one of which was a decision by Lord Wheatley. The Education, Lifelong Learning and Culture Committee was right to be concerned about that judgment, as it struck at one of the central features of the 2004 act: the definition of additional support needs. Lord Wheatley's judgment restricted additional support to educational support offered in a teaching environment. However, as we know, a range of support is necessary to assist some children in accessing education. The code of practice lists a number of interventions—everything from social work support to psychiatric support.

I was pleased to support the Government's amendment 7 at stage 2, which reiterated the intended definition of additional support.

Amendments 15 and 16 are based on the suggestion that was made in the joint submission from the Govan Law Centre, Scotland's Commissioner for Children and Young People, Capability Scotland and many others that the bill's provisions should cover not only section 1(3)(a) of the 2004 act, as amendment 7 at stage 2 did, but section 1(3)(b), which relates to early years provision, to ensure that they apply to children who are not based in school or who have a prescribed pre-school place. Those children are

included in the original definition of additional support needs for a purpose.

Having spoken again to the various groups who supported the amendments previously, I know that they remain concerned that we could be leaving young children in their crucial early years at a disadvantage. For example, we might jeopardise early communication interventions by speech and language therapists and diminish the systems of preparation for pre-school and school education for children with special and additional needs.

The Govan Law Centre continues to argue strongly that an amendment to section 1(3)(b) of the 2004 act for pre-school children aged zero to three is really needed. Changing the definition of additional support for that group categorically would not require an authority to take responsibility for a child from age zero to three. However, it would ensure that, if they have that responsibility through the application of section 5 of the 2004 act, as amended by section 5D of the bill, which was inserted at stage 2, the additional support would not be confined to support in a classroom. That is obviously particularly important for under-threes.

Section 5 of the 2004 act provides that, for disabled children who are assessed as having additional support needs, the authority has a duty to provide such additional support as is appropriate. The authority then has to look at section 1 of the 2004 act to see what additional support means in the context of a child aged zero to three. At present, what they see in section 1 is reference only to "educational provision." It makes less than no sense that additional support for school pupils is now not restricted to educational provision, but additional support for pre-schoolers is.

The Government's approach at present removes the difficulties that were introduced by Lord Wheatley's decision for pupils aged three to 18 but compounds them for children aged zero to three. It might even have the unintended effect of requiring education authorities to enrol disabled children at that young age in academic establishments, rather than allowing authorities to provide support in other, more appropriate contexts, such as at home or in health centres.

Amendment 15 is a technical amendment that will allow amendment 16 to be inserted properly. I urge colleagues to support amendments 15 and 16.

I move amendment 15.

The Presiding Officer: Before I call the Minister for Children and Early Years to respond, I remind members that if they wish to participate in the debate on any of the groups, they should press

their request-to-speak buttons when the group is called.

I call Ken Macintosh.

Ken Macintosh (Eastwood) (Lab): Thank you for the reminder, Presiding Officer.

I add Labour's support to amendments 15 and 16. It is important to remember that, although the 2004 act gave local authorities the power to address the needs of children from zero to three, it did not impose on them a duty to do that. Since 2004, we have found that, in practice, the needs of a number of children in that group have not been addressed or assessed.

I draw to members' attention the needs of deaf children in particular, who are often diagnosed between the ages of zero and three.

Having accepted amendment 7, in the name of the minister, at stage 2, which addressed Lord Wheatley's judgment, it is important that we transfer that to children aged zero to three, which is what amendments 15 and 16 do.

The Minister for Children and Early Years (Adam Ingram): It might be useful if I explain that the 2004 act currently requires an education authority to provide additional support to certain disabled children in their area who are under three years old. That duty applies where such children have been brought to the attention of the education authority as having, or appearing to have, additional support needs arising from a disability and the education authority establishes that they have such needs.

However, I do not believe that it is appropriate to place education authorities under the same statutory duty to make provision for disabled children under three as for children over three. It simply does not make sense for the same definition of additional support to apply to under-threes as that which will generally apply for those children for whom the authority has a responsibility from pre-school onwards.

That is because education authorities have completely different roles in relation to the different age groups of children. The role that education authorities can play to support disabled children who are under three is described—correctly—as that of educational support and is part of the early years framework, which recognises the right of all young children to high-quality relationships, environments and services that offer an holistic approach to meeting their needs. It is correct that a broader definition applies to children for whose school education the authorities have responsibility.

Approximately 200 severely disabled children are in the age range of zero to three and a high number who would be affected are less severely

disabled. Determining the costs exactly has not been possible, but one thing is certain: the proposed new duty will result in significant additional costs to education authorities. I reiterate that the effect of amendments 15 and 16 is that education authorities will take over a responsibility that is properly located with other agencies at the moment, so education authorities will incur extra costs but the children concerned will have no extra benefits.

The Presiding Officer: I call Margaret Smith to wind up.

Margaret Smith: I have nothing to add.

The Presiding Officer: Do you wish to press or withdraw amendment 15?

Margaret Smith: I will press amendment 15.

The Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. I suspend proceedings for five minutes.

14:41

Meeting suspended.

14:46

On resuming—

The Presiding Officer: We move to the division on amendment 15.

FOR

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)

McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 69, Against 48, Abstentions 0.

Amendment 15 agreed to.

Amendment 16 moved—[Margaret Smith].

The Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)

Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Orkney) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)

Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 70, Against 47, Abstentions 1.

Amendment 16 agreed to.

Section 5C—Additional support needs etc: specified children and young people

The Presiding Officer: Amendment 1, in the name of the minister, is grouped with amendments 2, 3, 3A, 3B and 17.

Adam Ingram: The bill, as amended at stage 2, requires authorities to treat all children and young people who fall into a number of specified categories as having additional support needs, regardless of whether they need additional support in order to benefit from school education. Many authorities and stakeholders, such as Children in Scotland, share the opinion that the provision will categorise children as having additional support needs when they do not, in fact, require additional support.

That said, I acknowledge that looked-after children and young people are a unique group—a group that does not fare as well educationally as others do. However, the bill omits the group of looked-after children who have the lowest educational attainment: those who are looked after at home. Our amendments in the group will rectify the situation.

The Scottish Government accepts and shares the concern of the Education, Lifelong Learning and Culture Committee on the position of the groups of children who are identified under section 5C of the bill. I thank Margaret Smith and the Liberal Democrats for their helpful suggestion that we create a working group to consider how the 2004 act is working for those groups of children and young people. I am more than happy to take on board Ms Smith's suggestion and to establish such a group urgently to examine how the act is affecting the groups of children that are specified in section 5C. The working group will report in due course, and we will act on its recommendations. I therefore urge Parliament to support amendment 2, which will delete all the other categories of children that are contained in section 5C, and

amendment 1, which will extend the provisions of the bill to encompass all looked-after children.

Amendment 3 makes it clear that, where a child or young person does not require additional support in order to benefit from education, the bill's presumption that they have additional support needs will be rebutted. I assure Margaret Smith in particular that amendment 3 will not delete the deeming provision. Education authorities will still have to start from the assumption that such children have additional support needs, and they will still have to assess each child individually. The amendment will, however, remove the potential absurdity of authorities being under a duty to deliver additional support to children and young people who do not have additional support needs.

I understand the rationale behind amendments 3A and 3B and note that they relate only to looked-after children. I trust that that is the case because the Liberal Democrats are supportive of amendments 1 and 2 in my name, which would remove the other specified categories of children who are deemed to have additional support needs. I welcome that support.

I regret that I am unable to support amendment 17, because it is confusing and legislatively unnecessary. The amendment picks out only one reference to children with additional support needs in the whole 2004 act. Its effect would be that other references to

"children and young people having additional support needs"

in the 2004 act would not include those who are deemed to have additional support needs. Without a similar provision for every other such reference in the bill, practitioners would be left to assume that those other references did not include children who are deemed to have additional support needs. Clearly, that is not the intention of the amendment.

I ask Parliament to support amendments 1, 2 and 3, offer my support to amendments 3A and 3B, in the name of Margaret Smith, and ask Margaret Smith not to move amendment 17.

I move amendment 1.

Margaret Smith: The group contains a number of important amendments. Amendments 1, 3A, 3B and 17 relate to looked-after and accommodated children. Members will be aware that I argued successfully at stage 2 that accommodated children should be deemed to have ASN. After our evidence taking and from our work as MSPs, all of us are aware of the particular challenges that looked-after children face. Time and again, they are let down by the system and by those of us who are meant to be responsible for them.

The needs of looked-after children were highlighted in a number of submissions, including

those from the Govan Law Centre and the president of the Additional Support Needs Tribunals for Scotland. Often they have been let down by their parents. Some will say that it is—because of the getting it right for every child policy and the inclusive nature of the 2004 act—wrong to pick out and give prominence to any one group of children, but I believe that looked-after children and young people are a different and unique group. Such children have no parents, or their parents are unable or unwilling to care for them. They find themselves with another parent—the local authority, which is often the gatekeeper to services. I want to ensure that no local authority is tempted to short-change any looked-after child and that no council official is tempted, because of departmental circumstances, not to ask for an assessment or a co-ordinated support plan for such children.

My stage 2 amendment covered, for the reasons that I have outlined, looked-after and accommodated children who live away from their parents, to allow them by virtue of their status to be treated as children with additional support needs. Amendment 1, in the name of the minister, includes looked-after children who remain at home. Rightly, the minister said that the evidence shows that those children tend to have the worst educational attainment. I am therefore happy to accept the extension of the provision to include all looked-after and accommodated children.

The minister's amendment 3 deals with the possibility that some looked-after children will not require any additional support. If we do not amend amendment 3, however, it could create a loophole whereby councils could make decisions without proper assessment or investigation of the individual child.

It was always my intention that there should be assessment of needs, and that councils should retain discretion over the additional support that is delivered following assessment. In response to ministerial concerns, I was pleased to lodge amendments 3A and 3B, which I believe to be reasonable amendments that would make the situation clear.

Amendment 2, in the name of the minister, is crucial. It is fair to say that Ken Macintosh's stage 2 amendment, which added lines to the bill in this regard, reflected real concerns about the implementation of the 2004 act. Those concerns were shared by us all on the Education, Lifelong Learning and Culture Committee, by parents and by many of the organisations that gave us written and oral evidence. Judging from the evidence that we heard, thousands of children and young people whom we would expect to have co-ordinated support plans do not have them. Her Majesty's Inspectorate of Education identified particularly

looked-after children, carers and young people with mental disorders as missing out in that regard. The National Deaf Children's Society identified deaf, partially deaf, blind and partially sighted children as being similarly overlooked.

There are two strong arguments before us: they are arguments between the philosophical and the pragmatic. On one hand is the principled position of universality and the inherent dangers of setting up a hierarchy. Supporters of that position will point to what they say is the visionary aspect of the 2004 act, and they will highlight the point of that act as being to extend new rights to all children with additional needs. There is a real strength to that argument.

On the other hand, it is clear—five years on from the 2004 act—that there are particular problems with its implementation. There is widespread variation in how the act has been put into practice and I am sure that all of us in the chamber are aware of those problems.

At stage 2, the minister provided details about a range of work that was being undertaken with the groups of children and young people who are covered in section 5C, lines 7 to 14, of the bill as amended at stage 2—namely: young carers, those with mental disorders, children who are deaf, who are blind and so on. That is laudable, but I do not believe that it goes far enough, which is why I have called on the minister to go further and to set up a working group to consider, particularly and specifically, how the needs of those children and young people whose cases have been raised before us are being dealt with. I hope that the group's work will lead to real improvements for many of our most vulnerable children. I am pleased that the minister feels able to accept that request on our behalf and I welcome the assurances that he has given about setting up a working party specifically to consider the groups that have been identified.

The 2004 act has clearly failed to deliver for many children, so we owe it to them to address that now. The minister said that amendments in this respect are contrary to the inspirational backdrop of the 2004 act but, for the past five years, many local authorities have acted in a way that is totally and utterly counter to the inspirational backdrop that we all supported.

Margo MacDonald (Lothians) (Ind): Could the member explain why local authorities have taken that action? Is it purely financial, or is there another reason?

Margaret Smith: Most of the evidence that the committee took suggested that financial imperatives play a large part in many decisions. Five years on from the passage of the 2004 act, we are about 11,000 young people adrift from the

number of co-ordinated support plans that we would expect to be in place, and many other effects of the act have not happened as expected.

There comes a point at which Parliament must underline the circumstances in which we think action needs to be taken. As I said previously, this is a struggle between the philosophical and the pragmatic. By instinct, I am a pragmatist. I have sought and received assurances from the minister that a fresh look at the matter will be taken through the setting up of a working party on the particular groups that I have mentioned. That allows me to accept the minister's amendment 2.

I accept that amendment 17 might lead to confusion, so I will be happy not to move it.

Ken Macintosh: I ask members to vote against the minister's amendment 2. At stage 2, the Education, Lifelong Learning and Culture Committee was able to agree on a range of measures, establishing the rights of looked-after and accommodated children, young carers, children with mental disorders and children with sensory impairments to an assessment of their needs—just an assessment.

I should say in passing that it is—to put it mildly—frustrating to have amendments that were agreed in committee being removed by massed whipped votes in the chamber at stage 3.

15:00

David McLetchie (Edinburgh Pentlands) (Con): That is a new thing—[*Laughter.*]

The Presiding Officer: Order.

Ken Macintosh: I seem to have hit a raw nerve—[*Interruption.*]

Mr Frank McAveety (Glasgow Shettleston) (Lab): I hear guilty voices.

Ken Macintosh: Absolutely.

The minister suggested that by identifying a vulnerable group of youngsters we will somehow undermine the principle of the 2004 act, but he went on to agree that accommodated children require to be so identified. Indeed, he went further and proposed that we add to the list children who are looked after at home. The minister has undermined his whole argument. It is difficult not to conclude that his calculations have less to do with principle than with the fact that the Conservatives, Lib Dems and Labour all voted for the inclusion of those groups at stage 2—

The Minister for Parliamentary Business (Bruce Crawford): Shame.

Ken Macintosh: Shame on the Government for trying to remove groups from the list.

As I argued at stage 2, I accept that in an ideal world we would not have such a list. That was our approach in the 2004 act. However, five years later, we are trying to amend the 2004 act with the benefit of experience, and experience tells us that looked-after and accommodated children, young carers and children with mental disorders are not benefiting from the legislation as fully as they might.

Margo MacDonald: I have an open mind on the matter and came to the debate to learn about it, so I hope that members will indulge me. If local authorities have been excluding the groups of children and young people that Ken Macintosh mentioned, why does he think that those groups' inclusion in the bill will make local authorities more likely to include them in the future?

Ken Macintosh: That is because local authorities will be under a statutory obligation to do so—they will have to assess the needs of those groups. Currently, many children are not even being assessed. It is not that they do not get a CSP; they are not even assessed.

I refer Margo MacDonald to the helpful briefing from Govan Law Centre, the National Deaf Children's Society, the Scottish Association for Mental Health, the Royal National Institute for the Blind Scotland and others, which highlights the evidence. For example, in 2007 HMIE reported that only

"A few education authorities were beginning to address mental health issues in children ... A few authorities had also recognised the need to look at the effectiveness of provision for young carers and the provision of local young carer support. However, this process was at an early stage of development."

I do not want to repeat evidence from the National Deaf Children's Society that I have quoted at length, on the underachievement of deaf children and children who have sensory impairments. I will at least refer members to the evidence in the report that was published this week by the University of Edinburgh, which found that no form of support plan is in place for 26 per cent—more than a quarter—of identified severely to profoundly deaf pupils.

Christina McKelvie (Central Scotland) (SNP): What will happen to kids who are not on the list, such as kids who are suffering from grief or family breakdown?

Ken Macintosh: As Christina McKelvie knows, the bill reaffirms the right of every child to have an assessment. We identified a range of particularly vulnerable groups. It is absolutely wrong to assert, as Ms McKelvie seemed to do, that by highlighting the needs of some children we are somehow demoting others. If that is the case, why is the minister highlighting the needs of looked-after and

accommodated children? How can he pick out the needs of looked-after and accommodated children and ignore the needs of young carers and children who have mental disorders, even though the Government's inspectorate found that such children have particular needs, which should be identified?

It is simply absurd to argue, as the minister tried to do, that we are forcing local authorities to provide support to children who do not need it. The suggestion that that will happen as a result of the bill is laughable.

I look forward to hearing more from the minister about the working group that Margaret Smith mentioned. I am sure that all members will welcome the group. The bill will not be the last word on the implementation of the legislation.

A parent said, "A vote for amendment 2 is a vote for the status quo." I urge all members to reject amendment 2 and to support the other amendments in the group.

Elizabeth Smith (Mid Scotland and Fife) (Con): As was the case with the 2004 act, the ethos of the bill is to provide adequate and relevant support to children with additional support needs. It is not the intention to provide that support where no such need exists or to introduce legislation the consequence of which would be to leave out certain categories of children who have additional support needs but whose disability is not covered by a specific legislative definition.

Since stage 2, various legal issues have arisen in that connection. Amendment 2 addresses those issues and the possibility of unintended discrimination, and seeks to preserve one of the fundamental principles of the 2004 act, which is why the Scottish Conservatives will support it.

Adam Ingram: I will clarify some points. The stage 2 amendment arrived in the bill although there was no majority on the committee; rather, it was approved by the convener's casting vote. In those circumstances, I am perfectly entitled to bring the issue back to Parliament.

I will summarise the effect of the amendments in the group. They will have the combined effect of deeming all looked-after children to have additional support needs, but will relieve education authorities of the requirement to meet needs that do not exist, the fact of their existence having been established only after appropriate assessment. It is important to recognise that looked-after children are in a unique position because it is perceived that local authorities have a conflict of interests as corporate parents on the one hand and as providers of services on the other. That defines the uniqueness of looked-after children and why they deserve to be covered in the bill.

Ken Macintosh: Why will the minister not, therefore, address the needs of young carers, who often look after their own parents?

Adam Ingram: I have already indicated that we will address the needs of young carers in the working group that I have agreed with Margaret Smith to set up. Young carers are already covered by the 2004 act, as are all other groups of children who have additional support needs.

Amendment 2 will remove the additional categories of children that Mr Macintosh placed in the bill at stage 2. We do not want to establish a hierarchy of needs, in which some groups of children with additional support needs are prioritised over others, which is what will happen if local authorities have statutory obligations in respect of specific groups of children. That would undermine the inclusive ethos of the 2004 act.

Robert Brown (Glasgow) (LD): Does the minister accept that the committee received substantial evidence of recalcitrance—I cannot describe it any less strongly—in some local authorities on that point? The issue is enforcement rather than legislative change. Will he undertake to deal with enforcement against those councils and improvement of the service as central issues for the working group that is to be set up?

Adam Ingram: I certainly undertake to do that. After the bill is passed—as, I hope, it will be—we will return to the code of practice and guidance to local authorities on implementing the bill's provisions. We can, in those, certainly address the issues that Robert Brown has raised and we can cover them in the working group that I have undertaken to set up.

Amendment 1 agreed to.

Amendment 2 moved—[Adam Ingram].

The Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)

Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Foulkes, George (Lothians) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 79, Against 42, Abstentions 0.

Amendment 2 agreed to.

Amendment 3 moved—[Adam Ingram].

Amendments 3A and 3B moved—[Margaret Smith]—and agreed to.

Amendment 3, as amended, agreed to.

Amendment 17 not moved.

After section 5D

The Presiding Officer: Amendment 18, in the name of Claire Baker, is in a group on its own.

Claire Baker (Mid Scotland and Fife) (Lab): I am delighted to speak to amendment 18, on the provision of advocacy services during a tribunal. I would have preferred to lodge an amendment on the provision of support services and advocacy, because it is clear that action needs to be taken in both those areas. If there was greater availability and uptake of support services, there would be less need for advocacy services at tribunal. However, I have been limited by the bill's financial restrictions, so amendment 18 focuses solely on the provision of advocacy services.

Amendment 18 is a simple amendment that would place a duty on ministers to secure provision of an advocacy service that would be available free and on request for tribunal proceedings. It addresses the anomaly that although the 2004 act created the right to advocacy, it did not create an accompanying duty on anyone to ensure the delivery of, or access to, advocacy services. Amendment 18 is supported by a range of bodies, including Independent Special Education Advice (Scotland) and Children in Scotland.

During stage 1, the committee heard evidence of the increasingly adversarial nature of some tribunals and of the need for parents and young people to be properly supported during the process. Amendment 18 would begin to level the playing field, particularly for those without the financial resources to hire an advocate. Ensuring the provision of an advocacy service that is available on request and free of charge to all parents is an important right that should be introduced to the bill. The provision of mediation and dispute resolution is in the 2004 act, and the opportunity should be taken with this bill to include the provision of advocacy services. At stage 1, the minister recognised the importance of advocacy services, saying:

"I want to ensure that parents have access to advocacy".—[*Official Report, Education Lifelong Learning and Culture Committee*, 21 January 2009; c 1905.]

During discussions at stage 2, the minister explained how the Government would achieve that:

"I am committed to establishing a representative advocacy service at tribunals for all parents and young people throughout Scotland. I propose the allocation of £100,000 per annum for a service to represent and/or support parents and young people effectively at tribunals."—[*Official Report, Education, Lifelong Learning and Culture Committee*, 22 April 2009; c 2194.]

Amendment 18 will deliver a service to which the minister has already committed in principle and financially. I believe that it is important that that commitment be secured within the bill to give certainty and security to parents and young people who require advocacy services.

I move amendment 18.

The Presiding Officer: The amendment will be moved later.

Margaret Smith: I very much welcome amendment 18 and its focus on the need for advocacy support for parents and young people at tribunals. A case can be made for the need for advocacy services prior to that stage, so that parents can be supported earlier in the process and, indeed, so that disputes might not make it through to the level of a tribunal. However, all of us at committee, whether we liked it or not, were

acutely aware of the costs involved in various amendments to the bill. I believe that amendment 18 strikes the correct balance.

The committee sought to achieve a greater balance of arms for tribunals between parents on the one hand and local authorities on the other, many of which employ lawyers and some of which employ Queen's counsels to argue their cases at tribunal. Amendment 18 and its projected funding requirement of £100,000 mirror a commitment that the minister made at stage 2 to invest that amount in tribunal advocacy services. I believe that it will represent valuable support to parents at what can be an incredibly stressful time. I thank Claire Baker for bringing the issue back before us at stage 3. She has been tenacious in her quest.

15:15

Adam Ingram: Frankly, I am surprised that amendment 18 has been lodged, given my discussion with the committee at its evidence-gathering session on 22 April. It appears that commitments given by me as a Scottish Government minister have been discounted. That causes me some concern. The undertaking that I have given is to establish a representative advocacy service at tribunals for all parents and young people throughout Scotland. I also advised that I expected that the service would help parents and young people with independent adjudication and with other remedies that are open to them to resolve disputes with education authorities. Amendment 18 is somewhat narrower, as it would exclude any help with other dispute resolution mechanisms.

Furthermore, I have concerns about the definition of "advocacy service" that is contained in amendment 18. The definition makes no mention of empowering parents or young people to speak up for themselves to secure their rights. I know that a number of advocacy providers share my concern about that.

Therefore, I ask Ms Baker to withdraw amendment 18 and to rely instead on the undertaking that I have given.

The Presiding Officer: I apologise to Ms Baker, who was quite right to move amendment 18 when she did. I ask her to wind up the debate.

Claire Baker: As I said in my earlier comments, amendment 18 is supported by Children in Scotland, ISEA and a range of other organisations.

I accept that the minister supports the provision of advocacy services for the tribunal process and that he is committed to delivering such services, but I believe that the best way to secure that commitment and to provide the service with the

certainly that it deserves is to translate that commitment into the bill.

I am afraid to say that we have seen too many organisations lose political support and funding when priorities change. I believe that advocacy services for parents and young people at tribunals should not be left vulnerable to that possibility.

I will press amendment 18.

The Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)

O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 71, Against 48, Abstentions 0.

Amendment 18 agreed to.

The Presiding Officer: Amendment 19, in the name of Karen Whitefield, is in a group on its own.

Karen Whitefield (Airdrie and Shotts) (Lab): The purpose of amendment 19 is to ensure the provision of independent mediation at local authority level. Although there are some excellent examples of the provision of mediation in some local authorities, evidence suggests that the fact that some councils provide mediation services internally has led to poor take-up because of concerns about how independent such services are. Parents often need mediation when a dispute arises between them and the local authority. Concerns have also been raised with the committee that some local authorities have made little or no provision for mediation.

Kenny Gibson lodged a similar amendment at stage 2 but chose to withdraw it because of a technical drafting issue. The committee agreed to his withdrawing it, but it was believed that it would be resubmitted at stage 3. Amendment 19 is a redrafted version of Kenny Gibson's stage 2 amendment. Account has been taken of the drafting problem that the minister highlighted at stage 2. As Mr Gibson said at the time, we need to ensure that

"there is no postcode lottery for mediation services".—
[*Official Report, Education, Lifelong Learning and Culture Committee*, 29 April 2009; c 2250.]

That is what amendment 19 seeks to do. It has the support of ISEA and the for Scotland's disabled children coalition, so I urge members to support it.

I move amendment 19.

Adam Ingram: Amendment 19 would prevent a mediation service from being provided by anyone who had any involvement in the exercise by a local authority of any of its functions, regardless of whether or not those functions related to education, by redefining the circumstances in which mediation services are to be regarded as independent. Ms Whitefield has confirmed that the aim of amendment 19, as with the amendment that Kenneth Gibson lodged at stage 2, is to prevent authorities from using in-house mediators and to require those authorities that currently provide an in-house mediation service to employ an independent mediation service provider. We understand that at least two authorities deliver in-house mediation services.

There is no evidence whatever to suggest that in-house mediation services are in any way less effective or of a lower standard than mediation that is provided by an independent mediation service provider. To prohibit those authorities that have

taken steps to put such a service in place from maintaining that service without any evidence that such a step would improve provision appears to me to be illogical and a rather negative development. I firmly believe that the mediation services for which the 2004 act provided are well regarded by all parents and that, in this instance, we in the Scottish Parliament should leave it to each education authority to decide the precise details of how it provides such services. Our role is to ensure that mediation services are provided free of charge to parents and young people, as the 2004 act provides.

Accordingly, I ask Karen Whitefield to withdraw amendment 19.

Karen Whitefield: I listened carefully to the minister's comments. Although he suggests that there is no evidence that there is a problem with the mediation services that Scotland's 32 local authorities provide, the Education, Lifelong Learning and Culture Committee heard from a number of organisations that expressed particular concerns about the impartiality and independence of mediation services.

No one doubts the commitment of those people who work in the mediation services that local authorities offer internally, but the point is about independence. It is essential that parents who seek mediation services have confidence in the system. Given that such parents are often in dispute with their local authority, they can have confidence in the system only if those mediation services are delivered independently. Therefore, I have no intention of withdrawing amendment 19.

The Presiding Officer: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Carlaw, Jackson (West of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Foulkes, George (Lothians) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gillon, Karen (Clydesdale) (Lab)

Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)

Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 73, Against 47, Abstentions 0.

Amendment 19 agreed to.

The Presiding Officer: Amendment 20, in the name of Ken Macintosh, is in a group on its own.

Ken Macintosh: Amendment 20 was suggested by ISEA. It deals with the problems that parents have encountered when trying to access dispute resolution. As members will know, at the moment when a parent or a young person wishes to refer their case to dispute resolution, they direct their complaint in writing to the local authority, which is the gatekeeper to the dispute resolution process.

In its evidence to the Education, Lifelong Learning and Culture Committee, ISEA highlighted that, in most cases, local authorities deemed those referrals from parents as not competent. The only recourse then for families is to take out what is called a section 70 complaint, which, as we are all aware, takes months. Even worse, if parents do not know about section 70, the complaint goes nowhere.

ISEA estimates that, in the five years since the passage of the 2004 act, between 20 and 25 parents have managed to access dispute resolution. However, on the upside, in the cases in which ISEA has been involved, there have been successful outcomes. That is something that we should hold on to.

I believe that all members want a reduction in conflict between parents and local authorities, and for cases to be settled long before they reach the

tribunal stage. Amendment 20 will enable parents to lodge their complaint directly with Scottish ministers. That will not only address the problem of one party to the dispute being the gatekeeper to the resolution process but allow the process to be more widely publicised. If the amendment is accepted, there will be one central point and one address to write to—information easy to distribute to parents.

As Mr Gibson argued at stage 2, what is proposed will make it easier to obtain an independent adjudication, and will therefore enhance the rights of parents and young people. It will also provide a more accurate picture of how many such references are made and received. Most important, it will remove the delays and problems that many parents experience, and it will increase parental confidence.

When dealing with a similar amendment from Mr Gibson at stage 2, the minister queried the use of the phrase “in the first instance”. Those words have been removed, which I hope makes the amendment more acceptable to all and more palatable to the minister.

At stage 2, the minister welcomed the advantages that the amendment then being considered would bring in that the Scottish Government would be alerted to any applications for dispute resolution and to any breach of timescales by a local authority. The minister then suggested that he would consider how to take the matter forward. I would welcome his thoughts on the problems that ISEA has identified with dispute resolution and, in particular, on the proposal before us in amendment 20.

I move amendment 20.

Adam Ingram: Amendment 20 provides that regulations as to dispute resolution may require that, where a parent or young person makes an application for dispute resolution, that application must be made to the Scottish ministers instead of—as at present—the local education authority.

As I made clear at stage 2, I appreciate that authorities can sometimes be tardy when it comes to contacting the Scottish ministers to nominate an independent adjudicator. That is simply unacceptable. To address that, I said that I would issue a direction under section 27(9) of the 2004 act to direct authorities to comply with the relevant timescales that are laid down in the regulations.

I recognise that it may be beneficial for the Scottish ministers to be alerted to the fact that a parent has submitted an application for dispute resolution, as that would enable Scottish ministers to contact authorities directly on a case-by-case basis where it is thought that an authority may be in breach of the relevant timescales. However, it is vital that any new process that we introduce is as

easy as possible for parents. Most parents, particularly those located in the more remote areas of the country, would prefer to be able simply to visit or to send a reference to their local council offices rather than to have to write to the Scottish ministers in Edinburgh with all the details of their case.

The Government does not claim that we have no role in the process. We have a role, but it is not the one that is proposed in amendment 20. Surely, the issue is about what individual parents want and the access that they have to their local providers. Our role is to support the process without getting in the way of it. Accordingly, I do not consider amendment 20 to be a good solution to the issue, so I ask Ken Macintosh to seek to withdraw it.

15:30

Ken Macintosh: The minister has approached the issue in a serious manner and has offered an alternative way of dealing with it. The issue is a moot point. The trouble is that, in the five years for which we have had the dispute resolution process, it has not worked very well. We are not talking about a huge number of cases. The minister argues that it is easier and simpler for parents to go to the local authority. He also talked about what parents want. I suggest that it is probably easier and simpler for parents to go straight to the minister, and we know that that is what they want, because they have told us that through organisations such as ISEA. Although I acknowledge fully that the minister means well and has suggested an alternative, the simple question is whether we want parents to go to local authorities or through the minister. I think that they should apply to the minister. On that basis, I will press the amendment.

The Presiding Officer: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)

Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
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 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)

FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
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 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
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 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 72, Against 47, Abstentions 0.

Amendment 20 agreed to.

Section 5E—Provision of published information to certain persons

The Presiding Officer: Amendment 4, in the name of the minister, is grouped with amendments 5 to 12 and 21.

Adam Ingram: Amendment 4 will place authorities under a duty to ensure that a summary of the information that they publish under section 26 of the 2004 act is provided to parents of children and young people with additional support needs. That will allow parents to request further information on subjects that are of relevance to their child. The amendment also provides that information on how to access all of the section 26 information should be sent to parents of children and young people with additional support needs. I emphasise that that will not allow authorities simply to provide a signpost to information in isolation, as the signpost will have to be accompanied by the summary.

Amendments 5 and 6 will focus the range of parents and young persons to whom authorities are required to send the information that is published under section 26 of the 2004 act by

linking it to those children and young persons with additional support needs

“for whose school education the authority are responsible”.

Amendment 7 is a technical amendment that will tidy up a drafting ambiguity in section 5E. The amendment makes it clear that the test that authorities are to use in establishing whether a young person lacks capacity relates solely to the young person’s ability to understand the information that is published under proposed new section 26(1)(d) in the 2004 act.

Amendments 4 to 7 will strike a better balance. They will enable parents and young people to access the information that they require in an environmentally friendly way and, in so doing, will remedy a totally disproportionate obligation on authorities that would result in a lot of wasted time, money and paper.

Amendments 8 to 10 are technical amendments to put the bill in a better order. Incidentally, amendments 4 and 8 are in no way related.

Amendment 11 focuses the places in which the summary of information that is published under section 26 of the 2004 act should be available by linking that to schools under the management of the authority.

Amendment 12 focuses the schools that must include the summary in their handbooks, publications or websites by linking that to schools under the management of the authority.

Amendments 8 to 12 will create a more practical and proportionate section 5F.

Amendment 21 enables the Scottish ministers to make an order specifying certain persons from whom parents and young people can obtain further advice, information and support in relation to additional support needs, including support and advocacy services under section 14 of the 2004 act. It places local authorities under a duty to publish information on those persons. I very much welcome the amendment and will ensure that we consult on the persons who are to be listed in orders.

I ask Parliament to support amendments 4 to 12 and I also offer my support for amendment 21, in the name of Margaret Smith. I move amendment 4.

Margaret Smith: Amendment 21 builds on an amendment that I brought to the committee at stage 2. It seeks to add to the information that councils give to parents about local advice, support and advocacy services by including other nationally specified bodies from which people can get information and support, and it ensures that those bodies should be specified by ministers. The intention is to name national bodies that are

specified by the Government, from time to time, as organisations that will provide information nationally. It is clear that we cannot, at any given time, put the names of such organisations into legislation or regulations. The amendment is a way of ensuring that, when a national body gives information that is supported by the Government, that information is made available to people. I have redrafted the amendment to make it clear that that will sit alongside the information that is already given out by councils and will not supplant it.

I will comment on amendments 11 and 12, picking up on some difficulties for Scotland’s disabled children. Parents, children and young people should have access to ASN summary information in more places than just schools, given the importance of partnership nurseries, learning centres and family centres.

Margo MacDonald: Will the member give way?

Margaret Smith: No.

Information should be provided in the widest range of settings so that it has the widest possible reach to affected children and their families. There is a concern that amendment 11 would limit the provision of information on ASN simply to schools that are run by local authorities.

Moreover, as some local authorities place children with ASN in independent special schools but retain a responsibility for their education, it follows that families with children at such schools should be able to access information about ASN. To deny them such access would be a disproportionate disbenefit arising from the attempt to prevent private schools from benefiting from local authority information. Accordingly, amendment 12 is also unhelpful if we are seeking to ensure that all children with ASN and their parents are provided with the appropriate information regardless of where they access that information.

Ken Macintosh: I echo Margaret Smith’s concerns on the amendments. We have debated the provision of information at length in committee and it troubles me slightly that we are returning to the same arguments today. It was agreed by majority view in the committee that we do not want parents to be signposted to where the information is on display. We do not want them to be pointed in the direction of the local library. We want the information—even if it is only a summary of the information—to be given to parents in person. The issue is far too important to leave it to parents to find their way through the morass of information that is already available.

Margo MacDonald: I hate to throw a spanner in the works—[*Laughter.*]

David McLetchie: You love it.

Margo MacDonald: We are discussing how information on legislation is distributed to parents. Are we creating a precedent that would apply to all departmental information?

Ken Macintosh: First, I congratulate Margo MacDonald on delivering what I think was an Edinburgh kiss to the members on the Conservative benches—I certainly saw a nod of her head in that direction.

I do not believe that we are creating a precedent. We want to create a duty under this particular legislation to provide parents with information on additional support for learning. It would not apply to other statutes or cases.

I am disappointed that we are revisiting this issue again. The committee made its view absolutely clear at stage 2, and because the bill has no financial resolution, we worked hard and made a lot of compromises to ensure that our amendments came within the terms of the bill. We have already compromised our initial position to an extent, and I am concerned that the minister is trying to pull back some of the ground.

The key concern involves the proposed section 5E(a)(ii) that would be introduced by amendment 4. I recommend that members vote against that amendment. Amendment 8 specifically refers to that section, so I think that it is linked, even though the minister says that it is not.

We will support amendments 5 and 6 on the ground that it is unfair to ask local authorities to provide information for pupils for whom they might not have any addresses, but I am aware that many pupils who are either at private schools or are home educated have additional support needs. I would like to hear the minister say that the local authority will still have the power—if not a duty—to supply the parents of those pupils with information, as it would be unfair to discriminate against them.

Amendments 11 and 12 seek to rewind the clock on the committee's deliberations, and I urge members to vote against them.

Elizabeth Smith: Throughout the evidence sessions in the committee and during the passage of the bill, it has been abundantly clear that, although some local authorities are exceptionally good at providing relevant support to children with additional support needs, some are not. Sadly, in some parts of Scotland, children's support services fall woefully short of the expected standard—or, in some cases, are non-existent. In those areas, parents have little assistance with regard to what support services are available or what procedures they should follow when things go wrong. In those cases, it is all too easy for a local authority to make a token reference to what

is available and hope that parents and families have the good sense to know automatically where to look for help. There is a clear need to provide a level playing field in that respect and to ensure that we are doing everything possible to identify all the cases in which there are additional support needs, to correctly diagnose the problem, and to ensure that the relevant support is provided.

It has been my intention—and, I believe, that of Margaret Smith and the Labour members—to ensure that parents are physically given the necessary and relevant information so that they are better informed and, therefore, better able to supply the appropriate support to their child. That should be a statutory obligation on local authorities. The Scottish Government has argued that that is the case under section 26 of the 2004 act, and that by lodging amendment 4 it is seeking to ensure that only a summary of the necessary information is provided, because the placing of the word “any” before “information” would mean families being provided with all the information that was relevant to any form of additional support needs, which inevitably would mean them ending up with far too much information.

I do not accept that argument, but I made it clear that I was willing to consider a Scottish Government alternative, which we see in proposed paragraph (i) of amendment 4. Sadly, that has come at the price of accepting proposed paragraph (ii) of amendment 4, which would oblige local authorities only to flag up where information is available rather than ensure that families are given it. For me, giving families information is a crucial part of the bill, as it provides them with greater assurances about and knowledge of their child's needs, rather than leaving them to navigate their own way around the rather daunting current system.

Despite section 26 of the 2004 act, giving families information clearly has not happened. For that reason, the Scottish Conservatives will be opposing the Scottish Government's amendments 4 and 8.

Finally, given that this matter is so important, it is disturbing to note that lobbying is still going on in the middle of the debate.

15:45

Adam Ingram: I re-emphasise to Elizabeth Smith that, with amendment 4, we seek not simply to signpost for parents or young people where they can find information but to provide a summary of information. The alternative, which is included in the bill as it stands, is to require all the information that the authority publishes under section 26 to be sent to parents of children with additional support needs and young persons with such needs. That

could be a substantial volume of information on paper or in other formats, so it could cost a substantial sum of money. We do not believe that placing duties on local authorities to act in such a wasteful manner is an appropriate way to conduct ourselves. Amendment 4 was lodged to address those issues.

On Ken Macintosh's point about what will happen if an education authority places a child in an independent school, of course the authority will be required to provide information to the child's parents.

I am disappointed that we have not reached a consensus on this matter. Additional burdens will be placed on local authorities as a result.

Karen Gillon (Clydesdale) (Lab): The Parliament is in this position because the Government failed to provide a financial memorandum to the bill that promised local authorities additional resources if the Parliament deemed them necessary.

Adam Ingram: Frankly, I urge the Parliament to give little credence to that argument. The bill was accompanied by a financial memorandum, as is normal. No member raised at stage 1 the question of the bill's lacking a financial resolution and the Parliament unanimously supported the bill at stage 1 in the full knowledge that no financial resolution was attached to it. I therefore reject the member's criticism out of hand.

I am sorry that the Parliament has been unable to reach an agreed position on this matter. An unnecessary burden will be placed on local authorities to no effect. Members might reflect on that when the debate is over.

The Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)

Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Presiding Officer: The result of the division is: For 49, Against 72, Abstentions 0.

Amendment 4 disagreed to.

The Presiding Officer: I invite the minister to move amendments 5 to 12 en bloc.

Amendments 5 to 12 moved—[Adam Ingram].

The Presiding Officer: Does any member object to a single question being put on amendments 5 to 12?

Members: Yes.

The Presiding Officer: As a result, the questions will be put one at a time.

Amendments 5 to 7 agreed to.

Section 5F—Availability of published information

The Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)

Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Allan, Alasdair (Western Isles) (SNP)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

ABSTENTIONS

Harper, Robin (Lothians) (Green)
 MacDonald, Margo (Lothians) (Ind)

The Presiding Officer: The result of the division is: For 46, Against 73, Abstentions 2.

Amendment 8 disagreed to.

Amendments 9 and 10 agreed to.

The Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)

Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Presiding Officer: The result of the division is: For 47, Against 71, Abstentions 1.

Amendment 11 disagreed to.

The Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)

Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Presiding Officer: The result of the division is: For 46, Against 69, Abstentions 1.

Amendment 12 disagreed to.

After section 5G

Amendment 21 moved—[Margaret Smith]—and agreed to.

The Presiding Officer: Amendment 13, in the name of Adam Ingram, is in a group on its own.

Adam Ingram: When an authority is planning for a child to leave school, the provision set out in amendment 13 will place the authority under a duty to

“seek and take account of”

the child's view in relation to the provision of any information to an appropriate agency or agencies. Currently, section 13 of the 2004 act places a duty on education authorities to provide information about any child or young person with additional support needs to other agencies where the authority considers that those other agencies will have a role in supporting the child or young person once they have left school education. The information may be provided only with the consent of the child's parent or the young person, but the 2004 act does not require the child to be consulted in the process.

Amendment 13 has been lodged as a result of on-going discussions with Scotland's Commissioner for Children and Young People on how we can strengthen children's rights. As a result of the commissioner's concerns that the 2004 act does not give children a voice in decisions about their personal information, I am pleased to have lodged amendment 13, which will ensure that authorities are under a duty to

“seek and take account of the views of the child”

in relation to the provision of information to agencies. In practice, that will mean that authorities will have to seek and take account of the child's views before they share any information with an appropriate agency or agencies. I am sure that members agree that amendment 13 will strengthen the rights of children and is a positive step in the right direction.

I move amendment 13.

Ken Macintosh: The minister will be relieved to hear that I rise merely to give him my wholehearted support, in the spirit of consensus for which he has called this afternoon. Transition is an important issue; it was raised as a concern at the committee and acknowledged by the minister. The evidence from Scotland's Commissioner for Children and Young People was persuasive. It is important that we reflect the views of the child, as we have always done in our legislation in this Parliament. I am happy to support amendment 13.

Amendment 13 agreed to.

Section 6—References to Tribunal in relation to co-ordinated support plan

The Deputy Presiding Officer (Alasdair Morgan): Amendment 22, in the name of Ken Macintosh, is grouped with amendment 23.

Ken Macintosh: Amendments 22 and 23 come from the organisation ISEA and deal with one of the weaknesses in the dispute resolution procedure. Currently, when a local authority fails to comply with or uphold the terms of a co-ordinated support plan, parents have to turn to dispute resolution. The problem arises—as I outlined earlier—that the local authority itself is the gatekeeper to that dispute resolution. ISEA has suggested that it would make more sense if the tribunal had the power to deal with the failure to uphold the contents of a co-ordinated support plan.

ISEA spent three full days with parents at a tribunal hearing on the contents of their severely disabled young son's CSP. The tribunal upheld the reference and the content of the CSP was changed dramatically, to ensure that input from education, health, social work and the college were all specified and quantified, and that the

equipment and resources, such as an extra room, were written into the CSP. That young person's amended CSP was to be implemented by August 2008. ISEA then wrote and spoke to the education authority early in November about the significant number of educational objectives that had not been implemented. ISEA had previously pursued dispute resolution on the young person's case, but that was ignored by the local authority, therefore ISEA decided to pursue an order under section 70 of the Education (Scotland) Act 1980. Today, halfway through May, ISEA tells us that it is no further forward and that it is disappointed because it expects that the young person will leave school without their CSP being completely implemented.

ISEA wants non-compliance with the terms of a CSP to go before the tribunal because that is a quicker route, and the tribunal should be able to enforce its decision.

I know that the committee supported a number of amendments at stage 2 that dealt constructively with similar concerns. I hope that members and the minister will feel similarly inclined to support amendments 22 and 23.

I move amendment 22.

Adam Ingram: Amendment 22 would extend the types of references that may be made to the tribunal to include a failure by the education authority to provide, or to make arrangements for the provision of, the additional support that is contained in a co-ordinated support plan and that is necessary for the child or young person to achieve their educational objective.

Amendment 23 would extend the power of the tribunal to enable it to specify the action that is to be taken to rectify such a failure. It would also enable the tribunal to specify a time within which such action must be taken. Under the current legislation, a failure of that type is already referable to dispute resolution and/or the Scottish ministers in the form of a section 70 complaint. However, I can see the logic in enabling all CSP-related matters to be dealt with by the tribunal. I therefore support amendments 22 and 23.

Amendment 22 agreed to.

Amendment 23 moved—[Ken Macintosh]—and agreed to.

After section 7A

The Deputy Presiding Officer: Amendment 24, in the name of Margaret Smith, is grouped with amendment 25.

Margaret Smith: The provenance of amendments 24 and 25 is the on-going concern that the data on children and young people with additional support needs remain weak in places. We need information, so that we know what

services we need to provide and plan for. As MSPs are aware, the for Scotland's disabled children campaign, and others, wrote to them to urge them to support the amendments and said that no one knows how many children have ASN.

Like others, people who are involved in that campaign are keen to have more detailed and accurate information, to allow effective planning, resourcing and delivery of services. Amendment 24 would require the Scottish ministers to report to Parliament in the five years following commencement on what progress had been made to ensure that enough information was available to allow effective monitoring of the 2004 act's implementation. That would make a positive difference to the legislation.

16:00

Amendment 25 picks up on gaps in the information that is currently gathered. I understand that the statistics define a child with ASN as one who has a co-ordinated support plan, a record of needs or an individualised educational programme. That measures those with ASN for whom a plan has been put in place, which is not the same as identifying everyone who has ASN. Data on the main reason for support for pre-school pupils are not collected, either.

I appreciate that the minister is attempting to address the matter. My amendments would complement and not contradict his efforts. The Scottish ministers acknowledge the need to address the lack of data collection and publication on the number of children and young people with ASN. The voluntary sector continues to work with ministers to develop that further. However, the for Scotland's disabled children campaign says that

"Without a statutory duty to collect and publish data as laid out in"

my

"amendment 25, there is a risk that with a change in priorities and/or resources, such data collection and publication could be discontinued. This baseline evidence is essential to the future planning and resourcing of the ASN framework: we currently do not know if the level of resources and investment in different types of support is the right level because we do not know the extent of need. Given the current pressures on resources such an evidence based approach to service design, planning and delivery is surely essential."

Amendment 24 would enable the Scottish Parliament to continue to play a role in monitoring progress by the Scottish Government to address data needs. Accordingly, it would complement amendment 25 and would allow broader evidence to be presented, particularly on implementation issues. For example, if a duty to report had existed from the 2004 act's inception, the slow progress in transferring children with records of needs to the

new ASN framework—more than 5,000 still have records of needs, 18 months after the transition period ended—could have been discussed, explored and remedied.

I hope that the minister will support amendments 24 and 25, which are in my name, and I urge all members to support them.

I move amendment 24.

Ken Macintosh: I support Margaret Smith's amendments. At stage 1, several members spoke about the need to improve data collection and the dissemination of information. Almost every organisation that lobbied the Education, Lifelong Learning and Culture Committee flagged up the lack of standardisation and agreed data, which would form the basis for any policy making. Given that, we should unite around both the amendments that Margaret Smith has lodged.

Adam Ingram: Amendment 24 would perhaps have been more accurately entitled, "Availability of statistical information on additional support needs". As a Scottish Government minister, I gave the clear commitment at stage 2 that my officials would discuss with voluntary organisations and any other interested stakeholders how to improve the data collection system for all children with additional support needs. I acknowledge that ways might exist to improve the additional support needs data that are collected through ScotXed.

Amendment 25 outlines matters, including the costs of providing support, on which information would have to be published. All parties agree on the importance of reducing the burdens of monitoring and reporting on local authorities, yet the amendment would introduce a new bureaucratic requirement on councils that would be of extremely limited use. The amendment is so broadly drawn that it is difficult to envisage a system that would result in consistent information being provided by local authorities. Even if collecting the information consistently were possible, the purpose that it would serve is unclear. The key issue must be meeting the needs of children and young people, not how much has been spent on doing so.

I ask Parliament to allow collective discussion to take place between me and all the stakeholders. We as a Government would commit to that before deciding on the best way forward. Accordingly, I ask Margaret Smith to withdraw amendment 24 and not to move amendment 25.

Margaret Smith: As Ken Macintosh said, almost every group that gave evidence to the committee highlighted data and information as a problem to one extent or another.

Costs are an issue that has weighed heavily on the minds and workload of Education, Lifelong

Learning and Culture Committee members over the past couple of months. In my 10 years in the Parliament, I have never spent so much time investigating and researching the costings of amendments.

In fact, amendment 24 made it through yet another part of the tortuous process: the Presiding Officer's office considered it over the course of the past week. Costings have been looked at. The Presiding Officer accepts that the amendment has de minimis costs.

I am not about to second-guess or challenge a decision of the Presiding Officer—

The Minister for Schools and Skills (Keith Brown): When it suits you.

Margaret Smith: I say to Mr Brown that, many times in the past few weeks, I have been on the receiving end of judgments that I have had concerns about. I did not query them any more than I will query this one.

We have gone through hoops in the most tortuous process that any of us have ever gone through. For the Government to say now that the amendment would have costs, when the process that we have all been expected to go through to reach this point has deemed that not to be the case, is unacceptable. I will press both amendments in the group.

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)

Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)

Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 73, Against 46, Abstentions 0.

Amendment 24 agreed to.

Amendment 25 moved—[Margaret Smith].

The Deputy Presiding Officer: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Carlaw, Jackson (West of Scotland) (Con)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Foulkes, George (Lothians) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Goldie, Annabel (West of Scotland) (Con)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Hume, Jim (South of Scotland) (LD)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley)

(Lab)
 Johnstone, Alex (North East Scotland) (Con)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Roxburgh and Berwickshire) (Con)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Margo (Lothians) (Ind)
 Macintosh, Ken (Eastwood) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McArthur, Liam (Orkney) (LD)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 O'Donnell, Hugh (Central Scotland) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stewart, David (Highlands and Islands) (Lab)
 Stone, Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tolson, Jim (Dunfermline West) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Allan, Alasdair (Western Isles) (SNP)
 Brown, Keith (Ochil) (SNP)
 Campbell, Aileen (South of Scotland) (SNP)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 FitzPatrick, Joe (Dundee West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Kidd, Bill (Glasgow) (SNP)
 Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)

Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McMillan, Stuart (West of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Gil (West of Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 74, Against 46, Abstentions 0.

Amendment 25 agreed to.

Section 7B—Provision by education authority for education of pupils belonging to areas of other authorities: recovery of costs where pupil has additional support needs

The Deputy Presiding Officer: Amendment 14, in the name of the minister, is in a group on its own.

Adam Ingram: Section 7B inserts a new section 27A into the 2004 act to attempt to ensure a right of recovery where an authority has provided additional support for any pupil who belongs to the area of another authority. If the aim of the section is to ensure a right of recovery between authorities, I ask members to be assured that the right exists already in the 1980 act, as has been confirmed by the courts and Glasgow City Council's decision to settle its dispute with East Renfrewshire Council.

The 2004 act amended section 23(2) of the 1980 act specifically to cover children with additional support needs. Any attempt in the bill to restate that right merely confuses the position. In the recent Court of Session case of East Renfrewshire Council v Glasgow City Council, Lord Penrose put the matter beyond doubt, stating that

“the plain language of the”

1980 act

“entitles”

East Renfrewshire

“to recover from”

Glasgow

“appropriate sums reflecting the cost of additional support services provided by”

East Renfrewshire

“to children belonging to”

Glasgow’s

“area notwithstanding that the children were placed in response to parental choice.”

Section 23(2) states clearly that an authority may recover an agreed amount from another authority, but the same clarity does not exist in the bill as amended at stage 2. Section 7B provides that, if a claim to recover reasonable costs is made,

“that other education authority must make payment.”

Who is to decide what a reasonable amount is? Is it the host authority? If so, home authorities may consider that section 7B is tantamount to writing a blank cheque.

The existing law is clear; section 7B is unnecessary and creates legal uncertainty. I therefore urge Mr Macintosh and the Parliament to support amendment 14, which would remove that pointless and confusing section from the bill.

I move amendment 14.

Ken Macintosh: I hesitate to reopen this discussion. Most members are aware of the background to the issue. One dispute—between Glasgow City Council and East Renfrewshire Council—has been mentioned, but we are dealing with a matter of principle that could apply to many other authorities, wherever children are on placement requests to authorities other than their own.

One of the key purposes of the bill is to change the way in which parents’ rights affect the relationship between home and host authorities. I am concerned that the bill will be interpreted by some local authorities in a way that enables them not to meet in full their obligations to children from their area. I am not suggesting that that will definitely happen, but the amendment that inserted section 7B in the bill—to which the Education, Lifelong Learning and Culture Committee has already agreed—will ensure that it does not.

The relationship between home and host authorities is complex. I will not go through all that complexity, but the minister seems to think that Lord Penrose’s judgment in the Court of Session put the matter beyond doubt. If that were the case, I would not have lodged the amendment that inserted section 7B in the bill.

There has been a series of cases. The minister says that all have now been settled, which is true, but it is interesting to note that they were settled in the past few weeks, as the bill progressed through the Parliament. The original cases that Lord Penrose settled were early cases—some predated

the 2004 act and referred to the old record of needs legislation. Lord Penrose’s judgment can be interpreted as establishing a principle, but many other cases were taken under the 2004 act and have never gone to court. They have now been settled between the local authorities concerned, but there has been no test case—no principle has been affirmed by Lord Penrose or anyone else, so there is still a doubt in my mind. I am concerned that, yet again, we may end up in a Court of Session battle over additional support for learning needs, at huge expense. All of us agree that that money would be far better spent on parents.

The minister suggested that section 7B is tantamount to writing a blank cheque. I absolutely assure members—especially all my Glasgow MSP colleagues—that that is not the case. The home authority still has to write the cheque. In other words, it will have to make a reasonable contribution. The authority would have to be taken to court were attempts to be made to get unreasonable amounts of money out of it.

16:15

Johann Lamont (Glasgow Pollok) (Lab): Will the member comment on concerns from the families of children with disabilities who wish to exercise their right to make a placing request, perhaps because of family circumstances, but whose children end up in a place where they are discriminated against because of their additional needs? Those parents are concerned that choices are made around placing requests on the basis of the burden. Perhaps the local authority where the child comes from—Glasgow City, for instance—might say that it could make the provision elsewhere. I have constituents who feel that there has been discrimination against their child on the basis of their additional needs. That must run counter to the legislation.

Ken Macintosh: As ever, Johann Lamont makes a very good point. One of the reasons why I lodged my stage 2 amendment was because of the many implicit assumptions and things that can go unsaid when difficult cases between local authorities and families who have children with additional support needs are discussed. There is a fear that funding decisions underpin some of the choices that are made. We all know that that is not supposed to be the case, but we all suspect that it sometimes happens—it is the elephant in the room.

I have concerns about situations in which local authorities wish to make a placing request. If the child is deemed to have additional support needs, that could seriously affect the way in which they are treated, and that would be totally unfair. The situation has been unfair on both Glasgow City Council and East Renfrewshire Council—it would

be unfair on any authority, whether or not it maintains special schools, and whether it favours mainstream support or whatever else.

The matter needs to be spelled out, and that is what we have done. The committee came to a measured view. We decided that, on balance, it was better to have the provision in legislation. The amendment that we agreed to at stage 2 merely repeats the wording that is already contained in the 1980 act. I urge the minister, even at this stage, to rethink the matter and to accept that that stage 2 amendment was very sensible, and that section 7B will see off at the pass any potential future problems in this area.

Elizabeth Smith: The Scottish Government has confirmed since stage 2 that the existing legislation provides clarity about the right of recovery of costs when one local authority provides support to a child who is resident in another local authority area. It has also confirmed that section 23(2) of the 1980 act allows for the authorities in question to agree the appropriate costs, rather than have an imprecise definition of reasonable costs imposed upon them.

I fully acknowledge some of the difficulties that have been experienced between the two local authorities that Mr Macintosh has referred to, but I do not consider them to be of a particularly legislative nature. The Scottish Conservatives will therefore support amendment 14.

Margaret Smith: I have a great deal of sympathy with what Ken Macintosh was trying to achieve with his stage 2 amendment. Over the years, certain local authorities have had, as we have heard, continuing disputes about the recovery of costs. Ken Macintosh sought to ensure a right of recovery when an education authority provides additional support for any pupil who belongs to the area of another authority.

During the last session of stage 2 consideration, Ken Macintosh indicated that the advent of the 2004 act had disturbed the operation of section 23 of the 1980 act. Having heard what the minister said on the matter, and having discussed the issue with him, I believe that section 23(2) of the 1980 act clearly states that an authority may recover an agreed amount from another authority.

Section 7B states that if
 “a claim to recover reasonable costs”
 is made, the

“other education authority must make payment.”

There is obviously an inconsistency there. There are issues around how that could be worked out, and there are concerns among councils that host authorities might incur significant costs that they

would seek to recover with no input from the home authority.

As I have mentioned before, a number of disputes have arisen, particularly involving Glasgow City Council and East Renfrewshire Council. Having sought further information on what action the minister might take on the issue, I am pleased that he has advised us that, since the last stage 2 session, Glasgow City Council has paid for all the cases between it and East Renfrewshire and not just the cases that went to the Court of Session. Keeping the matter to the fore throughout the parliamentary process seems to have delivered some much-needed clarity regarding the existing law and the Court of Session’s ruling as far as Glasgow City Council is concerned, as well as a welcome settlement for East Renfrewshire.

The onus is on councils to act towards one another in a reasonable manner and on the minister to take whatever action is necessary when they do not do so. I am sure that all members will support the minister in that regard.

Although I have sympathy with the predicament in which East Renfrewshire Council and other councils found themselves and with Ken Macintosh’s position, I accept the minister’s assurance that the law is clear on the matter. I support amendment 14, which would leave out section 7B.

Robert Brown: I have some acquaintance with the issue, because I convened the Parliament’s Education Committee some time ago and subsequently became Deputy Minister for Education and Young People. I am therefore well aware of Ken Macintosh’s concerns, which he was right to raise.

However, the points that the minister and other opponents of section 7B made are correct. The amendment of the bill at stage 2 to include that section made the situation more confused. The difficulty is the vagueness of the arrangements that are set out in section 7B, which would allow all decisions about a child’s needs to be taken without the home authority ever being consulted or included in the decision-making process, even though it would have to use its budget to pay for whatever was decided on.

Issues between local authorities to do with the extent of what must be paid for and the appropriateness of passing on costs to the home authority have, for the most part, been sorted out in the past. That is the best way of tackling the matter and it is unfortunate that the system has not worked well in some instances, in particular in the cases that involved Glasgow City Council and East Renfrewshire Council. Will the minister have a close look at the background to the matter, to ascertain whether greater clarity can be given to

councils? The issue is important and it is entirely unsatisfactory that there should be court actions between local authorities, which waste public funds and sometimes put parents and children in the middle of a dispute. The Parliament should not countenance such situations. Ken Macintosh has a point, as do Glasgow City Council and East Renfrewshire Council, and there might be potential to provide more clarity, so that we can prevent such disputes from arising as often as they have done.

Adam Ingram: I do not have much to add to the debate. I will certainly follow up Robert Brown's suggestion and perhaps write to him on the issue.

I understand that section 23 disputes have primarily been between two local authority areas. I also understand that all issues have been settled under the current legislation, and the last thing that I want to do is to disturb that process. Although Mr Macintosh might have no doubts in that regard, there are considerable doubts in the minds of the legal fraternity. I ask members to bear that in mind when they decide how to vote on amendment 14.

The Deputy Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Allan, Alasdair (Western Isles) (SNP)
 Brocklebank, Ted (Mid Scotland and Fife) (Con)
 Brown, Gavin (Lothians) (Con)
 Brown, Keith (Ochil) (SNP)
 Brown, Robert (Glasgow) (LD)
 Brownlee, Derek (South of Scotland) (Con)
 Campbell, Aileen (South of Scotland) (SNP)
 Carlaw, Jackson (West of Scotland) (Con)
 Coffey, Willie (Kilmarnock and Loudoun) (SNP)
 Constance, Angela (Livingston) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Don, Nigel (North East Scotland) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Finnie, Ross (West of Scotland) (LD)
 FitzPatrick, Joe (Dundee West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Christopher (Mid Scotland and Fife) (SNP)
 Hepburn, Jamie (Central Scotland) (SNP)
 Hume, Jim (South of Scotland) (LD)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Kidd, Bill (Glasgow) (SNP)
 Lamont, John (Roxburgh and Berwickshire) (Con)

Lochhead, Richard (Moray) (SNP)
 MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Central Fife) (SNP)
 Mather, Jim (Argyll and Bute) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West of Scotland) (SNP)
 McArthur, Liam (Orkney) (LD)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McKee, Ian (Lothians) (SNP)
 McKelvie, Christina (Central Scotland) (SNP)
 McLaughlin, Anne (Glasgow) (SNP)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMillan, Stuart (West of Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Central Scotland) (SNP)
 O'Donnell, Hugh (Central Scotland) (LD)
 Paterson, Gil (West of Scotland) (SNP)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Robison, Shona (Dundee East) (SNP)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Salmond, Alex (Gordon) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Smith, Elizabeth (Mid Scotland and Fife) (Con)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Somerville, Shirley-Anne (Lothians) (SNP)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow Govan) (SNP)
 Swinney, John (North Tayside) (SNP)
 Thompson, Dave (Highlands and Islands) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Watt, Maureen (North East Scotland) (SNP)
 Welsh, Andrew (Angus) (SNP)
 White, Sandra (Glasgow) (SNP)
 Wilson, Bill (West of Scotland) (SNP)
 Wilson, John (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gordon, Charlie (Glasgow Cathcart) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Kelly, James (Glasgow Rutherglen) (Lab)
 Kerr, Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)

McCabe, Tom (Hamilton South) (Lab)
 McConnell, Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)
 Murray, Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Whitton, David (Strathkelvin and Bearsden) (Lab)

The Deputy Presiding Officer: The result of the division is: For 77, Against 41, Abstentions 0.

Amendment 14 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Education (Additional Support for Learning) (Scotland) Bill

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-4059, in the name of Adam Ingram, on the Education (Additional Support for Learning) (Scotland) Bill. I point out to members that time is limited in the debate so I will stop them when they get to their time limits.

16:24

The Minister for Children and Early Years (Adam Ingram): I am delighted to have the opportunity to move that Parliament pass the Education (Additional Support for Learning) (Scotland) Bill.

I thank my parliamentary colleagues—particularly those who sit on the Education, Lifelong Learning and Culture Committee—for their input during the passage of the bill. I record my thanks, too, to the groups and individuals who provided oral and written evidence to the committee, briefings for MSPs and information and opinions to the Government. The bill deals with complex matters, and I am sure that all members acknowledge the contribution of those individuals and groups.

As I have said several times, it was never my intention for the bill to alter the ethos or fundamental building blocks of the Education (Additional Support for Learning) (Scotland) Act 2004, which is aimed at a broad group of children and young people with additional support needs. The bill amends the 2004 act in light of reports by Her Majesty's Inspectorate of Education, rulings by the Court of Session, annual reports from the president of the Additional Support Needs Tribunals for Scotland, stakeholders' views and informed observations in light of practice. Most important, the proposals in the bill will strengthen the rights of children with additional support needs and those of their parents.

Rhona Brankin (Midlothian) (Lab): Does the minister acknowledge that one reason why the Government has been comprehensively defeated on many issues this afternoon is that it simply failed to talk to the organisations and parents who wanted a much more fundamental review of the legislation?

Adam Ingram: I take issue with Rhona Brankin's description of what happened at stage 3: relatively few amendments were debated this afternoon. Through stages 1 and 2, during which we were in dispute over some issues, a consensus was arrived at across the parties. I suggest that Rhona Brankin examine carefully the

outcome of the bill. The Government certainly took a number of positions that were voted against this afternoon, but the Parliament properly addressed the core issues.

Karen Whitefield (Airdrie and Shotts) (Lab): Will the minister give way?

Adam Ingram: No, I will not.

During stage 1, I warmly welcomed the committee's broad support for the amendments to the 2004 act. Indeed, I am grateful for its support for the general principles of the bill and its recommendation to the Parliament that they be approved.

Also during stage 1, stakeholders and committee members suggested a number of additional amendments. I considered those suggestions carefully and, in light of my considerations, lodged at stage 2 a number of Government amendments that further strengthened the 2004 act. Again, I extend my thanks to the committee members for supporting me and agreeing to them—and, indeed, to a good number of the Government amendments that were debated this afternoon. I was also more than happy to lend my support to amendments lodged by Elizabeth Smith and Ken Macintosh at stage 2 and, indeed, by Margaret Smith and Ken Macintosh at stage 3.

I have made it clear from the outset that we did not intend to make any significant differences to the overall ethos of the legislation, the scope of the bill or the resource envelope. We wanted to fix some of the deficiencies in how the legislation had been implemented over the past three or four years.

During stage 2, I was disappointed to be accused of being anti-democratic, when members were, or ought to have been, well aware of the situation with regards to the status of financial resolutions and how amendments are dealt with. I appreciate that it was perhaps the first time that such a situation had happened and that we were perhaps taken a little unawares, but there was no attempt to subvert debate. I think that we have all learned lessons during the bill's passage.

I highlight, too, that, in addition to all the amendments in the bill, the code of practice will be amended in due course, having been consulted on and laid before the Parliament.

The Deputy Presiding Officer: I am afraid that the minister must sum up now.

Adam Ingram: Okay. As members will know, the purpose of this debate is to seek parliamentary approval that the Education (Additional Support for Learning) (Scotland) Bill be passed. I hope that everyone in the chamber has had the opportunity

to debate the bill fully and that they will support it at the end of the day.

I move,

That the Parliament agrees that the Education (Additional Support for Learning) (Scotland) Bill be passed.

16:31

Karen Whitefield (Airdrie and Shotts) (Lab): I thank those who were involved in consideration of the bill, as surreal as it was at times. On behalf of the Education, Lifelong Learning and Culture Committee, I thank the committee clerks, who worked hard to assist committee members in what were often stressful circumstances. I thank, too, members of the Scottish Parliament information centre, who provided committee members with a high standard of background material and assistance during efforts to cost amendments. I thank members of the bill team and the minister for the evidence that they provided. Finally, I thank those who gave evidence to the committee, particularly those groups who advocated strongly on behalf of children, young people and parents.

Having spoken as the committee convener, I now intend to speak about my personal reflections on the process of considering the bill. Although there is much in the bill to be welcomed, I must mention the unique position in which we, as members of the Education, Lifelong Learning and Culture Committee, found ourselves during stage 2. In concluding my stage 1 contribution in the chamber only two months ago, I was pleased to be able to say that issues occasionally come before Parliament in which party politics play little part and that this bill was one such issue. That should have remained the case. It is hard to fathom how we reached the position whereby the good will shown by all committee members during stage 1 was fractured to such an extent that some members felt obliged to ask for the process to be referred to the Standards, Procedures and Public Appointments Committee.

The effective exclusion of amendments as a result of the Government's failure to introduce a financial resolution created a feeling that debate was being closed down rather than opened up. In the current political climate, which affects us all, members of the public need to be assured that their concerns are being listened to and acted on. What they do not want is any sense that parliamentary rules are being used to stifle debate and prevent proper scrutiny of legislation.

Christina McKelvie (Central Scotland) (SNP): Can the member explain why we all agreed at stage 1 to the principles of the bill even though it did not have a financial resolution at the time?

Karen Whitefield: Perhaps the member would like to reflect on her comments at stage 2, when

she kept questioning amendments and the bill's scope. She seemed much more intent on stopping the democratic discussion of amendments than on engaging in it.

Concerns were raised by all committee members, with the exception of the Scottish National Party members, who were happy to defend the exclusion of amendments. What were those highly controversial amendments, which were so outlandish and expensive that they had to be thwarted? The minister said today that they did not count and were not important. In fact, they were perfectly reasonable amendments that organisations sought in order to increase access to the provisions of the 2004 act, provide a right to support and advocacy, and introduce a duty to provide information. That is hardly earth-shattering stuff, but they are exactly the kind of measures that parents and advocacy groups have been calling for.

In seeking to exclude those amendments through the technical process of not introducing a financial resolution, the Government and SNP members showed a willingness to circumvent the spirit of parliamentary democracy. I do not believe that the public, in particular those with an interest in the bill—

The Deputy Presiding Officer: The member must wind up.

Karen Whitefield: I do not believe that the public will have been impressed by this Government's shenanigans. Although the bill is worthy of support, it could have been so much better.

16:35

Elizabeth Smith (Mid Scotland and Fife) (Con): Let me say at the outset that the Scottish Conservatives fully support the principles of the Education (Additional Support for Learning) (Scotland) Bill, not least because its ethos is designed to ensure that adequate and relevant support is provided to all children, no matter what their specific learning needs are. It is vital that we get the process right and take every step possible to address some of the loopholes that exist in the Education (Additional Support for Learning) (Scotland) Act 2004.

There has been no disagreement that we need to ensure that each child with ASN receives the appropriate help in an efficient and timely manner and that that support must extend to the home and local community as well as to the teaching environment. It was good to hear the assurance that the Minister for Children and Early Years gave on that when he expressed his desire to ensure that support is both holistic and fully co-ordinated across social, health and education services.

Specialist care means the provision of specialist services, which in turn means that we must recognise the importance of the out-of-area placing requests that are made when, for one reason or another, a local authority is unable to deliver the appropriate support. The bill will be important in improving access to such services, extending equality of opportunity and of treatment before the law, and recognising the respective responsibilities of parents, of the host and home local authorities and of support carers.

Throughout the parliamentary process, we on the Conservative benches have fully supported the Government and other parties in their intentions behind the bill: 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; to provide better transition after school; and to do much more to support the vulnerable and most excluded children.

I believe that we needed to focus on two things. First, we needed to make the legislation as watertight as possible by reducing the loopholes in the existing act. Secondly, we needed to ensure that the bill could be complemented by reducing the wide variation in local authority interpretation of the code of practice. That second obligation was just as important as the first, in particular because we needed to reduce the scope for buck passing and to address the perverse financial incentives that sometimes lead to the wrong decisions.

Having listened carefully to the extensive range of evidence that the Education, Lifelong Learning and Culture Committee considered, I am in no doubt that professionals and experts in the field felt a considerable degree of frustration. They felt let down because the existing legislation does not provide them with the necessary support to deliver the best services to families whose children have additional support needs.

In particular, I am mindful of the need to identify additional support needs at the earliest opportunity and to ensure that the relevant support is given from day one. As well as the educational, health and social benefits of doing so, huge costs could be saved in the long run through a reduction in the number of cases in which families find themselves in difficult and adversarial circumstances. That was one of our principal concerns in dealing with the bill.

We have worked hard to improve the provisions on representation and advocacy and on the workings of the tribunal process. We have also worked hard to clarify the responsibilities and duties of local authority education departments because we wanted to reduce the scope for buck

passing that has enabled some local authorities to hide behind the complexities of the existing legislation.

If there is a proper, graduated response to the needs of the child in the first instance, if there are proper relationships between parents, school and partnership officer and if there is much greater clarity surrounding the process of what should legally be provided in a support package, the best interests of the child will be promoted through an holistic support mechanism that gives people the best possible chance in the future.

As the convener of the Education, Lifelong Learning and Culture Committee has just said, the bill should not have become a party-political issue. It could have been better. Indeed, it is deeply regrettable that, during its passage, debates sometimes became so highly charged that they even raised questions about parliamentary procedures.

That aside, the bill is about our commitment to the future of children with additional support needs and the families and carers who support them. That is why the Scottish Conservatives will support the Government in agreeing to the bill.

16:39

Margaret Smith (Edinburgh West) (LD): The Liberal Democrats will support the Education (Additional Support for Learning) (Scotland) Bill. Throughout the process, people have constantly highlighted the need to ensure that the systems that we put in place actually work throughout the country for children with additional support needs and for their families. All too often, we have heard from parents and others who, time and again, have had to fight, hassle and harry local authorities and health services for the necessary support to ensure that children with additional support needs can enjoy what quality of life they can.

There was an obvious need to strengthen and clarify the ability of the Education (Additional Support for Learning) (Scotland) Act 2004 to deliver on the original policy intention of providing any additional support necessary to help a child or young person to learn. It was needed in the wake of Court of Session judgments and the experience of five years of implementation. It was necessary, too, to simplify the process for the parents who are caught up in it and who, because of all the other stresses and strains on them, need legislation that is understandable and systems that deliver.

I am pleased that, at points along the way, I have managed to lodge amendments on looked-after children, information and data that have secured the support of members of other parties, for which I thank them whole-heartedly.

Although the bill's necessity has never been queried or contested, at times during the consideration process procedures were used to try to divide consensus when such division was unnecessary. I am deeply saddened and frustrated by the process that we all had to encounter. I have had the privilege to be a member of this Parliament for 10 years. As someone who, as convener of the Health and Community Care Committee, presided over consideration of the Mental Health (Scotland) Bill, to which I believe that 1,500 amendments were lodged, I consider myself to be fairly experienced in the ways of legislation. I thought that that was the most tortuous passage of a bill that I would ever have the privilege to be involved in, but I was wrong.

The lack of a financial resolution and the Government's refusal to lodge an appropriate motion—unlike the previous Government—have meant that the arguments surrounding the important issues that have been raised with us during the committee stages and through our work as MSPs might not have been put to the test. They have certainly not been put to the vote.

Adam Ingram: With regard to the member's complaint about the lack of a financial resolution, does she not agree that the bill's purpose is not to extend the scope of the 2004 act or to increase the resources that are applied to address problems in the provision of support for additional needs at school level? Given that we are trying to fix the problems with the implementation of the 2004 act, why would the bill require a financial resolution?

Margaret Smith: On the bill's policy objectives, the policy memorandum states:

"The Bill is an important step in the work of the Scottish Government to strengthen, as well as clarifying, the ability of the Education (Additional Support for Learning) (Scotland) Act 2004 ... to deliver its original policy intention, that intention being to provide for any need that requires additional support for the child or young person to learn."

That is an overarching requirement. Once they had listened to evidence, committee members sought to respond by following the practices to which the Parliament has adhered for the past decade. It is normal in the Parliament for members to take on board concerns that have been raised with us, to lodge amendments and to seek assurances from the relevant minister.

I am pleased that the minister said that we had "all learned lessons" from the process. I have learned several lessons, but there is one big lesson that the minister and the Government must stand ready to learn, which is that the onus is on a minority Government to persuade the majority of MSPs through the strength of its arguments, not to bully them or to push them by resorting to a

tactical measure that prevents issues that have been raised with members from being brought before the Parliament.

The Deputy Presiding Officer: The member should conclude.

Margaret Smith: It has been an extremely depressing experience for many of us. Any sense of achievement that we might feel at improvements that we have made as a result of the amendment process is tinged with a deep sense of regret at the manner in which the Government has conducted itself during the passage of the bill.

16:43

Aileen Campbell (South of Scotland) (SNP): As we reach the final stage of the bill's consideration, it is fair to say that it has been through the legislative wringer to a greater extent than some of us might have expected at the outset. That is not necessarily a bad thing, as the Parliament was designed to ensure rigorous scrutiny and debate. In a Parliament of minorities, it is important that all sides of the argument are heard. However, now that we have reached the final stage of the bill's consideration, I hope that the Parliament can come to a consensus about the best way to ensure that some of Scotland's most vulnerable children and families get the support and advice that they need.

As a member of the Education, Lifelong Learning and Culture Committee—the lead committee for scrutiny of the bill—I had a degree of sympathy with the policy direction of some of my committee colleagues. We might not all have agreed about how best to use the bill to travel in that direction, but it was clear to me that we had to be sure that its implementation would focus on ending the many problems that were raised in the evidence that we took, which was highly compelling.

As I said in my speech in the stage 1 debate—a debate that was notable for the degree of cross-party consensus—witnesses told us that the 2004 act does not always meet the needs of the parents, families and children who are in desperate need of support. I was aware from my constituency casework of the difficulties that parents faced when trying to do the best for their child with additional needs. Unfortunately, much of the evidence we heard did nothing other than to confirm what many of us have experienced in our casework. The committee heard about parents struggling to get the help that they needed, about cases dragging on for long periods, and about parents being pitted against teams of lawyers representing the council.

Those examples were of children lucky enough to have parents to care for them. We heard about the plight of looked-after children, Gypsy Traveller children and children with parents in the forces. It was clear that, despite the good intentions of the 2004 act, changes needed to be made.

In response, the Government was clear that it was committed to improving the quality of life and support available to those with additional support needs and those who care for them. It was also clear about the financial implications of the bill. Parents of children with additional support needs would be given extra protections when making placing requests, the tribunal system would be extended, and mediation and dispute resolution responsibilities would move to the authority responsible for education rather than the home authority.

Through the course of the committee's deliberations, the minister made it clear that he was committed to a suite of initiatives that would complement the bill. The Government wants to ensure that adequate levels of information are provided for parents and that looked-after children are not hindered or held back. The minister told us that he was actively working with the parents of disabled children to listen to their views and experiences at first hand and that he was committed to looking to help young carers, among a plethora of other measures. That clearly illustrated the SNP Administration's desire literally to get it right for every child.

We all have the opportunity now to ensure that we, too, do our best to get it right for every child and get the best possible piece of legislation, which is tailored to suit the needs of some of the most vulnerable families and children in Scotland. For that to be achieved, we need to have level heads and to put party politics to the side. It has been regrettable that some members, in their contributions, have sought to change the tone of today's debate.

Now that we have come through the legislative process, the debates and the scrutiny, I am confident that Parliament can unite behind the bill. Once again, I express our commitment to providing the best possible support for Scotland's children with additional needs and their families. I thank the minister for his contribution to the committee's deliberations on the bill.

16:47

Ken Macintosh (Eastwood) (Lab): I thank all those who have contributed to the bill, including, if I may say so, the minister and his team. I thank the clerks to the Education, Lifelong Learning and Culture Committee, the members of the committee and, in particular, the voluntary organisations and

parents who gave evidence, including the National Deaf Children's Society, Lorraine Dilworth of Independent Special Education Advice (Scotland) and Iain Nisbet of Govan Law Centre, who put an incredible amount of work into making the bill happen.

I say on their behalf that I am pleased but a little frustrated and disappointed in the outcome—disappointed because I feel that, in the end, the minister took what I would describe as a mean-spirited approach to the bill. Instead of revisiting one of the most important acts of the Scottish Parliament of the past decade, with a view to identifying possible deficiencies or areas that need attention and improvement, we had a bit of a cursory review, and then a bill that is based on the premise that it should impose no additional costs or new obligations on our local authorities. The political imperative not to disturb the concordat appears to have come before the need to agree the committee's reasoned conclusions or to address the needs of families.

All of us know from our constituency casework not only that it is a struggle for parents to ensure that their children's needs are addressed, but that such a struggle often results in an unhealthy dispute between local authorities and families. When we passed the 2004 act, we were fighting to support families' needs, while sympathising with local authorities, given the finite resources with which they operate. However, the minister appears to have taken sides with the local authorities against the families. That is not healthy.

Adam Ingram: Will the member take an intervention?

Ken Macintosh: I will not, if the minister does not mind. He will get to wind up in a second.

Many of the briefings that the committee received referred to the visionary and aspirational act passed by the Parliament in 2004. Five years on, we should be talking not about aspiration but about the practical and the immediate.

At stage 1, we started off constructively—a novel but welcome experience for the committee. Following the volte-face by ministers, I believe that most of us are left ruing a missed opportunity. I have no doubt whatever that the Parliament will have to return to the issue yet again, although I hope that that will be part of a broader review of additional support for learning.

Margo MacDonald (Lothians) (Ind): Has the aspiration behind the 2004 act been compromised by the local authorities' lack of money?

Ken Macintosh: In a word, yes. I believe that, with more money, local authorities could certainly deliver more. The bill will tidy up other matters, although more could have been done.

On the financial resolution and the Presiding Officer's role, I am absolutely convinced that the Presiding Officer had no desire to be caught up in the dispute over the assessment of the costs of particular amendments. In the interests of transparency alone, that potentially recurring problem must be addressed.

I urge the minister and his team to rethink their approach to minority government. We all want minority government to work—although we perhaps do not all want the present Administration to work. After such a promising start to the bill, the way in which relations broke down was not disastrous, but it was pretty bad news. The lack of trust between the minister and the committee was thoroughly unedifying and impractical. I feel slightly sorry for Mr Ingram, because his personal commitment on the issue is well known, so I can imagine only that he was told from above that he would have no money.

On a positive note, the 2004 act has made a difference to many lives, although we can do much more. I hope that the bill makes families' lives and their struggle a little easier and that it makes the decisions that are based on their experience a little fairer.

16:51

Murdo Fraser (Mid Scotland and Fife) (Con):

As my colleague Elizabeth Smith said, the Scottish Conservatives support the principles of the bill and look forward to its being passed at decision time. We recognise that the 2004 act, although important, contains several failings that the Parliament had to address. We must ensure that every child who is in need receives appropriate help. A concern arose about loopholes in the legislation that meant that that was not happening at all times. I hope that the amended legislation will lead to substantial improvements for some of our most vulnerable young people.

I raised several concerns when I spoke in the stage 1 debate on 4 March, so I am pleased that they have largely been addressed during the bill's parliamentary progress. I raised the issue of the adversarial nature of the tribunal process and mentioned that many local authorities employ solicitors and advocates to represent them at tribunals, which puts them at a major advantage over parents, who simply cannot afford that level of representation. I am pleased that amendments have been agreed to that will help to deal with that problem and to level the playing field by ensuring that parents receive more help with advocacy.

The provision of information is another issue on which the bill has been amended. Local authorities will be required to provide parents and young people with the information that they must publish

under the 2004 act. The authorities will also have to ensure that a summary of that information is available from schools in the school handbook and on the school or local authority website. Local authorities will be obliged to publish information on dispute resolution procedures. We have had representation on that from local authorities and the Convention of Scottish Local Authorities, which are extremely concerned about the cost of implementing some of those plans. I must say that they are overstating the case. Costs might well be attached to making that information available more widely, but it is hard to believe that they will be substantial. The point of making the information available is that it should reduce costs down the line by avoiding a more adversarial approach, which must make sense. I hope that, on reflection, local authorities will come to understand that.

Several other changes have been made to the bill, in relation to how tribunals will deal with placing requests, the definition of additional support and the right for parents to request an assessment at any time from local authorities. Those are all important issues and ones on which the bill has been improved.

I am not a member of the Education, Lifelong Learning and Culture Committee, but I am aware of the difficulties that the bill had during its passage through the committee, and I listened with interest to what the committee convener had to say. I hope that the Government will learn a lesson from the experience when it deals with future bills.

I hope that the new legislation goes a long way towards making life better for young people with additional support needs, who are a group in society for whom we should all have a concern. We will be pleased to support the bill at decision time.

16:54

Adam Ingram: I thank my parliamentary colleagues for what has been, by and large, a constructive debate. This afternoon, we have come to the end of a legislative process that began with a commitment from the First Minister to ensure that the parents of children with additional support needs would be able to make placing requests to schools outwith their local authority areas. The bill puts firmly in place a range of measures to strengthen the rights of the parents of children with additional support needs and of young people with additional support needs.

I thank the members who spoke in the debate. In nature and tone, the debate occasionally became rancorous but, by and large, it was thoughtful and constructive. There has been a degree of consensus in our deliberations. I am

glad that, from the beginning, there was widespread support across the parties and across the chamber for the general principles of the bill. Indeed, the bill has moved on considerably since its introduction to Parliament and a good number of amendments have been agreed to throughout its parliamentary journey. Some amendments were lodged by the Government at the behest of the Education, Lifelong Learning and Culture Committee, and some that were lodged by individual committee members got the agreement of the Government. That puts the narrative of the debate in perspective.

As might have been expected, there have been disagreements. However, I hope that it is accepted that there has been a genuine effort to address many of the concerns that have been raised both today and at stage 2 through the amendments that I lodged and the Opposition amendments that I supported. Nevertheless, I appreciate that some issues remain that it was either not possible or not appropriate to deal with through primary legislation. Many of those issues will be dealt with through secondary legislation or through revision of the code of practice. A dialogue with stakeholders has already begun that will be essential in informing that process.

The debate has been about seeking parliamentary agreement to the motion that the Education (Additional Support for Learning) (Scotland) Bill be passed. The Scottish Government is committed to improving the lives of children with additional support needs. Support for vulnerable children is at the heart of a smarter Scotland. Providing help when it is needed is both the right thing to do and an investment in our future. I believe that the bill provides essential elements that will ensure that our children and young people with additional support needs have the support that they require to enable them to take full advantage of the benefits of school education.

I thank the Parliament and my colleagues on the Education, Lifelong Learning and Culture Committee for their invaluable support, input and stimulation during the bill's passage. I also extend my thanks to the wide range of organisations and representative bodies that contributed so constructively to the bill's provisions. We look forward to continued dialogue with those stakeholders when we revise the code of practice and secondary legislation. Last but not least, I put on record my thanks to my bill team, who, more often than not, rose beyond the call of duty in responding to the needs of committee members and myself.

I ask members to endorse the bill this afternoon.

Business Motions

followed by

Members'
Crawford.]

Business—[Bruce

17:00

The Presiding Officer (Alex Fergusson): The next item of business is consideration of business motion S3M-4178, 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 27 May 2009

2.30 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Scottish Government Debate:
Influenza A (H1N1)

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 28 May 2009

9.15 am Parliamentary Bureau Motions

followed by Scottish Liberal Democrats 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 Debate:
CashBack for Communities:
Investing the proceeds of crime back
into our communities

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 3 June 2009

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

2.05 pm General Question Time

2.25 pm First Minister's Question Time

2.55 pm Themed Question Time
Rural Affairs and the Environment;
Justice and Law Officers

3.35 pm Stage 3 Proceedings: Offences
(Aggravation by Prejudice)
(Scotland) Bill

followed by Business Motion

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S3M-4179, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a timetable for stage 2 of the Scottish Local Government (Elections) Bill.

Motion moved,

That the Parliament agrees that consideration of the Scottish Local Government (Elections) Bill at Stage 2 be completed by 5 June 2009.—[Bruce Crawford.]

Motion agreed to.

Decision Time

17:00

The Presiding Officer (Alex Fergusson): There is just one question to be put as a result of today's business. The question is, that motion S3M-4059, 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 that the Education (Additional Support for Learning) (Scotland) Bill be passed.

Bees

The Deputy Presiding Officer (Alasdair Morgan): The final item of business is a members' business debate on motion S3M-4080, in the name of Peter Peacock, on declining bee numbers. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes with concern reports of the continuing decline in bee numbers and in the number of other key pollinators; notes the importance of bees for the production of honey and, along with other species, their vital importance in food production and in support of biodiversity; supports measures to research and understand better what may be causing the reported declines as a basis for appropriate further actions; further notes that in some areas, such as Colonsay, the varroa mite, which is known to be responsible for some of the decline in bee numbers, is not present, and considers that every effort should be made to maintain that position and sustain bee and other key pollinator numbers.

17:02

Peter Peacock (Highlands and Islands) (Lab): I welcome the opportunity to have this debate and am grateful for the support of members from all parties that has enabled it to take place.

As this is biodiversity week, it is appropriate that we talk about a number of the species that play a vital part in ensuring that that biodiversity continues. It is interesting to note that, tomorrow, the House of Lords will debate exactly the issue that we are about to debate.

As we workers sit here in this latter part of the evening—that is the last pun that I will use today—millions upon millions of honey-bees, bumble-bees and other pollinating insects are going about their work, of which we are a principal beneficiary. Their work is vital. They pollinate our flowers, our crops and our fruit. Two out of every three mouthfuls of food that we eat are reckoned to come from plants that are pollinated by insects. Around 84 per cent of European Union crops are pollinated by insects and 80 per cent of wild flowers depend on insect pollination.

The sad truth is that, despite the fact that millions and millions of insects are currently doing their work, fewer of them are doing so than was previously the case. The fact that their numbers continue to decline has profound implications. The decline has gone largely unnoticed by most of us for many years, although many people have argued that we should place the issue higher up the political agenda—accordingly, I welcome the attention that the issue has been getting in recent years.

Although the source is disputed, it is said that Einstein said that if bees go, mankind will follow

within four years. That statement focuses the mind wonderfully on the nature of the challenge that we face.

We know that there is a serious decline in bee numbers not just in Scotland, the United Kingdom and Europe but in many other parts of the world. Honey-bees, bumble-bees and other species are in decline. That is an issue for all species, as pollination is a complex matter—some insects pollinate some plants but not others, which means that species overlap.

We know that, with the decline in insect numbers, pollination becomes more limited. If pollination is less complete, a vicious downward cycle will start up: fewer seeds will be produced, which will mean that there will be fewer flowers the following season, which, in turn, will mean that it will be harder for the insects to survive.

Insect-pollinated plants are declining at a faster rate than those that are pollinated by water or wind. Twenty-seven bumble-bee species are in decline and three are already extinct. Seven bumble-bee species have declined by more than 50 per cent in the past 25 years and two thirds of moth species and 71 per cent of butterfly species are in long-term decline. Entire honey-bee hives have collapsed or are in serious decline, the great yellow bumble-bee is now unique to Scotland and the native Scottish black-bee now exists in very few places—one of which is Colonsay.

We do not understand all the reasons why the numbers are declining. We know about the varroa mite, which is affecting honey-bee populations and has spread rapidly throughout the country. It is now regarded as being endemic, and although there is a treatment for it that is used by many amateur and commercial beehive managers, we know that the parasite is becoming resistant to that treatment. We will have to consider new forms of treatment, which might mean using the new EU-licensed products that we know exist.

Habitat loss is a significant part of the issue. I visited Struan apiaries in Conan Bridge last year. The manager told me about habitat loss—significantly, he used to place his beehives in set-aside land or in field margins that were rich in flowers, but those are now decreasing because of set-aside changes, which has direct implications for his business and for us too, because of the effect it has on pollination.

Road verges are being cut more often at a particular time in the season, which may prevent the creation of, or destroy, nests of bumble-bees and the like. There are fewer grass meadows than there used to be—indeed, we have fewer gardens than we used to have. More people—for perfectly understandable reasons—are paving over their gardens or putting gravel down, and growing fewer

flowers. That has implications for the insect and bee populations that those gardens had previously supported. We need flower-rich habitats in more places.

There is a debate about insecticides and the impact that they have on the insect population. One dimension of that concerns not only whether insecticides directly kill insects and bees, but what happens at the sub-lethal level. We do not fully understand the long-term effects of toxicity on those species. We need to do more to find out about that.

Do we really understand the effects of climate change on invertebrates? Are they an early indicator—a barometer—of something much more fundamental that is happening in our environment but which we do not yet understand? Those issues, and the matters that I have just outlined, are some of the reasons why we need more research. I am pleased that the Scottish Government has, with the UK Government, put more money into research and I hope that in the process of deciding where to focus that research the Government will consult the Bee Farmers Association and the Scottish Bee Association to try to get the priorities right.

I welcome the Government's invertebrates strategy—it is good to see the Government standing up for invertebrates, if I can put it that way. I look forward to welcoming the bee strategy in due course. We need more incentives for farmers to farm, particularly in bee-friendly ways, and we need the Scottish rural development programme to help with that. We need individuals to do more in their gardens and we need more diagnostic services to examine the bees that are dying and to test them earlier to find out why.

We need to do more to protect the last remnants of certain species in the few communities in Scotland where they still exist—and to protect communities of bees that are native to Scotland. In Colonsay there is a bid to have a black-bee reserve because it is one of the very few places left in Scotland where the native black-bee exists. I hope that the Minister for Environment will ensure that Scottish Natural Heritage and her department work closely and urgently to take that forward.

A bee keeper in Easter Ross e-mailed me—and other members, I am sure—to say that there is an army out there and that if we are ready we should take action to help. The bee keeper said that they may need ammunition and leadership, information and support, and training to know what to do in some circumstances, but that there is a group of people who are willing to help. I hope that the minister will offer some of that leadership.

I learned on Sunday, while reading a famous Scottish journal, that the acts that we pass in the

Parliament are finally affixed with the great seal of Scotland, which I gather is made from beeswax. I hope that that continues well into the future. I look forward to hearing the contributions of other members to this debate on a very important subject.

The Deputy Presiding Officer: We move to the open debate. Speeches will have to be kept to four minutes because many members wish to speak.

17:10

Rob Gibson (Highlands and Islands) (SNP): I welcome the fact that Peter Peacock has secured this debate. I find it interesting that major companies such as the Co-op have decided to ban certain pesticides from their farms. The fact that commercial organisations have taken such action out of concern for bees raises the question what discussions have taken place in Europe about the pesticides that have been used. We need much more scientific research on the matter, and I am delighted that the Scottish and UK Governments are starting to undertake it.

I note, too, that the EU Committee on Agriculture and Rural Development has launched its own so-called plan bee and is trying to find the best means of securing EU funds to implement it. The plan has not entirely been agreed, but the committee hopes that it will include developing research into the parasites and diseases that are devastating hives; setting up ecological pollen and nectar-rich recovery zones like, for example, that proposed for Colonsay; promoting necessary measures to combat the threat of inadequate pollination; monitoring and controlling the quality of surface water; and providing financial aid to apiaries that are in difficulty.

We can learn from knowledge gained not just in Britain but in many other countries. Although I can never remember how to spell the word, it has been many years since we all discussed the varroa mite in the *Press and Journal*. Someone had been foolish enough to bring a beehive from an infected part of Yorkshire, I believe, to Brora. Because they did so in February, the bees died—unfortunately—but we should at least be thankful that they were not allowed to infect the area to which they had been taken. Since then, varroa, which as yet we have no means of combating, has moved north. I agree with Peter Peacock that it is highly important that we spend money on scientific research to tackle it.

With regard to habitats, we need to find ways of encouraging people to grow more flowers. After all, as members who grow vegetables will know, flowers attract various beneficial insects, and I suggest that the potager approach to gardening will be all the more important in that respect.

The impact of bees was discussed a number of years ago during the genetically modified oil seed rape trials on the Black Isle. At that time, people flagged up the danger of bees being able to fly for miles and to distribute pollen—in this case, genetically modified pollen, the effect of which has not yet been scientifically proven—in areas where we did not really want it to go. Bees have beneficial effects, but if they fly in the numbers that they have in the past, they can affect other plants in other ways.

I hope, however, that this debate has a positive tone. As the motion makes clear, we want the science to kick in. Although we in the north of Scotland might be lucky in being the last in the queue for the varroa mite, we cannot be complacent. We must ensure that we can strengthen the bee population, and I think that the proposal for sanctuaries in areas such as Colonsay should be extended to other parts of the country.

17:14

John Scott (Ayr) (Con): I congratulate Peter Peacock on securing this important debate in Scottish biodiversity week. I also declare an interest as a farmer.

In “Tam o’ Shanter”, Robert Burns wrote:

“As bees bizz out wi’ angry fyke,
When plundering herds assail their bike”.

Bees were as important to pollination and farming 200 years ago as they are today, but threats to bee populations other than shepherds have emerged, resulting in declining bee numbers in the UK and colony collapse disorder in America and Europe.

It is estimated that almost half of America’s honey-bee population has already been lost. Given that 70 to 80 per cent of pollination worldwide is carried out by honey-bees, a real threat is emerging.

Bumble-bee populations in Scotland are at risk, too. Experts suggest that in the past four or five years alone we have lost four of the 23 species known in Scotland—that is a different figure from Peter Peacock’s, but the principle is the same.

A real problem exists and my concern is that the Government, particularly at UK level, is not addressing it adequately. Of course I welcome the £10 million research grant that the Department for Environment, Food and Rural Affairs announced in April to help identify the main threats to bees and insect pollination, but one has to ask why it does not appear to address the threat of insecticide.

The four main research projects are: breeding disease-resistant honey-bees; “How good is the British countryside for honeybees”; “Learning from

other countries: Testing and developing European and North American varroa mite control methods under British conditions and extending knowledge and good practice to beekeepers"; and "Monitoring hives for pathogens and other causes of death: What is killing British honeybee colonies?".

Today, Parliament must ask the Scottish Government to use its influence to suggest to DEFRA that research be carried out into the alleged damage that the neonicotinoid group of pesticides is inflicting on honey-bee populations. Clothianidin has already been banned in Germany and Imidacloprid has been banned as a sunflower seed dressing in France since 1999. As Rob Gibson said, here in the UK the Co-op supermarket group has also banned the use of neonicotinoid sprays, arguing that they damage the neurological and immune system of honey-bees. The Soil Association has written to Hilary Benn to ask him to prohibit the use of the neonicotinoids that have already been withdrawn in France, Germany and Italy.

Of course I welcome the fact that DEFRA has invested £4.3 million to investigate the impact of the increased prevalence of the varroa mite, poor weather and the management of disease on declining bee numbers, but such research might well miss the point if the effect of pesticides on bee populations is not investigated too.

Peter Melchett of the Soil Association notes:

"While new funding and new research is welcome, it will not help if the government ignores existing scientific evidence that has led other countries to ban chemicals known to kill bees."

Given that approximately 35 per cent of the food we eat is dependent on honey-bee pollination, there are huge implications for food production in the worldwide decline of the honey-bee.

Not only do we have to look into better control of the varroa mite as resistance develops to existing treatments of it, we have to evaluate comprehensively the role of insecticides in the decline of bee populations.

In addition, we have to re-establish more bee-friendly habitats and suitable crops and clover-rich swards to help reduce stress levels in bee populations, given that stress is also a factor in bees succumbing to varroa mite and pesticide challenge.

The Deputy Presiding Officer: The member must wind up.

John Scott: Struan Stevenson wrote recently:

"The loss of bees is not just a problem for beekeepers but for the whole world. Probably the most fundamental link in the food chain, the honeybee is fast becoming the weakest".

He encapsulates the emerging view.

The Deputy Presiding Officer: I am sorry, but the member's time is up.

17:18

Liam McArthur (Orkney) (LD): I apologise for my slightly late arrival and I warmly congratulate Peter Peacock on securing the debate, even if it has provided an opportunity for him to rehash his "standing up for invertebrates" joke. Members will be aware that Mr Peacock boasts a proud and long-standing record of involvement with RSPB Scotland. After his detailed and well-informed speech this evening, it is tempting to consider him his party's—if not Parliament's—leading authority on the birds and the bees. Given that the current scandal that is laying low the body politic is financial rather than sexual, I am sure that it is safe for him to accept that accolade with justifiable pride.

I offer my thanks to the Bumblebee Conservation Trust for its briefing and contribution ahead of this evening's debate. The trust rightly drew to members' attention the significant and valuable contribution that a wide range of pollinators makes to Scottish agriculture, notably the soft-fruit industry. It is difficult, taking into account the associated processing industry, to envisage how about £260 million of economic activity could take place in Scotland without the sterling efforts of our pollinating insects.

As the briefing from the Scottish Parliament information centre makes clear, bees make an important contribution not just to the sustainability of our countryside, but to our biodiversity. I am therefore concerned to note the impact that a loss of habitat is having on a range of our bee species.

Orkney is fortunate to be one of the few parts of Scotland—and, indeed, of the UK—that can still lay claim to being home to the great yellow bumble-bee in some numbers. However, it is said that changes to grazing patterns are having a negative effect on bees, as the plant life that protects nests is eaten back and flowering is prevented. Rural Affairs and Environment Committee members discussed the topic earlier this week as we were chauffeured up to Peterhead by our convener, Maureen Watt. Committee colleagues waxed nostalgic for the Swiss model of allowing road verges to grow untamed, thereby allowing a thousand flowers—and many more insect species—to bloom and flourish.

I urge the minister to consider what more might be done to assist beekeepers in my constituency. Peter Peacock and Rob Gibson referred to the potential impact of the varroa mite on hives in Colonsay and other parts of the country. I can testify to the impact on Orkney—several keepers in my constituency have raised the issue with me.

The minister knows that the Bee Diseases and Pests Control (Scotland) Order 2007 (SSI 2007/506) requires beekeepers and others to notify the Scottish ministers of the suspected presence of notifiable diseases. I am sure that she is also entirely familiar with the fact that notifiable diseases and pests include American foul-brood and the small hive beetle. Sadly, they do not include the varroa mite. The extension of statutory infected area status to Orkney and Scotland's islands therefore lifted a layer of protection.

The Pentland Firth presents any number of challenges for those of us who live and work in Orkney, but it also provides great opportunities, not just in tidal energy, but in the fact that it is a barrier to a variety of animal and insect diseases, as in this case. I concede that exempting Orkney from SIA status might no longer be possible, but I hope that the minister will agree to work with Orkney Islands Council, local beekeepers and transport providers to see whether a voluntary ban on imports of hives and other bee equipment can be established. I accept that that might not be straightforward, but the benefits to Orkney and—more widely—to Scotland and the UK would be worthwhile.

I congratulate Peter Peacock again and look forward to the minister's response to my plea for the bees of Orkney.

17:22

Elaine Murray (Dumfries) (Lab): I, too congratulate Peter Peacock on securing the debate during biodiversity week. I apologise that I cannot stay until the end of the debate: I have another meeting to attend.

Many people might at the moment consider politicians to be a species of invertebrate, so perhaps it is appropriate that some of us are speaking out for invertebrates, which cannot speak for themselves.

The humble and necessary bee that quietly buzzes about its business is a worthy discussion topic in biodiversity week. Scotland has many species of bee. I note the slight difference between the information that Peter Peacock provided and that which John Scott had, but we are advised that Scotland has more than 80 species of solitary bee. The great yellow bumble-bee, which was mentioned, is now a rare species—I appreciate that it can be found in Orkney. Apparently, an extremely rare solitary bee called *Osmia uncinata* is unique to Scotland.

Bees are crucial to the maintenance of diverse habitats and ecosystems. As other members have said, bee populations have declined in recent years for several reasons. The varroa parasitic mite has been mentioned. It is a non-native

invasive species that originally infected Asian bees, but which has unfortunately managed to get into the British bee population, which had no resistance to it. The mite used to be treated with a pesticide, but it is now—unfortunately—becoming resistant to that, so new chemical and biotechnological solutions are being sought. As Peter Peacock's motion says, and as other members have said, it is important to preserve the status of mite-free areas such as Colonsay while other solutions are sought.

As John Scott said, pesticides can be dangerous to bees: they can kill them outright or have sub-lethal effects on complex social insects, like bees. Those effects can lead to changes in behaviour, lifestyle and reproductive systems that cause populations to decline.

I do not want to be unduly negative. Individuals and families who have gardens can take steps to help bees. Many people in my neighbourhood consider my garden to be overcrowded and overgrown. That could be the result of a lack of time for gardening, but I like to think that my garden is doing its bit for the environment by sequestering carbon and providing a habitat for birds, bees, butterflies and amphibians. Those creatures pay us back with hours of enjoyable observation. We all know about bird-watching, but the Bumblebee Conservation Trust will provide people who are interested with the means of identifying different types of bumble-bee. I understand that we can attract at least six types of bumble-bee, if not 10, into our gardens. Apparently, there are short-tongued and long-tongued varieties. As other members said, the traditional habitats that support bee populations, such as hedgerows and grasslands, have become scarcer. Wildlife gardens are now a stronghold for some bumble-bee populations.

Of course, bees need flowers, not only in the spring and summer but into the early autumn. The Bumblebee Conservation Trust can advise on which flowers to plant in our gardens to enable a food supply for bees throughout that period. The species do not need to be exotic—many common garden plants and wild flowers will do the trick. We need only ensure a rotation of flowering plants between spring and early autumn. I also understand that the Co-op has bee boxes in which solitary bees can nest. I have not yet been successful in obtaining one, but anyone who wishes to get such a box can obtain it from that source.

Bees need us to look out for them, not least because, without them, our lives would be much less sweet.

17:26

Robin Harper (Lothians) (Green): I will start with a few observations on chemicals. Research in the United States of America shows that fluvalinate, which is used for controlling mites, has a registered lethal dose rate of 50 per cent for a 65.85 microgram application on test bee populations. I am not sure whether there is research on the reformulated version, but 0.2 grams will kill 50 per cent of the bees that come into contact with it. Some formulations have added stabilisers that increase toxicity by a factor of 10^3 . Chemicals that looked quite safe when they were first passed for use are now possibly hugely dangerous to our bees.

Fungicides such as myclobutanil and chlorothalonil are also deadly to bees. In the USA at any rate, those fungicides are not tested for bee toxicity. I wonder whether that is the case in this country. Tests in the USA on 92 samples of pollen from plants that were visited regularly by bees show that 47 had chemicals on them that could lethally affect bees. One pollen sample had 17 different chemicals on it. In other words, in the USA and this country, bees are being exposed to a huge chemical soup of fungicides and pesticides. We do not know what the cumulative effect on our bees will be.

The varroa mite has been mentioned several times in the debate. Obviously, it is at the top of people's list of concerns. However, it is vital that beekeepers do not find themselves on the same chemical treadmill as conventional farmers, given what we know of the effect of those chemicals on our bees. Overuse of chemicals such as Apistan is already leading to breeding resistance to chemical treatment among mites. Scotland has been rather successful in combating varroa resistance to Apistan and beekeepers are being trained to use a variety of integrated approaches to controlling varroa. I urge the Government to give as much support as possible to that work.

It would be highly misleading to suggest that the only problem that bees face is disease. As we know, many places throughout Scotland have experienced unprecedented colony deaths that cannot be explained by varroa alone. The chemical cocktail to which our environment is now subjected is putting our bee populations under increasing pressure.

We must also not be drawn into thinking that we need to worry only about the plight of the domesticated honey-bee in the United Kingdom. Some 27 species of bumble-bee and about 230 other pollinators are under great pressure owing to loss of suitable habitat. Other members have mentioned that problem.

Members have also mentioned the loss of roadside habitat. In February, I lodged a motion to highlight the threats that wildlife faces through the loss of set-aside. Over the course of 2008, the amount of land in the set-aside scheme fell by 71 per cent, from 63,000 to 18,000 hectares. Losing such set-aside land represents a huge loss of undisturbed habitat for the declining numbers of many varieties of wildlife, including the all-important pollinators. The Government is consulting on its approach to common agricultural policy changes and restoration or mitigation of all the goods that have been lost by the demise of set-aside. We must make it clear that current agri-environment schemes are not enough to replace the benefits that set-aside provided.

We must ensure that a percentage of the cultivated landscape is managed explicitly to support biodiversity; I also support restoring our roadsides to an area of biodiversity. The Bumblebee Conservation Trust argues that habitation provision on a landscape scale is needed now to support pollinator populations. It is not a matter just for the Government and the agriculture industry—everyone with a garden can play an important role by growing native flowering shrubs and flowers that provide valuable food for bees and all the other pollinating insects.

17:30

Kenneth Gibson (Cunninghame North) (SNP):

I congratulate Peter Peacock on securing this debate, which is on an issue in which I have long had an interest. I, too, had intended to lodge a motion on the subject, before Mr Peacock's covered it admirably.

In children's books and commercial logos, bees are renowned stereotypically for their happy, human-like, smiling faces—they are an important part of children's literature and our culture. They are also fundamentally important to the Scottish environment and economy. The steady decline in bee populations is, therefore, of great concern to conservationists, field naturalists, farmers and gardeners. It is primarily a consequence of loss of extensive flower-rich habitats and fragmentation due to increasing intensification of land use for agriculture, forestry and development.

As we have heard, the varroa mite makes bees more susceptible to deadly viruses and is now resistant to treatment. If bees become infected with the mite, it will kill 99 per cent of a colony within four years. Three British species of bumble-bee are now extinct, with a further nine species listed as endangered. As we have heard, at one time the great yellow bumble-bee was widespread across Britain. In the past 50 years, the population has declined by 95 per cent, and the species now resides only in the north and west of Scotland,

mainly in the Hebrides, Orkney, Sutherland and Caithness. Also of concern are neonicotinoid pesticides and climate change, both of which have been mentioned.

As a result of their dependence on an abundance of diverse flora, bees are key indicators of the health of the environment. If there is a large bumble-bee population, it is highly probable that there will be significant populations of other wildlife. DEFRA recognises that

“bees make an important contribution to the sustainability of the countryside, contributing both to agriculture and horticulture”,

not to mention biodiversity. Bees are crucial for pollinating vital crops. As we have heard, approximately 35 per cent of our diet depends on crops that are pollinated by bees. Furthermore, there are approximately 30 commercial bee farmers in Scotland whose business is completely dependent on the bee industry. I confess that I have often thought that I fancy being a bee farmer when I retire.

The decline in honey-bee populations has not only resulted in a shortage of honey but jeopardised the pollination of commercial fruit and vegetables. The honey that bees produce not only is a healthy substitute for refined sugar but has antibiotic characteristics. A survey conducted last year by the British Beekeepers Association revealed that nearly one in three of the UK's 240,000 beehives did not survive the winter of 2007 and spring of 2008. BBKA president Tim Lovett expressed his deep concern at the 30 per cent death rate, which contrasts with the usual 5 to 10 per cent and will have a serious impact on the economy. It also places at further risk the Government's campaign for members of the public to consume five portions of fresh fruit and vegetables a day. The chief executive of the Biotechnology and Biological Sciences Research Council, Professor Douglas Kell, has warned:

“Without effective pollination we will face higher food costs and potential shortages.”

The director of the Wellcome Trust, Sir Mark Walport, adds:

“The devastating effect that this decline may have on our environment would almost certainly have a serious impact on our health and wellbeing.”

I fully support the announcement that the Scottish Government will contribute £500,000 to the UK Government's project to research and identify the prominent threats to bees and other insect pollinators. That funding will be available to researchers across the UK under the living with environmental change partnership, which involves the Scottish Government, the Biotechnology and Biological Sciences Research Council, DEFRA, the Natural Environment Research Council and

the Wellcome Trust. The project is undoubtedly critical and requires our support. In the words of Richard Lochhead MSP, the Cabinet Secretary for Rural Affairs and the Environment:

“The impact these insects have on our rural industries, such as the soft fruit sector, and on plant biodiversity across Scotland cannot be under-estimated. Any reduction in numbers could have catastrophic consequences”.

I fully support the four strategic outcomes that are proposed in the honey-bee health strategy in Scotland, although I take on board John Scott's comments.

I will not cite Albert Einstein's declaration, to which Peter Peacock has already referred. I will close with a reflection on Rupert Brooke's poem “The Old Vicarage, Grantchester”, in which he asks:

“Stands the Church clock at ten to three?
And is there honey still for tea?”

We must ensure that the answer to Brooke's poem is an emphatic yes.

17:34

Jamie McGrigor (Highlands and Islands (Con): I well remember my mother keeping bees during my childhood, and I recall being fascinated looking at the hives and watching the activity as the workers relentlessly went about their business—business that is essential to the sustainability of mankind. Bees are one of nature's miracles. They are famous not just for their delicious honey; we also owe the bee a debt for the pollination process that ensures the production of the food on which we depend for our survival. Scottish Highland heather honey and wildflower honey are surely among the finest tasting in the world, and have so many health benefits.

Two years ago, when I was conducting a surgery at Bonar Bridge in Sutherland, I was visited by Hamish Robertson, who runs Struan Apiaries, which was mentioned earlier by Peter Peacock. Mr Robertson alerted me to the significant losses of honey-bees that Scottish beekeepers were suffering. It was not a gradual decline, but a very sudden one—I remind members that I am talking about two years ago. I am most grateful to Dr Beryll Stevenson, a well-known Sutherland lady, for encouraging him to raise the issue with me.

I subsequently lodged a written parliamentary question on the subject, and I was concerned to read the answer from Michael Russell, which said:

“No research is being carried out at present.

Where beekeepers have suffered larger than normal post winter losses, in the vast majority of cases the loss was due to poor husbandry”.—[*Official Report, Written Answers*, 15 May 2008; S3W-12732.]

I thought that that was a bit of an insult to our hard-working Scottish beekeepers, and I feel that the former Minister for Environment perhaps ought to be stung by a bee to make him understand that.

Why is the UK now spending £10 million, including £500,000 from the Scottish Government, to identify the threat two years too late? Beekeepers in Scotland want more support from central Government. There is only one bee adviser, based at Auchincruive, to cover the whole of Scotland. Although he does an excellent job, beekeepers believe that more support staff are required to cover such a huge area.

Peter Peacock referred to Einstein's comments on the importance of bees to biodiversity and human sustainability. Einstein suggested that mankind would be doomed without the work of the bee. He gave us four years, which is a pretty sobering thought, especially as the BBKA survey of its members shows that bee numbers declined by 30 per cent during the winter and early spring of 2007-08. Beekeepers are waiting to see how their bees have fared this winter.

I congratulate Peter Peacock on raising an issue of singular importance and on highlighting a problem that screams for an answer. If we are to believe Einstein, we should put the situation in the same category as the problem that is caused by nuclear waste: a solution must be found, and we ignore it at our peril.

17:37

The Minister for Environment (Roseanna Cunningham): I am not 100 per cent certain that Einstein is actually the person who made the comment that has been cited. However, it is widely attributed to him, and I know that people understand the importance of bees from that comment, even if it was not Einstein who actually said it.

I congratulate Peter Peacock on securing the debate and for the very impressive cross-party support that he obtained for the motion. The decline in the world's bee population is a matter for real concern and has in fact become a priority of my directorates. We are in the final stages of the preparation of a honey-bee health strategy, some details of which I can provide to the Parliament this evening.

As we have heard, rapid, unexplained losses of honey-bee colonies pose a threat to Scottish agricultural production, a point that John Scott made very clear. They pose an even greater threat to global food security. Experts believe that Scotland lost up to a third of its honey-bees last year alone, on top of heavy losses in previous years. Other countries fared even worse.

There is a lot of debate and disagreement about the causes, as we must accept. Many of the possible causes have been discussed here this evening—Peter Peacock, Rob Gibson and Robin Harper did so extensively. The potential effects are very serious, whatever we decide is the cause. It is the usual story: lots of possible reasons but no obvious definite cause. It would be easy and popular to scapegoat one aspect, but scientists know that there is no magic bullet.

Understanding the complexity of the matter might be the key to saving the insects. That is why we have been working with stakeholders and experts on a 10-year honey-bee health strategy, which was developed throughout 2008 to tackle this very issue. We intend to publish it in the near future.

I hope that members will follow up the interest that has been shown in today's debate by engaging with us and with beekeepers to implement the strategy and develop a brighter future for Scottish apiculture. I also hope that members will encourage their local authorities and beekeepers to interact with one another—I said that in response to Liam McArthur, in particular.

The honey-bee health strategy will broadly follow the framework and principles of the animal health and welfare strategy. We want to achieve a sustainable and healthy population of honey-bees in Scotland through work in five main areas. The first area is education. Although the challenges are beyond the capacities of individual beekeepers, good husbandry can and does have a significant role to play. Secondly, communication among policy officials at their desks, scientists in their laboratories and beekeepers in their gardens and fields requires effort and thought if it is to be focused and effective. Thirdly, good surveillance is needed, so that we can understand the situation on the ground, know how many beekeepers and colonies we have and track diseases in the field.

Fourthly, research will be crucial. We do not yet know the extent of colony loss or disease problems in Scotland, nor what the key drivers are. Pesticides are a reserved matter, which makes it difficult for the Scottish Government to act in that regard. As I understand it, although neonicotinoids have been banned in a number of countries in Europe, they are not shown to have an impact on the rate of colony loss.

John Scott: Notwithstanding what the minister said, does she agree that as part of its research DEFRA should consider research elsewhere in Europe, which suggests that neonicotinoids are causing bee deaths?

Roseanna Cunningham: It is clear that there is a debate about that in the scientific community. I hope that DEFRA will explore every possible

cause. It would not be good enough if DEFRA were to ignore anything. I simply say that there is no unanimity on any particular issue.

Finally, the strategy will focus on diagnostics. It is important to feed back information to beekeepers, to allow early intervention and disease prevention.

We have identified new money for research. We have contributed up to £500,000 to a £10 million UK-wide research initiative. The money will be made available to research teams to investigate the relationships between biological and environmental factors that affect the health and lifespan of pollinators. That understanding will assist in the development of improved disease control and population management.

It is not just about honey-bees. Our wild bees are also at risk, as Liam McArthur said. Bumblebees play a crucial role in pollination: they can pollinate a wide range of crops and are essential for the pollination of certain crops. The problem does not seem to be critical in wild bee populations, but that might be because we do not yet know enough about what is happening.

Robin Harper: Is the minister aware of the European Parliament's recommendation that countries set up bee safe zones, which are safe for bumble-bees and honey-bees?

Roseanna Cunningham: I am sure that officials are well aware of the recommendation. Robin Harper might be thinking about Colonsay, which I will talk about shortly.

Money is available through the SRDP and SNH for a variety of different projects, which will help our understanding and make a difference. We will follow up the debate with a letter to interested members, which will set out sources of funding that their constituents and other stakeholders might find useful.

As Peter Peacock identified in his motion, some places, such as Colonsay, are currently free of the varroa mite. We are exploring ways of maintaining that status. The legal advice is that the Colonsay black bee is not a wild species and is therefore outside the protection of the Wildlife and Countryside Act 1981—that is where we get into complicated arguments. Government officials and SNH scientists will meet on 5 June specifically to discuss issues to do with Colonsay and the black bee. Of course, the outcome will have ramifications for other parts of Scotland. We are aware of the issue and are working on it.

There is much that we still do not know, such as how many people in Scotland keep bees, how many bees they keep and what the wild population is. We do know that we cannot watch from the sidelines and hope that populations will recover.

I thank members for their speeches and repeat my call for them to stay engaged. In the meantime, they might want to visit excellent and informative websites such as those of the Scottish Beekeepers Association and the Bumblebee Conservation Trust and apply the information that they find there to their own gardens. Like Elaine Murray, I have many bees in my garden. The number of bees tends to increase in line with the owner's neglect of their garden so, in this context, neglect can be truly benign. There is more land in gardens in the UK than there is in nature reserves, so small actions by many people can make a big difference.

Meeting closed at 17:44.

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