

EDUCATION COMMITTEE

Wednesday 22 March 2006

Session 2

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EDUCATION COMMITTEE

7th Meeting 2006, Session 2

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

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

*Fiona Hyslop (Lothians) (SNP)

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

Mr Kenneth Macintosh (Eastwood) (Lab)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Mr Jamie McGrigor (Highlands and Islands) (Con)

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

Mr Andrew Welsh (Angus) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Frances Curran (West of Scotland) (SSP)

Bill Scott (Scottish Socialist Party)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 6

Scottish Parliament

Education Committee

Wednesday 22 March 2006

[THE CONVENER *opened the meeting at 10:01*]

Items in Private

The Convener (Iain Smith): Good morning colleagues, and welcome to the seventh meeting of the Education Committee in 2006. Before we commence our business this morning, I am sure that members will join me in expressing deep condolences to Margaret Ewing's family and to Fergus in particular following the sad news yesterday of Margaret's passing. We shall have a few moments of private contemplation.

Thank you colleagues.

Lord James Douglas-Hamilton will be late, and Ken Macintosh is unable to be here because he is at another committee. Also, Elaine Murray has to leave shortly.

Under agenda item 1, I ask for members' agreement to take items 4, 5 and 6 in private. Item 4 is a draft report to the Finance Committee in relation to its inquiry; item 5 is on the appointment of an adviser on the proposed adoption and children (Scotland) bill; and item 6 is a draft report on the pupil motivation inquiry.

Ms Rosemary Byrne (South of Scotland) (SSP): I do not see the need to take the items in private. In particular, item 6 should be open and transparent.

Fiona Hyslop (Lothians) (SNP): I agree with Rosemary Byrne about item 6. Discussions on the appointment of advisers should be taken in private, so I agree with the convener with regard to item 5. There are also some issues to do with item 4 that we might want to discuss in private. I therefore recommend that we take item 6 in public, but items 4 and 5 in private.

The Convener: I recommend that we take item 6 in private because that is the approach that the committee has always taken to the consideration of draft reports. We consider draft reports in private to ensure their confidentiality until the committee has agreed its view.

Do members agree that we should take item 4 and item 5 in private?

Members *indicated agreement.*

The Convener: Before I put the question on item 6, are there any other comments?

Mr Frank McAveety (Glasgow Shettleston) (Lab): I feel that a draft report should be kept confidential until the committee has finalised its position.

The Convener: All right. The question is, that item 6 be taken in private. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Douglas-Hamilton, Lord James (Lothians) (Con)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

AGAINST

Byrne, Ms Rosemary (South of Scotland) (SSP)
Hyslop, Fiona (Lothians) (SNP)

The Convener: The result of the division is: For 4, Against 2, Abstentions 0. It is agreed that we will take item 6 in private.

Proposed School Meals and Snacks (Scotland) Bill

10:04

The Convener: For item 2, I welcome Frances Curran, who has proposed the school meals and snacks (Scotland) bill; Claire Menzies Smith, who is a senior assistant clerk at the non-Executive bills unit; and Bill Scott, who I believe has worked with Frances Curran on the bill.

I remind everyone that we are not discussing the principles of the bill, or the content of the draft proposal; we are considering only whether consultation on the bill has been sufficient to meet the requirements of standing orders. I invite Frances Curran to make some opening remarks.

Frances Curran (West of Scotland) (SSP): I thank the Education Committee for allowing us this time to present our proposal. I have been working on the proposed school meals and snacks (Scotland) bill for a long time. I submitted the initial draft under the previous rules on members' bills and resubmitted it under the new rules. Unfortunately, as the rules had just changed, we did not include the draft proposal with the consultation document, although that document was signed off by NEBU and supported by the Parliament.

Now that I have resubmitted the draft bill, I hope that members will agree that we have carried out extensive consultation. Some 2,000 consultation documents were sent out. The consultation document was posted on the websites of One Plus, the Child Poverty Action Group in Scotland and the Poverty Alliance, and I consulted through the Scottish Youth Parliament's education and lifelong learning committee.

We received 517 responses. Members will see from the report that a huge breadth of organisations replied. We were very pleased with the consultation exercise: we tested the policy; tested opposition arguments to the bill; considered any potential difficulties in implementing legislation that were thrown up by those arguments; and submitted all the consultation documents to the Scottish Parliament information centre. Our analysis was submitted to SPICe and is available online. We have a file of all those who responded to the consultation, should committee members wish further information on that.

The Convener: Thank you. I draw members' attention to the additional paper that has been submitted. The paper contains details of the consultation mailing list, the organisations that responded, individuals who responded and individuals not on the mailing list who responded.

Do members have any questions?

Fiona Hyslop: The consultation is comprehensive and the range of interests and involvement is wide. I am particularly interested in the full response list to the consultation—for our purposes, it is unfortunate that it was submitted only today.

Should the bill proceed, one of the issues will be about milk. I remember when one of my colleagues, Michael Matheson, proposed free milk for schoolchildren, the British Medical Association had concerns about obesity and other matters. I cannot see the BMA on the list, but was it consulted?

Bill Scott (Scottish Socialist Party): A consultation document was sent to the BMA, but it did not respond.

Fiona Hyslop: Right. We know that it has an historical concern about milk.

Frances Curran: About three other health bodies responded to the consultation.

Fiona Hyslop: I notice that there are quite a few dieticians on the list and that a range of medical interests is represented. The BMA's view on milk is an obvious issue, but perhaps it is for the committee to take evidence on that.

Frances Curran: Absolutely. I hope that the committee will ask for evidence from the BMA.

The Convener: As I mentioned, it is not for us to determine whether the bill should proceed; all that we are doing is asking whether we are content that there has been sufficient consultation so that the proposed bill can be submitted without further consultation. Are members content with that?

Members indicated agreement.

The Convener: I thank Frances Curran and her team for coming this morning.

Subordinate Legislation

Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 (SSI 2006/88)

10:08

The Convener: Item 3 is consideration of subordinate legislation. No member requested that anyone from the Scottish Executive attend to give evidence, so I assume that there are no questions.

Fiona Hyslop: We are seeing a huge number of Scottish statutory instruments under the Education (Additional Support for Learning) (Scotland) Act 2004 roll-out, not least because much of the legislation was to be made by statutory instrument. I am interested to know what the Parliament does to alert all interested parties that took part in the development of the legislation to the fact that we are considering those SSIs. One of the main arguments about the 2004 act was that so much would be covered by SSIs. My point is procedural.

The Convener: The present rules replace ones that the committee considered previously. The Executive agreed to come back with alterations—it has now issued the rules in a single document, rather than just the changes to the rules. The Executive consulted extensively on the original practice and procedures rules. I remember receiving information on that when we considered the rules initially. I ask the clerk whether that is his recollection, too.

Eugene Windsor (Clerk): It is.

The Convener: So the Executive has already consulted. The SSI is really a technical amendment to one that was issued previously.

Fiona Hyslop: I appreciate that the Executive has consulted. The issue is whether the committee has made a point of letting people who have an interest know about the rules, so that they can contact us if they want to.

The Convener: The answer to that is probably no.

Fiona Hyslop: Would it be too cumbersome to do that? Do we expect the people who expressed a great deal of interest in and concern about how the tribunals will work to stay alert to what is happening in the Parliament, or should we alert them?

The Convener: Because of the volume of SSIs with which the Parliament deals, it would be administratively burdensome to alert everyone who may have an interest in each one. The key point about the subordinate legislation on additional support for learning is that the Executive

alerted various bodies and consulted before it was produced. As I said, the rules are simply a technical revision of the original ones, which the committee has already approved.

Fiona Hyslop: Right. Has the Executive done what we asked it to do?

The Convener: I think that the issues were raised by the Subordinate Legislation Committee rather than by us.

Fiona Hyslop: That is fine.

Lord James Douglas-Hamilton (Lothians) (Con): Is it likely that the dispute between the Subordinate Legislation Committee and the minister's draftsmen will be resolved satisfactorily?

The Convener: We have two sets of drafting lawyers arguing about where a comma should go, so I am not sure that the issue will ever be resolved satisfactorily. There is a difference of interpretation between the two sets of lawyers, but no significant issue of principle.

Lord James Douglas-Hamilton: It is desirable for there to be a meeting of minds, if possible.

The Convener: That is a matter for the Subordinate Legislation Committee, rather than us, to pursue.

Mr Adam Ingram (South of Scotland) (SNP): The Subordinate Legislation Committee has drawn our attention to the fact that it believes that there is defective drafting, with the result that it will not be possible to apply one of the rules. Can the committee write to the Executive to express concern about that and to ask directly for the Executive's views on the matter? I cannot quite remember what the issue is, but it is to do with the procedures of the tribunals.

The Convener: I am not sure that there is anything to be gained from this committee raising an issue that the Subordinate Legislation Committee has already raised—the Executive will just give the same response.

Mr Ingram: As far as I am aware, the Subordinate Legislation Committee's views have been drawn to the Executive's attention and there is a dispute between the two. We are interested in the matter, because it relates to the likely operation of the tribunals. Therefore, do we not need to seek clarification from the Executive or perhaps to consult another body? It is rather unsatisfactory to leave the issue hanging—one group tells us that the rules will work, while another says that they will not.

The Convener: The Executive has said that, in effect, it accepts the Subordinate Legislation Committee's view and will introduce a relevant amendment to rule 15, as stated in appendix 2 to the Subordinate Legislation Committee report.

There is nothing to be gained by pursuing the issue further. There is a slight disagreement in relation to rule 17.

Mr Ingram: That is the issue that I was raising.

The Convener: If the committee wants to write to the Executive, we can do so. I am concerned only because I am not sure what the purpose of writing would be. We would be asking the Executive simply to reiterate what it has told the Subordinate Legislation Committee.

10:15

Mr Ingram: I presume that a gap will exist until the Executive produces a new statutory instrument, which is what will have to happen, during which period the rules that we are discussing will be in force and we will still have the problem. That may be challenged; I do not know. Could we have further clarification of the situation?

The Convener: We can agree that we have nothing to report on the rules or we can defer our decision to a subsequent meeting, which would allow us to seek clarification from the Executive in the meantime. The question is whether the point is sufficient to require us to defer our decision. I am not sure whether it is, because the Subordinate Legislation Committee has addressed the matter. However, that is up to the committee—I am easy on the matter. We would have to deal with the instrument next week, because of the Easter recess.

Lord James Douglas-Hamilton: There is something to be said for being absolutely certain that the Executive gets it right. Many statutory instruments pour through. If a dispute arose about what one of them meant, that would not reflect well on the process. Waiting a week will do nobody any harm.

Fiona Hyslop: A point of procedure arises. If we left it to the Subordinate Legislation Committee to have direct correspondence with the Executive on any points of concern, that committee would not need to report to us. The Parliament's procedures have been established to allow the Subordinate Legislation Committee to report to us, which allows us to take a view on whether we agree with it. To have a week's delay to ensure that the rules are right is correct. However, procedurally, there would be no point in our receiving reports from the Subordinate Legislation Committee if we wanted it just to deal directly and independently with the Executive.

The Convener: The Subordinate Legislation Committee has drawn our attention to the defective drafting of rule 7(2), which the Executive has agreed to amend. My slight difficulty is that we would be asking the Executive about rule 7(1), to

which the Subordinate Legislation Committee did not draw our attention. Paragraph 9 of the Subordinate Legislation Committee's 13th report of 2006 refers only to rule 7(2), whereas Adam Ingram's concern is about rule 7(1).

We have time to defer the decision to next week. There is no harm in doing that, if members so wish. We will ask officials to come and explain the issues.

The Subordinate Legislation Committee draws such matters to our attention, but we are primarily concerned with whether to approve the policy behind an instrument rather than with its drafting. The Subordinate Legislation Committee's purpose is to consider drafting.

Do we agree to defer the instrument to next week and to ask the Executive for clarification?

Members indicated agreement.

The Convener: That concludes the public part of our meeting. Next week, we will deal primarily with stage 2 of the Scottish Schools (Parental Involvement) Bill. Amendments to all sections, apart from section 14, must be lodged by noon on Friday.

10:19

Meeting continued in private until 11:12.

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