EDUCATION COMMITTEE

Wednesday 19 April 2006

Session 2

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EDUCATION COMMITTEE
9th 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:

Jackie Brock (Scottish Executive Education Department)
Robert Brown (Deputy Minister for Education and Young People)
Sara Davies (Scottish Executive Health Department)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Education Committee

Wednesday 19 April 2006

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

Subordinate Legislation

Children (Protection at Work) (Scotland) Regulations 2006 (SSI 2006/140)

The Convener (Iain Smith): Good morning, colleagues, and welcome to the Education Committee's ninth meeting in 2006. I hope that you had a restful Easter recess. I welcome Andrew Welsh, who is here as a substitute for Fiona Hyslop. I believe that he has been to the committee before, so he knows what to expect.

Agenda item 1 is subordinate legislation. The first set of regulations is to be considered under the negative procedure. No members have asked for witnesses to attend. As members have no points on the regulations, do we agree that we have nothing to report on them?

Members *indicated agreement*.

Joint Inspections (Scotland) Regulations 2006 (draft)

The Convener: We move to a second Scottish statutory instrument, which will be taken in two parts. First, under agenda item 2, the committee will take evidence on the draft regulations. Then, under agenda item 3, we will consider the draft regulations under the affirmative procedure. Robert Brown, the Deputy Minister for Education and Young People, will give evidence. He has with him Jackie Brock, from the children and families division of the Education Department; Sara Davies from the health planning and quality division of the Health Department; and Douglas Tullis, from the office of the solicitor to the Scottish Executive. I ask the minister to make his opening comments on the draft regulations, after which we will ask questions.

The Deputy Minister for Education and Young People (Robert Brown): I will kick off with one or two comments about the background. The parliamentary debates on and the committee's scrutiny of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill demonstrated the "overwhelming support", as the committee described it, for the principle of joint inspection of services for children. There was unanimous agreement that joint inspection teams had to be given powers to deliver robust joint inspections, to enable them to report with confidence on whether services work together effectively to ensure that children are safe and protected and that their range of needs are being met. The aim is also to provide reassurance to all professionals that information that might otherwise be confidential can be disclosed lawfully.

The draft regulations, supported by the draft code of practice, set out the powers that joint inspection teams will be able to use in the conduct of joint inspections; define the arrangement for using the powers; and, in regulations 5 to 9, create offences for those who fail to comply with the requirements for entry, information and explanations. The committee and the Executive spent a lot of time considering how the powers should be exercised in relation to two of the key principles that will be applied during joint inspections. The first is that of seeking the consent of individual children to access records, about which concerns were raised by health professionals and voluntary organisations during the passage of the bill. The responses to the consultation on the draft code of practice suggest that such groups have been satisfactorily reassured.

Consent is a fundamental principle that should be observed, but we think—and the Parliament agreed—that express consent is not necessary or desirable in every case. We considered arguments about the circumstances, in particular in child protection, in which express consent would not be necessary. The draft protocol for the joint inspection of child protection services was redrafted to make the situation clear, and most respondents agree that the redrafting has been helpful. In particular, the redrafted protocol is helpful in that it explains the process. Comments were also received from the office of the Scottish information commissioner, most of which have been taken into account.

The draft regulations will help to provide the clarification and reassurance that are required if joint inspections are to be conducted robustly and in line with the requirements of the European convention on human rights and the Data Protection Act 1998. The committee will remember that we committed to a review of the legislation and the code of practice when the first four joint inspections of child protection services have been completed—that will happen by the end of the year. The review will take place before pilot joint inspections of wider children's services begin in 2007. I will provide the committee with further details on those inspections.

The Subordinate Legislation Committee highlighted a drafting error in the draft regulations. Regulation 11 creates offences in the event of obstruction of or non-compliance with regulations

5 to 8. Regulation 5 gives a member of the joint inspection team the power to enter premises owned by a person who provides children's services. The power of entry is subject to regulation 5(2), which requires a member of the joint inspection team to produce an

"authenticated document showing the authority to exercise the power",

if they are requested to do so. The effect of regulation 11 is inadvertently to create an offence on the part of a member of the joint inspection team who fails to produce such a document. It was not the Executive's intention—or the committee's, I dare say—that failure to provide such a document should be an offence. The situation is not likely to arise, because members of the joint inspection team should carry documentation as a matter of course. If appropriate documentation were not available, the matter would have to be resolved immediately through the appropriate channels. Although in practice the error has no implications and its effect is technical and academic, it needs to be remedied and we intend to lay an amending regulation to deal with the matter—we will probably do so later in the week.

The matter demonstrates the strength of the Parliament's scrutiny process. I apologise sincerely for the error, which should not have happened. If the matter is resolved by approving the regulations as currently drafted today and dealing with an amending regulation immediately afterwards, the necessary and vital work of joint inspection can proceed, as the committee, the Parliament and the Executive intend. I am sorry that I have had to take up time to talk about the error and I will be happy to answer questions on the matter.

The Convener: Thank you. Before I open up the meeting to questions from members, it might be helpful if the minister were to outline the implications of the committee dealing with the error in a different way, by rejecting the draft regulations and asking that a new instrument be drafted.

Robert Brown: The answer is quite simple; there would be a delay in proceeding with the first joint inspection, which has already been held up to an extent by the requirements of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006. Because the matter relates to child protection we are extremely anxious that there be no further delay in taking matters forward and carrying out inspections. If we were to lay a new instrument, which is an approach that I discussed with officials, there would be a delay of two to three months in getting things right, given the time period for the laying and consideration of instruments before they can come into effect.

The Convener: Thank you for that explanation. I invite comments or questions from members.

Mr Andrew Welsh (Angus) (SNP): The minister said that the drafting error has no implications and that its effect is academic, but I am sure that a lawyer would not agree. How did such an error happen?

Robert Brown: The draft regulations are complex and, I think, follow or translate regulations that have been made in other contexts. There was simply a mistake; I cannot say much more than that. The intention was to make it an offence to obstruct people who require entry to premises, but unfortunately regulation 11 refers to regulation 5 in general, which means that an offence would be committed if regulation 5(2) were not complied with.

There is an argument that it is not necessary to amend the draft regulations, and we have had an exchange of correspondence with the Subordinate Legislation Committee along those lines. However, at the end of the day, we are satisfied that we need to act properly and that, to put the matter right, we need to get rid of the reference to regulation 5(2) as one that will create an offence.

Mr Welsh: I am not a lawyer, but it seems to me that the wording was in danger of making either or both parties to the inspection guilty of a criminal offence. That is not trivial. I am concerned that such a fundamental problem was created through drafting. Is there any explanation as to why that happened? If I can spot the problems from an initial reading of the draft regulations, I would have thought that the Executive draftsmen should have spotted them a mile away.

Robert Brown: You are absolutely right that the matter is not trivial and that we do not want to create offences that should not be created. However, for a problem to arise in practice, an inspector would first have to appear without documentation and, secondly, somebody would have to decide to make an issue of that and to report the matter to the procurator fiscal. The chances of anybody being prosecuted for such a matter are minimal in the extreme. However, that is not the point. We must put the draft regulations right, which is why we want to take the course of action that I outlined. The problem, even in theory, will exist for only a couple of months until it is resolved, so the chances of an issue arising are not great. The matter is an embarrassment—there are no two ways about it. However, now that the situation has arisen, the alternatives are to deal with it in the way that I have suggested or to bring about a two or three-month delay in the process of joint inspection by starting all over again, which I am extremely reluctant to do. I hope that the committee will be with me on that.

Mr Welsh: It is fortunate that the Subordinate Legislation Committee spotted the error. During my time in Westminster, I saw a lot of badly drafted legislation that caused problems later on. I am concerned about why any inspector should turn up without documentation. Unless I am wrong, removing the words "if … requested" from regulation 5(2) would make it compulsory for inspectors to have documentation. Surely inspectors, who will have massive powers to look at and obtain information, should automatically have documentation. The simple change of removing the words "if … requested" would make it compulsory for inspectors to have documentation and would achieve the purpose.

Robert Brown: We must change the draft regulations, but, regardless of what the change is, that cannot be done through the present process. We must realise what will happen in the inspection procedure. Notice will be given to the recipients of the inspection that inspectors will come. Everybody will know that the inspectors are on their way, so there will not be an issue about documentation. I would be surprised if anybody demanded documentation in that situation, but they will be entitled to do so if they wish. If they did so, and a dispute arose, regulation 5(2) is intended to deal with that situation. I agree entirely that inspectors should carry documentation, but, nevertheless, given that they are human beings, it might sometimes be forgotten. We would not want inspections to be held up, or criminal offences to be created unnecessarily, because of a technical mistake.

Mr Welsh: I do not wish to prolong the discussion, but the mistake is not just a technical one; it is a major error, and I hope that that will not happen again.

Just for clarity, will the minister give us the definition of the term "authorised person" and the source of that definition?

Jackie Brock (Scottish Executive Education Department): The definition of "authorised person" is found in the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006. I am not sure whether Mr Welsh has a copy of that, but I can give him the reference.

Robert Brown: Perhaps you will just say which section it is in.

Jackie Brock: I think that it is in section 7, which is on interpretation.

Mr Welsh: I just want to clarify the matter. If you can give me the reference, that will be fine.

Jackie Brock: I am just looking for it.

Mr Welsh: I presume that the 2006 act also contains a definition of the documentation that is required.

10:15

Jackie Brock: I am sorry—the definition of "authorised person" is in section 3(3).

Your second question concerned the nature of information. Section 7 of the 2006 act contains definitions applying to information that is held confidentially in medical and personal records. Those definitions are drawn from the Data Protection Act 1998 and elsewhere.

Mr Welsh: I understand that the person doing the inspection has massive powers to look at all sorts of records and to share those records. What authorised documentation would the person doing the inspection be required to carry?

Jackie Brock: I see what you mean—sorry. Under section 1, ministers request a joint inspection. They write to all the inspectorates that they require to be part of the joint inspection team and to give the team the authorisation—under the 2006 act—to conduct a joint inspection. That enables the inspection team to draw on the powers that are set out in section 3 of the 2006 act and in regulations.

The Convener: For clarification, the definition of authorised person appears at section 3(3) of the 2006 act.

Mr Welsh: I have got that.

The Convener: I welcome to the meeting Richard Baker, who is here as a substitute for Wendy Alexander.

Do you have any other questions, Andrew?

Mr Welsh: The whole situation is unsatisfactory. I am concerned about why the mistake happened in the first place, and I hope that the minister will ensure that it does not happen again.

Robert Brown: I like to give absolute guarantees in such matters but I guess that these things happen. I can only apologise to the committee for that. Every care is taken with these matters, but the draft regulations are quite complex and occasionally things slip through. Embarrassingly, that was the position here. Officials will be conscious of the consequences if such things recur.

Lord James Douglas-Hamilton (Lothians) (Con): The minister will be aware that the British Medical Association was not happy with the provision to give inspectors the power to remove from premises any documents, including personal medical records. A general practitioner, for example, might need constant access to health

records. What is the reasoning behind taking the original rather than a copy? From the point of view of the doctors in the BMA, it would be less disruptive to their practices and to the health service if a copy was taken rather than the original.

Robert Brown: I should say something about the process here. The experience to date on joint inspections is that what is often most useful to the inspectors is conversation with the doctor or other professional involved. The inspectors do not often need to go to the second stage of getting hold of the records and taking them away. That is dealt with in the draft protocol, which I think the committee has seen at an earlier stage of the procedure. I think that I am right in saying that a procedure is laid out for what happens with documentation. I ask Sara Davies to clarify that.

Sara Davies (Scottish Executive Health Department): Certainly. I just have a couple of points about the copying of the records, about which there has been a long debate. First, it can be dangerous to copy original records and take the copy elsewhere, because records can be mislaid or have different entries put into them. The inspectors are required to annotate any records that they inspect so that we have an audit trail of who has looked at any record at any time. There is a concern not to take copies of original records.

Secondly, GPs and the BMA have pointed out that general practices often have no quiet place where records can be looked at. That is dealt with in the draft code of practice. If possible, there will be somewhere in the practice to look at second-line records, such as GP records. The core records, which are health visitors' records and school records, will be taken to one place so that they can be looked at by the team.

Robert Brown: It is worth adding that the core records are the health visitor records and the school nurse records, rather than the GP records. It is usually the core records that the inspector is after, rather than the GP records.

Lord James Douglas-Hamilton: Can the minister reassure doctors that, although there are powers to remove any documents or records from the premises, in practice that would be done only in the most exceptional cases and that every effort will be made not to disrupt GP practices?

Robert Brown: That is absolutely the case. The intention is not to cause disruption to practices. The draft protocol states:

"Non-core records"—

that is, primarily the GP records—

"will not leave health premises. They will be reviewed by the inspectors in a quiet confidential area within relevant health premises."

That is undoubtedly the intention in most instances. The only exception would be when there is no quiet place in the surgery or other health premises. In such cases, the records will be taken to a room in the local authority's base, where they will be kept locked up and made available only to the inspectors. Every effort is being made to keep the records confidential.

The draft regulations contain provisions on the destruction of copies of documents after a certain period. We are going a long way to satisfy the requirement for confidentiality. That has been recognised by the medical interests involved.

Lord James Douglas-Hamilton: I presume that original documents will be returned in due course.

Robert Brown: Yes. They will not be destroyed.

Mr Kenneth Macintosh (Eastwood) (Lab): Notwithstanding the drafting error, the draft regulations are welcome. The subject has been fully debated by the committee. I seek further reassurance about the protocol, which we have seen in draft form. Will it be published? Will it be given to the committee, the Parliament and the general public?

Robert Brown: I think I am right to say that the revised draft protocol was issued on 30 January with a deadline for comments of 17 March. We are now finalising it. The protocol will be published and we will make a copy available to the committee. If you want any further reassurance, I am happy to provide it.

Mr Welsh: You said that you will take the draft regulations away and rectify the error. Can you tell the committee how you will change the wording, what you will alter and why?

Robert Brown: I am not proposing to take draft regulations away. I hope that the committee will agree to—

Mr Welsh: I meant that you will make a new set of regulations.

Robert Brown: Yes. The change relates to the terms of regulation 11, which deals with the creation of offences. A change will be made so that the regulation refers to regulation 5(1), rather than regulation 5(2), which is the one that causes the problem.

The Convener: As there are no further questions, we move on to item 3, which is consideration of the motion on the draft regulations. As we are now on to the formal debate, officials are no longer allowed to contribute to the proceedings.

I invite the minister to speak to and move motion S2M-4144, in the name of Peter Peacock.

Robert Brown: Given that we have explained the draft regulations in depth, I do not want to say anything further.

Motion moved,

That the Education Committee recommends that the draft Joint Inspections (Scotland) Regulations 2006 be approved.—[*Robert Brown.*]

The Convener: As no member wants to contribute to the debate, I do not think that the minister needs to sum up. I am sure that the committee agrees that we wish to draw the Parliament's attention to our concerns about the drafting and the assurance that we received from the minister that, if the motion is agreed to, an amending instrument will be laid as quickly as possible.

Motion agreed to.

That the Education Committee recommends that the draft Joint Inspections (Scotland) Regulations 2006 be approved.

The Convener: I thank the minister for his attendance.

10:25

Meeting suspended.

10:26

On resuming—

Scottish Schools (Parental Involvement) Bill: Stage 2

The Convener: Agenda item 4 is our second and final day of stage 2 consideration of the Scottish Schools (Parental Involvement) Bill. I welcome again the Deputy Minister for Education and Young People, who will speak on the Executive's behalf. He is supported by Deirdre Watt, the bill team leader; Neil Ross, from the office of the solicitor to the Scottish Executive; and Donald Henderson, whose title I do not have in front of me, although I am sure that it is very important. I remind members that officials cannot speak in the debate but can advise the minister.

Members should have a copy of the bill, the second marshalled list and the second list of groupings. Several amendments that we debated at our previous meeting have still to be disposed of and we will deal with them as we reach them on the marshalled list.

Section 12—Duties of education authority to parents generally

The Convener: Amendment 25, in the name of Fiona Hyslop, is in a group on its own. Andrew Welsh will move the amendment on Fiona Hyslop's behalf.

Mr Welsh: The bill's core aim is to increase parental involvement generally. One development is the introduction of a duty on ministers to support and encourage parental involvement. Amendment 25 deals with education authorities' responsibility to address the factors that discourage parents' involvement in a school generally and in their children's education specifically. It would introduce in statute a more proactive and focused approach for education authorities in identifying and tackling barriers to effective parental involvement.

The amendment would provide ballast in support of the bill. Without it, the danger is the extension of a tick-box mentality under which, as long as a parent council exists, some councils could claim to be promoting parental involvement. The best councils will proactively identify and tackle barriers to parental involvement. The amendment would ensure that every council does that.

I move amendment 25.

Ms Rosemary Byrne (South of Scotland) (SSP): I support amendment 25, which is important. In dealing with the bill, the committee has discussed the dislocated or disconnected groups of parents and children in schools. The amendment would enable and encourage local

authorities to consider carefully how they structure the set-up in schools. It will give secondary schools the opportunity to be more imaginative in involving parents. It is important to provide for that encouragement in the bill; otherwise, I fear that the scenario will remain as it always has been and that the bill will not improve the situation and will not bring in those parents who are not engaged in education but who we badly want and need to get engaged. For those reasons, I hope that the committee will support the amendment.

10:30

Mr Macintosh: I am sympathetic to the reasoning behind amendment 25. We certainly want to remove all the factors that would discourage parental involvement. However, I have the feeling that the amendment is unnecessary. The whole ethos of the bill is to encourage parental involvement and to remove factors that discourage parental involvement. Trying to spell that out in the proposed manner would not help with understanding the bill.

The bill will do two things: first, it will improve the method of parental representation; and it will improve parental involvement. We are placing a duty on local authorities always to have in mind the improvement of parental involvement. Singling out the issue as the amendment would do would not help matters; it might confuse them.

Dr Elaine Murray (Dumfries) (Lab): Like Ken Macintosh, I am sympathetic to the sentiment behind amendment 25. However, I am not quite sure what local authorities would be expected to do. Some of the factors that discourage parental involvement might lie outwith the remit of the local authority. The wording of the amendment sounds quite good, but I am not certain what additional responsibility the education authority would have if the amendment were agreed to.

Robert Brown: I am grateful for those comments. Like committee members, I recognise the intent behind the amendment in Fiona Hyslop's name and I sympathise with the desires that lie behind it. I fully agree that an education authority should take steps to address all the factors that serve to inhibit parents or to discourage them from taking an active interest in their children's education and learning and in the life of the school. Indeed, as Ken Macintosh said, that is what the bill is all about, and sections 1 and 2 set out duties in stronger and more general language than that used in amendment 25. The bill will require education authorities actively to promote parental involvement in its widest sense and to have an active strategy in place to develop it.

The amendment downgrades the importance of section 2 on strategies for parental involvement. It seeks to amend section 12, which is about ensuring that education authorities, head teachers and school staff are available to give advice and information to parents about their children's education. The amendment seeks to introduce a wider duty in respect of the factors that act against parental involvement, but that would be better addressed in section 2, which puts a duty on authorities to prepare a strategy for parental involvement. Far from encouraging a tick-box mentality, that is a much more proactive approach than has existed before, which very much takes on board the issues to which Andrew Welsh drew attention.

The committee will note that Executive amendment 42 will require ministers to issue guidance in respect of education authorities' strategies for parental involvement. I hope that it reassures Andrew Welsh, and indeed Rosemary Byrne, to know that we will ensure that the guidance addresses the need for strategies to take account of all factors that discourage or inhibit parental involvement in their children's education and learning. That will include factors arising from disadvantage or inequality. There is no real argument about the objective of the exercise; it is just a question of how things are done.

With those assurances, I hope that Andrew Welsh will feel able to withdraw amendment 25. If not, I ask the committee to resist the amendment on the ground that it is unnecessary.

Mr Welsh: I appreciate the sympathetic comments that have been made about amendment 25. I am a bit unhappy that the amendment has been described as "unnecessary" and that actions should apparently not be spelled out. The key words in the amendment are "in their judgement", which put the onus on local authorities to identify the measures that could be taken to prevent action that discourages parental involvement. The amendment seeks to give local authorities the scope and flexibility to encourage positive action on any factors that would discourage parental involvement. In fact, instead of downgrading the bill's existing wording—as the minister claimed it does—amendment 25 supports and supplements its provisions. After all, we all support parental involvement and want these provisions to be implemented. As a result, I will press amendment 25.

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Baker, Mr Richard (North East Scotland) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 25 disagreed to.

Section 12 agreed to.

After section 12

Amendment 26 not moved.

Section 13—Headteacher's report to Parent Council, Combined Parent Council or Parent Forum

Amendment 27 not moved.

Section 13 agreed to.

The Convener: The question is, that section 15 be agreed to. Are we agreed?

Mr Frank McAveety (Glasgow Shettleston) (Lab): What about agreeing section 14, while we are at it?

The Convener: Apparently, section 14 does not need to be agreed to because it has not been amended.

Section 15 agreed to.

Section 16—Establishment etc of Combined Parent Council

Amendments 39, 40 and 41 moved—[Robert Brown]—and agreed to.

Section 16, as amended, agreed to.

Sections 17 and 18 agreed to.

Section 19—Guidance

Amendment 42 moved—[Robert Brown].

Amendment 42A not moved.

Amendment 42 agreed to.

Amendment 43 moved—[Robert Brown]—and agreed to.

Section 19, as amended, agreed to.

Section 20—Interpretation

Amendment 28 not moved.

Section 20 agreed to.

Sections 21 to 23 agreed to.

Schedule

REPEALS

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 57 and 44.

Robert Brown: Section 87B of the Education (Scotland) Act 1980, as inserted by the Self-Governing Schools (Scotland) Act 1989, states that education authorities must not exclude anyone who is not employed by the authority from consideration for appointment as a teacher. The provision was intended to protect teachers in the sector from being excluded from appointment to an advertised local authority post.

However, as current employment legislation already ensures open and fair competition for advertised posts, retaining section 87B could create a tension between existing legislation and the flexible and modern appointments system that we have proposed and that our key stakeholders have told us that they want to see.

Section 87A of the 1980 act, which amendment 57, in the name of Rosemary Byrne, would repeal, deals with the appointment of principal teachers. The section is currently suspended and it is our declared policy intention to repeal it. Many of our key stakeholders, in particular local authorities and teacher unions, raised the issue in response to the consultation on head teacher appointments. Therefore, although the issue does not concern the involvement of parents, given how the bill has evolved, we have the opportunity to repeal the section and we are happy to accept amendment 57. It will be necessary to lodge a consequential amendment relating to section 50 of the Local Government in Scotland Act 2003, under which section 87A is presently suspended. We will deal with that by lodging a tidying-up amendment at stage 3.

Amendment 44 is a consequential amendment to the long title of the bill, which reflects the repeal of section 87B, and now section 87A, and the impact on appointment procedures for all teachers, not just head teachers and deputes.

I move amendment 45.

Lord James Douglas-Hamilton: Section 87B of the Education (Scotland) Act 1980 states, with regard to the selection of teachers:

"Without prejudice to section 7 of the Local Government and Housing Act 1989 (which provides for the appointment of staff of local authorities to be made on merit) and to any requirement in any other enactment as to the considerations to which they may or may not have regard in making appointments, an education authority who are considering an appointment of a teacher shall not exclude any person from consideration for such an appointment on the ground that—

(a) he is not employed by that education authority; or

(b) he is not employed by a particular employer or class of employer; or

(c) he is not currently employed as a teacher."

It seems to me that the provisions of section 87B are still valid. The minister talked about tensions, but if he removes that whole section, he will be introducing a situation that is too restrictive.

Robert Brown: That goes back to the point that I made. We are talking about a particular section that sets out specific requirements, which are no longer necessary because of the general arrangements in employment law.

We are trying to introduce a flexible arrangement for the appointment of head teachers, which can be altered and brought up to date by regulation, if necessary, in accordance with changing requirements of the standard for headship, without having to pass an entirely new bill. I do not imagine that section 87B of the 1980 act would cause an issue in most instances, but it goes against the grain of the flexible arrangements for appointments that we require. Against that background, and given that the provisions are in any event unnecessary, we request that the committee agrees that the section should be repealed.

Amendment 45 agreed to.

Amendment 57 moved—[Ms Rosemary Byrne]—and agreed to.

Schedule, as amended, agreed to.

Section 14—Procedures for appointment of headteacher or deputy and participation of a Parent Council

The Convener: I now remember that we did not deal with section 14 before, because we agreed to deal with it last.

Amendment 14, in the name of Lord James Douglas-Hamilton, is grouped with amendment 58.

Lord James Douglas-Hamilton: Amendment 14 would ensure that there is no diminution in the statutory rights of parents in relation to the appointment of senior staff. It provides for the setting out in the bill of procedures for parental representation in the appointment of head teachers and deputy heads, with parent councils and local authorities represented equally on appointment panels.

Bill McGregor of the Headteachers Association of Scotland said at the Education Committee on 14 December:

"The bill sets out to improve parental involvement and to encourage parents to join in the life of the school, so I would have thought that partnership would be implicit when it came to employing and appointing senior staff. My experience in 15 years as a head teacher was that parents thought it absolutely vital to be involved in that. One of the ironies of the bill is that it actually presents an opportunity to reduce the role of parents. I would find that very difficult to live with."—[*Official Report*, *Education Committee*, 14 December 2005; c 2917.]

Amendment 14 is based on the provisions of the existing School Boards (Scotland) Act 1988; it provides for the chair to be a nomination of the education authority.

I am glad to support amendment 58, which is entirely sensible. It will give parent councils the right to seek advice on the appointment of head teachers and will place a duty on authorities to ensure that members of a parent council have access to appropriate training on the appointment of senior staff.

The appointment of a head teacher or deputy head teacher is of crucial importance to a school and its pupils, so it is desirable that parents, who may neither be education professionals nor have experience of the statutory framework, are given training and advice to support them in forming their views.

Given that I support the minister's amendment 58, I wonder whether it is too much to hope that he will support mine.

I move amendment 14.

10:45

The Convener: We will find out in a second. I call the minister to speak to amendment 58 and the other amendment in the group.

Robert Brown: Partnership is implicit in what the Executive is trying to do in all aspects of the bill. However, partnership is wider that that between parents and the local authority; professional interests are also involved. Partnership is endemic to what we are trying to do. Parents are and will continue to be involved in the fullest way in the appointments process.

As part of the consultation on the bill, we asked about the overarching principles of replacing and modernising the appointments process for senior staff and retaining parental involvement in the process. We then undertook further consultation in November, when we asked what the finer details of the appointments process should look like. Our intention is that such detail should be set out in regulations rather than in primary legislation and we have provided for that in the bill. As I have said about other Executive amendments, that allows processes to adapt more easily to wider change in the educational agenda, including changes to the standard for headship.

We appreciate that representation on appointment panels is an important issue for parents. However, as the committee will have

seen from the consultation analysis and our response, most key stakeholders do not want to see a return to the kind of prescriptive legislation that we have at the moment, which can quickly become out of step with changes in educational practice. Such prescription can also cause unnecessary delays to the appointments process.

In our response to the consultation on head teacher appointments, I think that we hit the nail on the head when we said on the make-up of the appointment panel:

"This is a complex area, we believe it is essential to strike a balance between the different communities of interest: parents who know the needs of their communities; educational professionals who know most about the demands of running modern schools; and the local authority who carry statutory responsibilities both as employer and in relation to the delivery of high quality education in their area. We believe appointment panels are stronger when they contain these different perspectives, and when members are focussed on their single common interest – to collectively secure for the school the best possible candidate."

I hope that that statement of intent is one that committee members will find compelling and attractive. However, our view is that the Executive should not prescribe detailed composition of panels from the centre. We want, through regulations, to be able to optimise the involvement of parents at all stages of the appointments process—in the sift as well as in interview procedures.

On amendment 58, I echo what Lord James Douglas-Hamilton said. We recognise that training can be helpful for members of parent councils. We considered putting a general requirement for training into the bill but, on balance, we came to the view that it would be wrong to overformalise the position by suggesting that training is a prerequisite of being a member of a council, which we know some parents might find off-putting. It will be for parent councils to decide on what is appropriate for them and to agree local arrangements for training.

When it comes to involvement in the formal process of appointments, we consider that there is a real need for specialist training. As the committee will see from our responses to the consultation on head teacher and deputy head teacher appointments, the need for training, guidance and guidelines to be provided to all parents who are involved in the appointments process was a common thread throughout all responses.

We have lodged amendment 58 to ensure that education authorities are required to make adequate training available to members of parent councils, or persons acting on their behalf, who are involved in the consideration and selection of head and deputy head teachers. Our whole approach in the bill and in the consultation on appointments is designed to ensure that the best possible candidates are put in place and that all stakeholder interests can contribute properly to the process. Our aim is to have something that everyone can sign up to—there is often consensus in appointment procedures in any event. Obviously, that is the best way forward.

I ask the committee to reject amendment 14, as it goes in a different direction, which would be inflexible and out of date in comparison with the new requirements that we seek to introduce through the bill.

Mr Macintosh: On amendment 58, I hope that the committee will be unanimous, as were the consultation responses, in accepting the need for and desirability of training for parents who apply to sit on a board to appoint a head teacher. That would be a valuable addition.

On amendment 14, although I can see where Lord James Douglas-Hamilton is coming from—as the bill is all about promoting parental involvement, and we want parents to be involved in the appointment of head teachers—I feel that we have tried to strike a balance between the flexibility that the bill offers and the rather rigid and overly formal system that the school boards imposed, and that a return to the school boards system would not be welcome. There is a huge variety of different schools across Scotland and to impose one system for the appointment of head teachers for all schools would not be desirable or in the best interests of parents at all those schools.

My experience is that, where parents are involved in the appointment of a head teacher, it is highly unlikely that a panel with a majority of professionals or local authority representatives would overrule the wishes of parents if the parent representatives on the appointment panel felt strongly against an appointment. I do not think that we need to build in so formal and restrictive a policy as Lord James Douglas-Hamilton suggests in amendment 14 with his proposal for a certain level of parental representation. I suggest that the committee should reject amendment 14 but accept amendment 58.

Dr Murray: Like Ken Macintosh and the minister, I feel that amendment 14 runs contrary to the spirit of the bill, although I can understand why Lord James feels that parents should be significantly involved at the final stage. I also have to disagree with the suggestion that parental involvement in the appointment of senior staff would somehow be diminished, because if parents are involved in the sift, they will have increased involvement. I have been involved in the appointment of head teachers in the past and I know that the parents on the school board who came to the final interview got the shortlist that we

had decided and had had no input into how that shortlist was compiled. I think that parents will now have more involvement and that if they are involved earlier, the likelihood of conflict at the final stage will be reduced.

Lord James Douglas-Hamilton: I thank the minister for his reply, but my view is that it is important, and preferable, to have the arrangements in the bill rather than to deal with them by some other means. I believe in that principle, so I will press amendment 14. However, I will also support amendment 58.

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baker, Mr Richard (North East Scotland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)
Welsh, Mr Andrew (Angus) (SNP)

The Convener: The result of the amendment is: For 1, Against 7, Abstentions 0.

Amendment 14 disagreed to.

Amendment 58 moved—[Robert Brown]—and agreed to.

The Convener: Amendment 15, in the name of Lord James Douglas-Hamilton, is grouped with amendment 29.

Lord James Douglas-Hamilton: Amendment 15 is supported by the Headteachers Association of Scotland. Its purpose is to make certain that a head teacher is appointed to one school only. It is my view that the head teacher is vital to the ethos and effective running of the school, so amendment 15 seeks to ensure that heads will not be employed as cluster managers of a number of schools.

Bill McGregor of the Headteachers Association of Scotland said in the Education Committee on 14 December 2005:

"I am concerned that the flexibility that is implicit in the bill might almost become a form of slackness."—[*Official Report, Education Committee*, 14 December 2005; c 2911.]

He went on to say:

"If what you mean is the appointment of a head teacher to an authority followed by placement in one of the authority's schools, we do not believe that that is good either in respect of the best use of management or, which is much more important in this forum, in respect of parental involvement in selection and representation. Parents want to know who will be the head teacher of their school rather than of a school. The Headteachers Association of Scotland opposes that concept."—[*Official Report, Education Committee*, 14 December 2005; c 2920.]

I agree with the spirit of amendment 29, in the name of Fiona Hyslop, not least because it addresses the concerns of the Headteachers Association of Scotland. Interestingly, it is indirectly supported by Bill McGregor, who said on 14 December:

"If what you mean is the appointment of a head teacher to an authority followed by placement in one of the authority's schools, we do not believe that that is good either in respect of the best use of management or, which is much more important in this forum, in respect of parental involvement in selection and representation. Parents want to know who will be the head teacher of their school rather than of a school. The Headteachers Association of Scotland opposes that concept."—[*Official Report, Education Committee*, 14 December 2005; c 2920.]

I repeat that quote because I believe that it is absolutely in line with amendment 29 as well as with amendment 15.

I move amendment 15.

Mr Welsh: Amendment 29 reinforces the point that has been made by Lord James Douglas-Hamilton, which is that appointments should be made to a specific school and that education authorities should consult the parent council about long-term redeployment of senior management to another school.

Transfers can and should happen for good education and management reasons—for example, to deal with long-term illness or death, or to provide extra support to another school. However, the committee was concerned about the evidence from the Convention of Scottish Local Authorities, which suggested that COSLA would like to move to a position in which head and deputy head teachers were contracted to be employed not in a particular school, but in the education authority as a whole, to be redeployed at the will of the council without any recourse to the parent council. It is not just initial appointments that should have parent council involvement; long-term transfer, for example, should—at the very least and even as a matter of courtesy—be subject to consultation of the parent council on the implications for the school.

I support the principle that appointments should be made to specific schools rather than to the education authority.

Dr Murray: I understand why the head teacher organisations were concerned about the evidence that we received from COSLA and from the Association of Directors of Education in Scotland, which seems to want to extend the situation beyond what exists at the moment. However, we must reflect on the fact that the bill will not change

the current situation with regard to the transfer of head teachers and will not introduce what COSLA has asked for.

My concern about amendments 15 and 29 is that they might prevent secondment of head teachers. The secondment of an experienced head teacher for a year or so into the central organisation of the education authority can be very beneficial in terms of development of policy, if the head teacher is deployed on that, and to the continuous professional development of the head teacher.

I acknowledge the spirit of amendment 29, which would require the agreement of the parent council to secondment. However, if a school has a very good head teacher, the parent council may be reluctant to part with them for more than six months, although that person's experience could be extremely useful in the development of policy in the local education authority.

I am, therefore, inclined to support neither amendment. The water was significantly muddied by some of the comments that were made by COSLA and ADES when we took evidence from them.

11:00

Mr Macintosh: I reinforce Elaine Murray's comments. It is not helpful to tie an appointment to a specific school, as Lord James Douglas-Hamilton's amendment 15 would. I will give a current example from a school in East Renfrewshire. The head teacher retired early and it was difficult to fill the post immediately. Therefore a very good head from another school is temporarily running both schools. That is a highly advisable step in the circumstances and it would not be possible if we were to agree to Lord James's amendment, which would introduce a rigid and inflexible system.

I have a lot more sympathy with Fiona Hyslop's amendment 29, to which Andrew Welsh spoke. Speaking as a parent, I would not like the head teacher of my children's school to be taken away for an extended time, although it would be okay for a short period. The question is whether we want to deal with the issue in legislation; it is currently not dealt with in the bill. It would not be helpful to formalise in legislation the feelings of me and other parents. Much as I did not agree with COSLA's and ADES's evidence to the committee about treating head teachers as jobbing workers who can be moved around from school to school, it would not necessarily help if in legislation we were to formally prevent them from being moved around. I will resist both amendments.

Ms Byrne: I speak in support of amendments 15 and 29. If we are to have true parental involvement, parents must be involved in ensuring that a named head teacher is appointed to their school. Ken Macintosh's example of a head who is running two schools, albeit temporarily, is not a situation that I like to see. Schools must be part of the community; for that to be the case there must be a sense of belonging. Parents must therefore be able to recognise who is in charge of their school and they should have some input in relation to a secondment that will last for more than six months. Parents must have that input, given that we are saying that we will involve them across the board. It is contradictory to prevent such involvement, which is very important. I would hate to see head teachers not being appointed to specific schools. I will support both amendments.

The Convener: I will make a couple of comments before I ask the minister to respond to the debate.

The issue requires to be examined because the current rules could be abused by some local authorities. I know that a primary school in my constituency has not had a permanent head teacher for almost three years because of a series of secondments. However, I am not convinced that the way to deal with the problem is to include a provision in primary legislation. The issue should be dealt with through guidance and good practice, which should be adopted as a matter of course. Consultation should happen not only if a head teacher is seconded for six months; if a head teacher is to be removed from a school for any length of time it would be good practice for the education authority to consult and discuss the matter with the parent council. The matter should be covered in guidance rather than in legislation.

I would be surprised if any education authority would want to appoint a pool of head teachers rather than appoint them to specific schools. That would not be good practice, but there must be flexibility within the legislation so that education authorities can respond to circumstances such as the long-term illness of a head teacher or other reasons. Such a situation might arise because a school is performing particularly badly and the education authority wants to get the best support into the school quickly. The education authority should have such flexibility, but it should act according to sensible guidance and good practice. Legislation is not the right way to deal with the issue.

I ask the minister to respond to the debate.

Robert Brown: I echo what the convener said at the end of his remarks. Amendments 15 and 29 raise an important issue and the committee is right to want to probe the matter more deeply, but a number of red herrings have been brought into the debate. Elaine Murray was right to say that the bill will essentially make no change to the current

arrangements. The overarching desire is to have flexibility by way of guidance and so on. We should keep that in mind.

We make clear in our response to the consultation analysis on head teacher appointments that our policy intention remains that advertising of vacancies should be the norm, although we accept that there could be occasions when local authorities, in order to fulfil their statutory obligations as employers, might need a more flexible approach to making appointments. In such circumstances, appointments should require discussion with parent councils. The guidance will take that on board. It is certainly not our intention to allow head teachers to be whisked away willy-nilly without some consultation, even if there are urgent requirements elsewhere. We will have to explore the details and we will probably wish to discuss the matter with the committee in the future. I stress that appointment as part of a pool would be an exceptional situation: the norm is for head teachers to be appointed to schools.

It is worth pointing out that a wider power is given with respect to appointments, as set out in the teachers' scheme of conditions of service, which allows local authorities to move teachers or head teachers as necessary for the smooth running of their services. That could be in order to deal with situations such as have been described by a number of members; for example sickness, early retirement, secondment to headquarters and so on. Such transfers will happen only exceptionally, but there needs to be provision for such situations. We will try to deal with that appropriately in guidance.

Once again, I draw attention to the starting point. When I talked about red herrings, I was referring to the suggestion that the process—as Lord James described it when commenting on observations that were made in evidence—is one of appointing people to local authorities and then appointing them to schools. That is not what happens. The appointment is to a school. However, the employer is the local authority, which ultimately has discretion to transfer people if necessary.

Amendments 15 and 29 would both put in the bill detail that would be unnecessary, confusing and against the wishes of the overwhelming majority of respondents to our consultation. Section 14 aims to set out a framework for parental involvement—which we regard as central—in the appointment of head teachers and deputes. It does not say what the results of the process should be, which is a matter for local decision making. Section 14(1) will place a duty on authorities to inform parent councils of their procedures for filling vacancies; we are confident that that, along with the provisions that allow the making of regulations, will be sufficient. Scottish ministers have powers under section 14(3) to tackle instances in which local authorities, against our expectation and against best practice, overuse their powers to move head teachers. We can deal with that should any practical problems emerge.

The drafting of amendment 29 raises a number of questions—its terms are a bit uncertain in some respects. First, the definition of the term "transfer" is not very clear. It could potentially create another perceived level of appointment, with less involvement by the parent council. That would require no consultation of the receiving school's parent council and would make no mention of the movement of staff outwith the education authority's area, so it could be done without any consultation of the parent council of either school. Neither would a duty be placed on authorities to consult in cases in which a transfer was for less than six months. Unfortunately, as with many such things, the law of unintended consequences could produce a situation in which short-term transfers had become the norm, which could be more damaging to the continuity of leadership within schools.

Those are technical points, but I do not want to take anything away from the central issue, which is that appointment to schools will be the norm, while the local authority, as the employer, will have powers reserved to it to do certain things in exceptional circumstances. None of that is a change from the current position, and we have heard no evidence to suggest that the present arrangements have been abused. If the arrangements are abused, we have powers under section 14 to deal with that.

I hope that, against that background, and with the assurance that I am more than happy to discuss with members or the committee as a whole any further implications or concerns, the committee will be prepared to reject both amendments 15 and 29 and that the two members concerned might be willing to withdraw and not to move the amendments respectively.

Lord James Douglas-Hamilton: I wish to press amendment 15 to the vote. Both amendments 15 and 29 are competent. It seems to me that it would give reassurance and clarity to the teaching profession and parents if these matters were covered in the bill. It seems that far too much is being left to guidance. If the amendments were included in the bill, it would be crystal clear what is intended.

The Convener: The question is, that amendment 15 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Baker, Mr Richard (North East Scotland) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Smith, Iain (North East Fife) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 15 disagreed to.

Section 14, as amended, agreed to.

After section 14

Amendment 29 not moved.

Section 24 agreed to.

Long Title

Amendment 44 moved—[Robert Brown]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 of the Scottish Schools (Parental Involvement) Bill. I look forward to seeing you all again at stage 3. I thank the minister and his team for their attendance.

That concludes the public part of the meeting. Before we go into private session, I remind members that the pupil motivation inquiry report was published this morning and is now available on the Parliament website.

11:11

Meeting continued in private until 11:58.

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