



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 12 May 2010

Session 3

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**Wednesday 12 May 2010**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>3555</b>
<b>SUBORDINATE LEGISLATION .....</b>	<b>3556</b>
Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 (Draft) .....	3556
Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010 (Draft) .....	3556
Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 (Draft) .....	3556
Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 (Draft) .....	3556
<b>SUBORDINATE LEGISLATION .....</b>	<b>3580</b>
Additional Support for Learning (Appropriate Agencies) (Scotland) Amendment Order 2010 (SS1 2010/143) .....	3580
Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SS1 2010/144) .....	3580
Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SS1 2010/145) .....	3580
Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2010 (SS1 2010/149) .....	3580
Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 (SS1 2010/152) .....	3580
<b>EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACTS 2004 AND 2009 .....</b>	<b>3591</b>
"Supporting Children's Learning: Code of Practice (Revised Edition)" .....	3591
<b>SUBORDINATE LEGISLATION .....</b>	<b>3597</b>
Additional Support for Learning (Appropriate Agencies) (Scotland) Amendment Order 2010 (SS1 2010/143) .....	3597
Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SS1 2010/144) .....	3597
Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SS1 2010/145) .....	3597
Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2010 (SS1 2010/149) .....	3597
Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 (SS1 2010/152) .....	3597
<b>EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACTS 2004 AND 2009 .....</b>	<b>3598</b>
"Supporting Children's Learning: Code of Practice (Revised Edition)" .....	3598

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# **EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE**

## **14<sup>th</sup> Meeting 2010, Session 3**

### **CONVENER**

\*Karen Whitefield (Airdrie and Shotts) (Lab)

### **DEPUTY CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

### **COMMITTEE MEMBERS**

\*Claire Baker (Mid Scotland and Fife) (Lab)

\*Aileen Campbell (South of Scotland) (SNP)

\*Ken Macintosh (Eastwood) (Lab)

\*Christina McKelvie (Central Scotland) (SNP)

\*Elizabeth Smith (Mid Scotland and Fife) (Con)

\*Margaret Smith (Edinburgh West) (LD)

### **COMMITTEE SUBSTITUTES**

Ted Brocklebank (Mid Scotland and Fife) (Con)

Hugh O'Donnell (Central Scotland) (LD)

Cathy Peattie (Falkirk East) (Lab)

Dave Thompson (Highlands and Islands) (SNP)

\*attended

### **THE FOLLOWING GAVE EVIDENCE:**

Katrine Feldinger (Scottish Government Children, Young People and Social Care Directorate)

Ian Glover (Scottish Government Learning Directorate)

Adam Ingram (Minister for Children and Early Years)

Robert Marr (Scottish Government Legal Directorate)

Kathleen McNulty (Scottish Government Children, Young People and Social Care Directorate)

Andrew Mott (Scottish Government Children, Young People and Social Care Directorate)

Rachel Sunderland (Scottish Government Learning Directorate)

### **CLERK TO THE COMMITTEE**

Eugene Windsor

### **LOCATION**

Committee Room 4

## Scottish Parliament

### Education, Lifelong Learning and Culture Committee

*Wednesday 12 May 2010*

[The Convener *opened the meeting at 10:01*]

### Decision on Taking Business in Private

**The Convener (Karen Whitefield):** Good morning. I open the 14<sup>th</sup> meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I remind all of those present that mobile phones and BlackBerrys should be switched off for the duration of the meeting. We have received no apologies. I understand that Claire Baker is running a little late but intends to join the committee as soon as she can.

Agenda item 1 is to decide whether to consider the committee's draft stage 1 report on the Children's Hearings (Scotland) Bill in private at this meeting and future meetings. Is that agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

**Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 (Draft)**

**Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010 (Draft)**

**Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 (Draft)**

**Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 (Draft)**

10:02

**The Convener:** Item 2 is to take evidence on subordinate legislation under the Protection of Vulnerable Groups (Scotland) Act 2007. This is the first batch of subordinate legislation that the committee expects to consider over the following months and comprises four affirmative instruments. I am pleased to welcome Adam Ingram, the Minister for Children and Early Years, and Scottish Government officials. We are joined from the PVG implementation team in the Scottish Government by Andrew Mott, PVG implementation legislation manager; Katrine Feldinger, the project lead; and Kathleen McNulty, a team member. I understand that the minister wishes to make an opening statement before the committee moves to questions.

**The Minister for Children and Early Years (Adam Ingram):** I will give a brief introduction before covering each order in turn, if members think that appropriate.

The PVG scheme is established by the Protection of Vulnerable Groups (Scotland) Act 2007 and is due to go live later this year. In essence, its aim is to ensure that people who have a past history of inappropriate behaviour are unable to work, on a paid or voluntary basis, with children or protected adults. The scheme will bring about a streamlined disclosure process for individuals working with vulnerable groups by replacing enhanced disclosure with a membership scheme. Disclosure Scotland will retain the personal information of scheme members, so it will not be necessary for them to complete a long application form to access subsequent disclosures.

As Disclosure Scotland will continuously update scheme members' records, any new conviction or other relevant information from the police will be gathered when it arises. That means that there will be no delay in issuing future disclosures because the information will already have been collected and that, if the new information indicates that the individual may be unsuitable to work with vulnerable groups, Disclosure Scotland can take immediate action by considering the individual for listing and notifying known employers.

The PVG scheme will, for the first time, establish a Scottish adults barred list, making it much harder for people who are unsuitable to work with so-called "protected adults" to harm them through their work. If individuals apply to join the PVG scheme and Disclosure Scotland finds that there is a conviction or other information about the individual that may be relevant, the information will be assessed and may lead to the individual being considered for listing. That is a big improvement on the current process in which information is printed on an enhanced disclosure but it is left entirely to the employer to work out how serious it is. Finally, for the first time, through new types of disclosure, personal employers, such as parents employing a nanny for their child or somebody purchasing a care service through self-directed support, can ensure that the individual is not unsuitable to do that type of work.

Members will recall from the informal briefing on 10 March that quite a number of Scottish statutory instruments are required to support the delivery of the PVG scheme. The five before the committee today are just the first batch. Two of the SSIs prescribe serious offences, conviction for which may lead to an individual being automatically listed or, at least, being automatically considered for listing on the children's list, while the other three modify the scope of the scheme with regard to working with children and protected adults. All today's instruments have been consulted on as draft SSIs in recent months and have been the subject of extensive discussions with stakeholders. I should also point out that it has taken us two years to get to this point.

Before summarising the purpose of each SSI, I emphasise again my overriding concern for proportionality in the scope of the scheme and fairness in how it goes about identifying who is unsuitable for this type of work. I think, convener, that we will return to the notions of proportionality and fairness throughout the morning.

The purpose of the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 is to set out the very few circumstances in which an individual will be automatically listed. Automatic listing means that the individual does not have the right to make

any representation before they are listed and the order sets out the very small number of serious offences for which conviction on indictment leads to automatic listing.

We acknowledge that offences are committed by a wide range of people in many different circumstances. However, where an individual's behaviour involves the murder of a child or any form of non-consensual sexual penetration of another person, they will be automatically listed on both the children's and adults' lists, which prevents them from working with vulnerable groups unless or until they make a successful application for removal from one or both lists.

Automatic listing is reserved for these most serious offences, the nature of which suggests that the individual is unequivocally unsuitable to work with vulnerable groups. The schedules to the order identify the 12 or so Scottish offences, and their non-Scottish equivalents, to which automatic listing applies, and we have liaised with the Independent Safeguarding Authority to ensure that a consistent approach is taken to these serious offences across the United Kingdom. During the consultation, the majority of stakeholders agreed that our approach to automatic listing was proportionate.

With regard to the Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010, which is commonly referred to as the automatic consideration for listing order, once the PVG scheme is live, an individual convicted of an offence contained in schedule 1 to the 2007 act will be automatically considered for listing on the children's list. Courts will be under a duty to refer individuals convicted for any of those offences to Disclosure Scotland and referrals will always lead to consideration for listing on the children's list, hence the use of the term "automatic consideration".

The purpose of the order is to make some changes to schedule 1 to the 2007 act for a number of reasons. The Sexual Offences (Scotland) Act 2009, which the Parliament passed last June, introduces some new sexual offences. During the process of developing the secondary legislation, some other offences were brought to the Scottish Government's attention that covered other types of harm that the 2007 act aims to prevent. We also want to ensure that anyone who becomes a registered sex offender is automatically considered for the children's list. Again, from the consultation, we know that the majority of stakeholders supported these changes as they will enhance the protection of Scotland's children.

Turning to the scope of regulated work, I will briefly explain the purpose of the Protection of Vulnerable Groups (Scotland) Act 2007

(Modification of Regulated Work with Children) Order 2010. Schedule 2 to the 2007 act defines regulated work with children and, as a consequence, those who should join the PVG scheme because they work with children. In its clarity and focus, the schedule is, even in its unamended form, a significant improvement on the Protection of Children (Scotland) Act 2003. However, the order makes three significant adjustments: first, to provide a clear and proportionate regime for host parenting; secondly, to narrow existing provision for work in establishments; and thirdly, to narrow the scope of charity trustees.

The order makes specific provision for host parenting as an aspect of regulated work with children but disapplies the offences of appointing a barred person to do this type of work. That means that organisations arranging overnight accommodation in family homes as part of school exchange programmes and visits, trips or excursions can—but are not obliged to—check potential host parents. As a result, whether to make such checks in effect becomes a local policy decision. The fact that it will be a criminal offence for a barred individual to undertake host parenting will provide some protection across the board, and I have taken this unusual approach because there are strong arguments both for the need to check potential host parents in order to protect children and for the avoidance of inappropriate deterrents to potential host parents, depending on the circumstances of the hosting arrangements. Furthermore, stakeholders reached no consensus on this very difficult and tricky issue.

Schedule 2 also sets out a number of establishments such as schools in respect of which an individual is deemed to be doing regulated work with children if that individual's normal duties include work in that establishment. The provision is designed to capture people whose work provides the opportunity to harm children, even though their work does not involve activities such as caring for or teaching children. We must remember that Ian Huntley, as a school caretaker, was in just such a position. However, the provision as it stands is excessive because it captures, for example, builders working on school premises in the holidays when no children are present. As a result, the amendment to schedule 2 seeks to introduce an additional condition stating that the post must give the worker the opportunity to have

“unsupervised contact with children ... when doing anything permitted or required in connection with”

their work.

10:15

In respect of charity trustees, the provision for regulated work with children and regulated work with adults has been brought into line, so much of what I say here applies equally to the adults' workforce. The main reason for including charity trustees within the scope of regulated work is the trust and access to children and/or protected adults that the position confers, or would be assumed by a layperson to confer. That is why charity trustees are treated differently from directors of businesses with similar workforces, for example. However, the provision in the PVG act is too broad. The revised provision in the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 requires that not only is the main purpose of the charity to provide benefits for children but the principal means of delivering those benefits is by workers of the charity doing regulated work with children. That excludes charities whose main purposes are aimed at adults or the population more generally and those which deliver indirect benefits only, such as financial, legal or medical research.

The Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 makes the same and other provision to narrow the scope of regulated work with adults by amending schedule 3 to the PVG act. I want to ensure that the PVG scheme does not capture posts that afford the worker no real opportunity to harm protected adults. The order removes fairly wide provision for those providing care home services from the scope of regulated work with adults. Those workers who should be PVG scheme members will be caught by other provision in schedule 3. For example, the provision currently captures an administrative worker in the headquarters of a large care home provider, for which there is little justification in terms of risk management.

The order also narrows down work in establishments such as care homes, so that only those people whose normal duties involve working in the specified establishments and who have unsupervised contact with protected adults that is not incidental to their work will be caught. That takes out of scope, for example, the postman delivering a parcel to a care home; a repairman working in an area with no access to residents; or the church choir entertaining care home residents, even when staff are always present. I am sure that we all agree that it would be disproportionate to expect those types of worker to become members of the PVG scheme. We therefore intend to limit the provisions to ensure that, where workers are not in a position to build trust or relationships with protected adults, or where they pose very little or

no risk of harm, they should not fall within their scope.

The order also amends the coverage of charity trustees so that it is proportionate and in line with the provisions for children's charity trustees, which I have just explained in the context of the modification of regulated work with children order. As the legislation is drafted, there was concern that all 40,000 Church of Scotland elders, as trustees, would become scheme members, which is not appropriate as a result of that role alone. The revised provision is much narrower.

Both the modification of regulated work with children order and the modification of regulated work with adults order are before you today only—I emphasise—because of the intelligent and committed engagement that we have had from stakeholders as we have prepared for PVG implementation. I record my thanks to them for working so hard with the Scottish Government to make the PVG scheme fit for purpose.

The protected adults regulations prescribe the health and welfare services, receipt of which make an adult a protected adult. Relevant support and care services are set out on the basis of the PVG act, and these regulations complete the picture.

During consultations, stakeholders were overwhelmingly in favour of a service-based definition of "protected adult" as it avoids stigmatising an adult by reason of disability or personal characteristics. It places no obligations or expectations on adults to demonstrate vulnerability and avoids categorising adults solely by a condition or disability. The regulations add to the services that are already prescribed by section 94 of the act. Taken altogether, that means that adults receive protection in situations in which they must necessarily trust the person who is providing a service but that those services are limited to ones in which there is an actual risk of harm, such as care, health and welfare services. The regulations seek to ensure similar protection across public and independent health sectors, so that the PVG scheme will encompass those who do regulated work in hospitals, in local general practices or within the community. They will also ensure that services such as accident and emergency, the ambulance service and NHS 24 are included.

In order to ensure that workers for voluntary and private sector organisations that provide relevant non-statutory services to individuals are included, the regulations define what constitutes a welfare service. That will enable such organisations to require their workers who deliver front-line care to be PVG scheme members. The definition of a welfare service that has been adopted is similar to the definition of a social care service under the existing disclosure scheme, so there should be

little or no disruption to established procedures for the organisations.

I commend the instruments to the committee as striking the right balance between the competing demands of the protection of vulnerable groups, the proportionate use of disclosure and the rehabilitation of offenders. I am happy to answer any questions that the committee may have.

**The Convener:** Thank you. The more observant among members might have noticed that, although I said that we were considering only four instruments today, the minister spoke about five. There is a reason for that. The fifth and final instrument on which the minister commented went before the Subordinate Legislation Committee only yesterday, so it is not on our agenda today. However, as the minister has given evidence on it, this will be the committee's opportunity to question the minister on it—we will not have that opportunity next week, although he will be back to talk to us about others.

**Ken Macintosh (Eastwood) (Lab):** For clarification, which instrument is that?

**The Convener:** It was the final one—I do not have the title.

**Adam Ingram:** It is the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161).

**The Convener:** It is a bit confusing, as we have not seen it in preparing for today's meeting.

**Andrew Mott (Scottish Government Children, Young People and Social Care Directorate):** I will explain. The reason for talking about the protected adults regulations today is that, in looking at regulated work with adults and the order that amends that, it is useful to have the background about whom we are trying to protect in the first place. The act tells only half the story; the prescribed services regulations set out the health and welfare services that are involved. I apologise for the confusion, but we thought that it might be helpful to have that background in looking at the orders today.

**The Convener:** Thank you for that clarification.

**Margaret Smith (Edinburgh West) (LD):** Could you clarify what you said about staff working in and around care homes? I totally agree with what you said about the need for the scheme to be proportionate and balanced. You said that it does not make sense for people who work in an admin role in a headquarters and who are nowhere near anybody in a care home to be part of the scheme, and we certainly agree with that. However, will you clarify for us where somebody fits into the scheme whose job does not necessarily mean that they have unsupervised access to an elderly person



but who nevertheless works in a care home in proximity to such people and might have the opportunity to do harm if they are the kind of person who has the intent to do so? I am thinking about somebody who works in an office, for instance. Does the scheme now cover them or not?

**Adam Ingram:** In essence, we are trying to identify the people who work within an establishment who could take advantage of the opportunity to have unsupervised contact with individuals and build up a trusting relationship with them. By and large, they will be front-line staff, or their managers and supervisors, who deal with residents day to day.

I refer you to my colleague, who has particular knowledge on that area.

**Katrine Feldinger (Scottish Government Children, Young People and Social Care Directorate):** The amendment that we have made, which removes the provision on care home services, is intended to make the 2007 act more proportionate. On the situation to which Margaret Smith refers, in which an individual with a proclivity to cause harm deliberately tries to find a way in, the wording states that unsupervised contact has to be in the context of something that is permitted in the course of that person's work duties. It will be for the employer to establish whether someone who works in an office does or does not have sufficient opportunity that it may pose a risk. PVG is a part of safe recruitment practices, so the employer should seek references and chase up anything else about which they may have concerns.

**Elizabeth Smith (Mid Scotland and Fife) (Con):** I ask for clarification about schools that are involved with parents who host school trips abroad. Has the Scottish Government taken advice from other countries as to how they operate such arrangements? That would be important for an exchange between Scotland and France or Spain, for instance, where there might be different procedures.

You said that whether to carry out checks is a local decision. Did you mean that it is a decision for the headteacher in the school or for a local authority? In other words, would we end up with a single decision for a local authority or would it be at a headteacher's discretion as to how it operates?

**Adam Ingram:** My understanding is that it is the responsibility of whoever makes the hosting arrangements. That could, I presume, be a headteacher or somebody within the education authority.

Host parenting falls in a bit of a grey area. I suppose that it is a little like foster caring, in which

there is regulated work on the one hand but family life on the other. It somehow overlaps or fits somewhere between the two. We think that special provision is appropriate, just as we have for foster carers. We intend to help those who are organising host arrangements with guidance so that we can steer people between the twin poles of risk and flexibility.

I do not know whether we have considered experience from other countries.

10:30

**Elizabeth Smith:** I asked the question because a large number of schools in Scotland make several visits abroad, particularly to European countries. Obviously, the implications are substantial in terms of both bureaucracy and cost, because nowadays schools tend to err on the side of taking the precaution that they must have the paperwork done.

I have concerns, partly because there would be a bit of inconsistency but also because schools might stop doing these trips, which are educationally enormously valuable for teachers and pupils. We have to be absolutely clear about what the guidelines on that would be: I would hate the legislation to become so burdensome that it stopped people making such trips. It is important that we get consistency, because different schools might have very different approaches. If you are happy with that, that is fine, but it raises quite a few issues.

**Adam Ingram:** As Elizabeth Smith points out, under the POCSA regulations we are seeing risk aversion creeping into such decisions. What we are trying to do in the order, while ensuring that it is still an offence for barred people to be in that position, and that we can prosecute barred people who take on a host parenting role, is to relieve the hosting organisation, if you like, from the fear of prosecution, which tends to make people very risk averse and to revert to disclosure checking regardless of the circumstances. By removing that element, I hope that people can look at the merits of a case without looking after the interests of their organisation and instead focus on the needs of the children who are being assisted by such exchanges.

**Elizabeth Smith:** I take that point and I regret that we are in this situation. It is unfortunate that this risk-aversion scenario comes up so often, but I foresee considerable difficulties for education departments that might have to make such decisions, given that different headteachers might want different things.

Another question is who bears the cost, which is—if I am not mistaken—a big issue for schools. I would like an assurance that you have thought the

matter through. From what I know of the teaching profession and people who represent parents and teachers—some of whom are in the room—I think that they, too, would like that assurance.

**Adam Ingram:** Yes. Would Andrew Mott like to pick up on that point?

**Andrew Mott:** Many organisations have, under POCSA, struggled to work out how the legislation applies to them, because there is no explicit reference in it to host parenting. It requires case-by-case assessment of the general provisions for working with children to establish whether a particular host-parenting arrangement is or is not in scope. Of course, under POCSA, if the arrangement is in scope and the checks have not been done and an unsuitable person is employed, there would be a lot of problems to be faced. We have tried to make the situation clear by including an explicit reference to host parenting and by saying that, now that we have explicitly identified it and brought it unambiguously into the scope of regulated work, we are disapplying the offences that organisations might face for employing a barred person. They can ask for disclosure but they do not have to. Our view is that we can produce guidance to help people, but the idea is that, based on the local circumstances, they are best placed to make that risk assessment and can do so free from the fear of prosecution.

I have had one or two bits of correspondence from schools about the cross-border dynamic. If a school is, for example, arranging an exchange with Germany, the new provision would make it clear that the Scottish school, or whomever was arranging the hosting of German pupils in Scotland, could do such checks as they thought appropriate. When it comes to sending Scottish children to Germany, obviously German child protection law applies. Britain is probably more advanced in respect of the checks that are available, so it is up to the schools to ensure, on a case-by-case basis, that they are satisfied.

**Elizabeth Smith:** Most exchanges are for 10 days or two weeks. The same parents do not host children on an on-going basis; they host children because their children happen to be in year 2, or whatever year the exchange involves. The exchanges are for very short periods. Will schools be expected to include people in the membership scheme for school trips?

**Andrew Mott:** That would have to be decided on a case-by-case basis. It is up to the school to look at the various risk factors, which might depend on how well it knows the people who are hosting the children and whether the child has ready access to another adult if they have concerns. A huge number of factors are involved.

**Elizabeth Smith:** It is potentially a very big cost for a school. A large secondary might have five trips involving 20 or 25 pupils.

**Adam Ingram:** As I said, we want to try to ensure that the opportunities remain for children. It would be a great loss if we saw a significant reduction in exchange visits, which is why we are trying to encourage as much flexibility as possible. People have to establish the merits of disclosure checking. If trips are regular, and people come back year after year and the school has a significant body of knowledge about the parents who have been engaged—

**Elizabeth Smith:** That is fine for the parents of children at that school. However, it is not fine when the school does not know the parents from another country. That is a very difficult situation.

**Adam Ingram:** That is the situation that we have just now with exchange visits. In essence, we have to trust the people in other countries who are looking after our children to make appropriate arrangements. No one said that this was an easy thing to deal with; it is very tricky. I think that we would all agree that we do not want exchange visits to be choked off because of a disproportionate approach to child protection issues. The scheme that we are proposing clarifies matters to a degree in establishing whether people should go down the route of disclosure checking.

**Elizabeth Smith:** We need a bit more clarification, because there are some considerable grey areas.

**Adam Ingram:** It is a natural grey area. We can assist schools and education authorities with guidance and perhaps give them examples of where it would be appropriate to have disclosure checks. We have had some cases in which children have been abused by host parents. The situation is not black and white. We have to establish the best and most appropriate approach.

**The Convener:** I was struck by your saying that there is a need for flexibility. Will there be consistency of application? Otherwise, it is very unclear what will happen and with whom responsibility will lie. Will the school be liable if something goes wrong and it has opted not to do the checks on host parents?

**Adam Ingram:** No. That is the reason for disapplying the particular penalties under the general scheme for people who employ barred individuals. The point is that we do not want a situation in which schools or education authorities automatically write in disclosure checks, which would reduce children's opportunities to engage in exchange visits.

Andrew Mott might want to pick up that point.

**Andrew Mott:** I see where the committee is coming from in wanting consistency. The difficulty is that host-parenting arrangements cover a huge spectrum, including three weeks of residential accommodation for a French exchange—such things happen regularly—and one-off overnight accommodation for a sporting event that is being hosted too far from home for the participants to get home straight after it. It is legitimate for those different scenarios to be treated differently. We are trying to give organisations access to the checks if they think that that is appropriate. Because of the great range of possibilities, we are not saying that people must do checks in all circumstances.

What we are hoping for—and what the guidance will seek to achieve—is consistency among similar scenarios. For example, it would be sensible for all French exchanges to be treated in the same way if the set-up is the same and the same risks apply. That is best achieved through guidance, because we cannot in the legislation go through every possible host-parenting scenario.

**The Convener:** When will the guidance be available?

**Adam Ingram:** If the committee approves the order, we hope to issue guidance by the summer. That will give people plenty of time to engage with it and get their heads round it.

**Ken Macintosh:** Before I move on to another subject, I have a question on the previous one. Have there been examples of host parents abusing children?

**Adam Ingram:** Yes.

**Ken Macintosh:** Who pushed for the introduction of the measure? I believe that host parents have not been covered by PVG before. Who wanted them to be included?

**Andrew Mott:** That is one of the big issues. Since POCSA came into force on 10 January 2005, host parenting is an issue that has rumbled on. There has been a lot of ministerial correspondence on it and a lot of queries to officials because people have found it difficult to work out what to do under POCSA.

In the consultation on the 2009 version of the modification of regulated work order, we consulted on a particular solution, which was to include host parenting with no exemptions so that organisations would need to do checks in all scenarios. There was no consensus in the 100 responses that we received, although there were a lot of strong views on both sides. On the one hand, people believe that it is terrible even to consider disclosure checking because it will kill off good activities for children but, on the other hand, people cite anecdotal evidence of things that have

gone terribly wrong and state how important it is to protect children in such situations.

If a child is living in someone's home, they are going to bathe and sleep there, and can seem quite vulnerable. We had a huge spectrum of responses, but there was no consensus. The one thing on which there is consensus is the need to know the position. The POCSA uncertainty was causing a lot of trouble. Taking account of all the views, the approach that we propose seemed to be the best way forward.

**Ken Macintosh:** Do the previous examples provide evidence that there is a pattern to such abuse? For example, is it more common with longer-term or shorter-term host-parent arrangements? Is it more likely to involve senior pupils or junior pupils?

10:45

**Andrew Mott:** I do not think that we have the data to come to a conclusion on that. Some of the evidence is anecdotal. Kathleen McNulty might want to say something about that.

**Kathleen McNulty (Scottish Government Children, Young People and Social Care Directorate):** The key point is that it is a vulnerable situation for any child to be in. As Andrew Mott said, there are not enough data. The problem is the child's being away from the leaders or supervisors of the group and being isolated. In general, abuse—particularly sexual abuse—does not happen in front of other people. It happens when people are isolated and exposed to someone who has power over them. Any child who is placed in such a situation is potentially vulnerable.

**Ken Macintosh:** Indeed, but the proposed process is not to be applied even-handedly to all host parents. You are allowing discretion. You are giving a tool to those who wish to be able to apply such checks. You say that you want to achieve consistency, and you gave the example of exchanges with French families. Would you like the checks to be used with those exchanges? What is your thinking on that?

**Adam Ingram:** Again, it depends. We have an exchange programme in Ayrshire that involves Chernobyl victims coming to stay with the same parents every year, so they have experience of dealing with the children. Disclosure checks might not be necessary in that case, but with exchanges that involve different children and, therefore, different host parents from year to year, I suggest that disclosure checking would be appropriate, particularly if a child is to come into a home for a week or 10 days.

We need to get people thinking through the merits of the systems that they put in place to ensure the safety of children. We do not want them to implement a blanket disclosure approach on a knee-jerk basis in order to avoid their organisation being harmed. We are asking people to look at the principles of protecting children and to determine what is appropriate, given local circumstances.

**Ken Macintosh:** The difficulty is that we are talking about a system that is based on fear rather than one that is based on trust, which is a difficult thing to apply in such situations. It could be that it does not provide much protection and just gives the illusion of providing protection rather than actually protecting people.

Are scout groups, which also have lots of exchanges, covered by the proposed system? Scouts often have host-parent arrangements.

**Adam Ingram:** Yes.

**Ken Macintosh:** If a school or a scout group was to have a host-parent arrangement, would you expect the school or the scout group to ask every parent involved to undergo a check, or would you expect it to check one or two of the parents about whom it had worries or doubts?

**Adam Ingram:** I would have thought that it would have to be all of them or none of them, but I defer to colleagues on how that situation would be handled.

**Andrew Mott:** One would have to be fair and consistent. I am not sure that what Ken Macintosh has suggested would be an appropriate use of the system.

**Ken Macintosh:** The minister said that someone who has hosted regular exchanges will probably not be checked because they will have a history of never having abused anyone, which means that they can be trusted, but parents whose children are in secondary 2 or S3 will be new to exchanges, as Elizabeth Smith highlighted. For them, it will be a one-off. We are talking about huge numbers. There will be an additional cost to everyone in the year group, but for the sake of what? It is difficult to pin that down.

**Adam Ingram:** That is a consequence of introducing the legislation—

**Ken Macintosh:** The proposal is a clear extension of the legislation; it is not in the legislation. We are extending the check to include parents; they were not included before.

**Adam Ingram:** Currently, we have to deal with the matter through the POCSA legislation. We are trying to make the situation make sense, as far as we possibly can. As I indicated to Elizabeth Smith, we are trying to steer a path between

unacceptable risk on the one hand and flexibility and common sense on the other, so we will provide guidance for people to help them find the appropriate path.

**Ken Macintosh:** Are you saying that there is no extension of the legislation in that regard and that, at the moment, both parents can be checked under POCSA?

**Adam Ingram:** That is correct.

**Andrew Mott:** The issue at the moment is that, because host parenting is not specifically mentioned as an activity, it requires an assessment of the things that are mentioned in POCSA. For example, people might be caught by the part about being in sole charge of a child, or the part about supervising or caring for a child. However, a case-by-case assessment is required. We are trying to address that by saying that host parenting is definitely in the scope of the legislation, but we are disapplying the offence of appointing someone who is barred.

As the minister said, someone who is barred would still be committing an offence by doing that work, so there is a sort of background protection, but that is not an issue for the organisation in terms of getting disclosure.

**Ken Macintosh:** If such a check can be carried out under POCSA, by explicitly naming it in the regulations, you are explicitly sending out a message that you expect the power to be used. You are saying that you want each case to be considered individually, but that is what happens under POCSA. At the moment, you have the situation that you say you want to arrive at, because people must consider each case carefully. However, you are replacing that with a blanket scheme under which, even if they will not be prosecuted—I agree that you have removed that element of risk aversion, which will encourage people to do what you want them to—people will be expected to carry out checks on host parents. You are explicitly extending the scheme at great cost to parents to address a problem that I am not sure is that big. There are cases of abuse at the moment, but there will still be such cases after the legislation is in place. I am not sure that it will make anyone any safer.

**Andrew Mott:** Under POCSA, one has to determine whether a host-parenting arrangement is or is not in scope. If it is in scope, there should be a check—it is not a “can”; it is more like a “must”, because people have to ensure that they are not appointing a barred person. If it is not in scope, a disclosure should not be being applied for at all. There is a bit more at stake in trying to make that boundary determination.

We are saying that host parenting is in scope, so people have the right to ask for a disclosure,

period. However, one needs to think about the factors that are involved in the arrangements when deciding whether to exercise that right.

The current arrangements are a problem—they are at the high end of the list of issues that people write to us about, so clearly people are struggling with them. Something needs to be done to provide some clarity on host parenting, which we have tried to do; the guidance will steer people through what you might think of as the risk-assessment process.

**Adam Ingram:** That is the critical factor. At the end of the day, what we are doing here is assessing risk. Although we do not want to discourage exchange visits of the type that Elizabeth Smith mentioned, we have to be aware that children are being placed in vulnerable situations, which is what the legislation is supposed to help us with.

**Ken Macintosh:** I will not ask more questions, but I worry because I do not think that the proposal necessarily addresses risk. If there is a risky situation, schools, scout groups and other responsible organisations should address it by putting in place other procedures, such as regular checks with another adult, access to other people or other checks. The whole point about the PVG and POCSA regulations is that they are not a comfort blanket: an awful lot of organisations think that, once the scores are checked, that is it and everybody is safe under it. However, the legislation means nothing of the sort—it is merely a way of identifying extremely high-risk people.

I am sure that the minister is aware that the danger—as Elizabeth Smith highlighted—is that we will actually reduce the number of exchange visits and activities that our children engage in, and that we will hugely increase the cost for families. Having said that, I accept that ensuring that organisations are not prosecuted will at least stop the regulations being imposed on every single situation.

Can I move on to charity trustees, convener?

**The Convener:** You may if you have questions. I remind you that there is a debate, so just keep to questions, Mr Macintosh.

**Ken Macintosh:** The Scottish Council of Jewish Communities raised a specific issue on charity trustees, which I think also applies to the scouts. Even with the changed definition, I believe that the way in which trustees are covered by the PVG legislation will not be entirely even, in the sense that charity trustees will be covered, but other voluntary organisations that are not charities, but which work with children in similar situations, will not be covered. The scouts are a very good example, because some scout groups are charities but some are not. A situation will be

created so that, although people may be involved in exactly the same level of activity with children, some will be covered by the legislation and face the costs, which may give extra security, but others will not. The Scottish Council of Jewish Communities has proposed a specific amendment that may address that situation. Has the minister had a chance to look at that?

**Adam Ingram:** Yes. If we can just put this in context, obviously people who deal in regulated work providing front-line services to children or protected adults must clearly be in the scheme, as should their supervisors and managers. The question is how high up in an organisation we should go to ensure that kind of coverage. Our view is that being a charitable trustee confers almost by definition a level of trust that goes beyond that of, say, a member of a governing body. It also provides a level of access to vulnerable groups within the trustee's own charity and other charities. We feel that a lay person out there would assume that a charity trustee was to be totally trusted, so we need to ensure that that is the case.

There is also a clear statutory definition of "charity trustee". Perhaps the equivalent people—about whom Mr Macintosh is talking—on other types of organisations' governing bodies are not so clearly defined, so it would be extremely difficult to set out a simple qualifying criterion in legislation. As I said, we have tried to ensure that the scope does not expand until we are almost in a position whereby every adult in Scotland has to be PVG checked. I realise that Mr Macintosh is not talking about going to that extent, but we believe that what he proposes would expand disproportionately the scope of the scheme's coverage. That is where we are at.

11:00

**The Convener:** Are there any other questions for the minister?

**Ken Macintosh:** I have questions in other areas; I was just letting other members in.

**The Convener:** Well, Mr Macintosh, if you want to exhaust your questions, please do.

**Ken Macintosh:** What I want to ask about might not be covered by the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010. We have had a number of instruments, and not all of them are before us this week.

At one point, there was going to be a reference to people who have the opportunity for unsupervised contact with children. That is obviously a particular worry for parent councils.

What is the minister's view? Have the definition and the fears around it been addressed?

**Adam Ingram:** They will be addressed. I know that it is an issue for parent council members who have to come into schools to attend parent council meetings. We intend to provide guidance and protocols on that.

**Andrew Mott:** There has been some misunderstanding. There was some concern that the provision in the order broadened the scope of work in establishments, but it narrows it. Let us take schools as an example. For a person whose normal duties involve working in a school, the additional test is whether anything that is permitted or required in connection with that work provides the opportunity for unsupervised contact. As the minister said in his opening statement, that cuts out a lot of the people whom we do not want to capture.

The first thing to say about parent councils is that parents who go into the school to collect their child or to go to a meeting to discuss their child's performance or because their child is ill are not working; they are being parents, and that has nothing to do with the legislation. Parents can go into schools to deal with their children, and that has nothing to do with the order.

Being a parent council member is work, so if that work takes place in a school, we need to decide whether the tests in the legislation apply. The provision that the order inserts would mean that, for example, if a parent council met after school when no children were present, it would not be included. It would also be out of the order's scope if schools put in place fairly modest arrangements to ensure that, on turning up, parent council members were taken to the meeting room, had their meeting and then left.

Parent council members are no different to anyone else. If they are allowed to just wander through the school as part of their work, and they have the opportunity for unsupervised contact with children, it is fairly sensible to treat them in the same way as we would treat any other worker who is allowed to do that, because there is a potential opportunity for harm. In that case, the parent council members would rightly come within the scope of the order.

Just to be clear, the order narrows the provision on working in establishments. We believe that it provides a sensible risk threshold and level playing field.

**Ken Macintosh:** Will it really narrow the numbers? The previous definition was for a childcare position. There is a clear relationship: someone is placed in someone else's care, and we are asked to assess that person's suitability to look after the other person's safety. Unsupervised

contact with children does not mean that someone places their child in another person's care: it is a different thing. When your children are in school, or at home, it is everyone's job to ensure that they are all right. It is not a question of labelling every single person who comes into contact with children as a potential threat. That is not the right approach.

**Adam Ingram:** No, and we are trying to narrow the scope of the legislation to prevent that happening. I have laid out a number of ways in which we are doing that through orders and regulations.

If parent council members are in school to provide care to children, to instruct them or to teach them, that is—rightly—in the scheme's scope. We argue that guidance or protocols should be in place. For example, we must ensure that people need not go through the rigmarole of disclosure checking for parent council meetings that take place regularly in a school. However, we will have to provide guidance to ensure that parent council members do not drift into regular potentially unsupervised contact. That is why we are keeping the scope of the scheme narrow.

**Elizabeth Smith:** Does the scheme cover silver or gold Duke of Edinburgh's award activity that is supervised by a member of staff who is in charge but who cannot physically be with the children because of what they are asked to do for the award?

**Adam Ingram:** The member of staff would have to be a scheme member.

**Elizabeth Smith:** What would happen if a child on such a programme came into contact with somebody else?

**Adam Ingram:** Such as who?

**Elizabeth Smith:** One condition of silver and gold awards is that the children are on their own for a carefully planned expedition. It is clear that a member of staff is responsible for that, but it is perfectly possible that the children will come into contact with other human beings, who might encounter difficulties. Who would be responsible for that?

**Adam Ingram:** We cannot legislate for such situations. I presume that, in such circumstances, a risk assessment is undertaken before the activity proceeds.

**Elizabeth Smith:** A risk assessment is done, but that is not quite the same thing. On some expeditions, the owners of small hotels or hostels are asked to check in on children.

**Adam Ingram:** That is not in the scope of the legislation.

**Andrew Mott:** What Elizabeth Smith describes is out of the scope. The teacher or whoever else runs the Duke of Edinburgh's award event up on the hills or whatever is responsible for the children. As the minister says, that person needs to put in place appropriate arrangements to ensure the children's safety. The point of a Duke of Edinburgh expedition is to go out and navigate, which means that children will meet members of the public. That is part of the activity.

**Elizabeth Smith:** I will make myself clear. I know that you cannot legislate for members of the public, but I am talking about situations in which children are asked to make contact with individuals who run a hostel or a bed and breakfast, for example. Do we expect the scheme to cover such individuals?

**Andrew Mott:** No—such people are out of the scope.

**Ken Macintosh:** Costs have risen significantly since the introduction of disclosure. The cost of applying for a disclosure was £13.20 in 2002 and has risen to £59.

**Adam Ingram:** We will discuss fees next week.

**Ken Macintosh:** Are we discussing fees next week?

**Adam Ingram:** Yes.

**Ken Macintosh:** Different parts of Scotland have different practices. For example, some schools and local authorities bear the costs, whereas others do not. Will we cover that next week, too?

**The Convener:** Yes.

**Adam Ingram:** Yes.

**Ken Macintosh:** Automatic listing for sexual offences was raised in the evidence session on the Children's Hearings (Scotland) Bill last week. Not all sexual offences will result in automatic listing—is that right? You referred to 12 offences.

**Adam Ingram:** People who are convicted on indictment, which involves serious offences, will be listed automatically, as laid out in the schedule.

**Ken Macintosh:** How are we changing the system from what is currently in place? That is the key thing.

**Adam Ingram:** Those offences are not currently specified. They are to be added to the schedule as a consequence of the passage of the Sexual Offences (Scotland) Act 2009 last year in the Scottish Parliament.

**Ken Macintosh:** So a number of offences result in automatic listing and we are increasing the number.

**Adam Ingram:** We are adding offences. There are something like 12 specific offences, so it is a rather short list.

**Ken Macintosh:** I have another question, which is about guidance. The complexity of the legislation is worrying. We will perhaps deal separately with the guidance in another meeting, but I will raise my concerns now. The legislation is complex and the terminology is difficult for many people and organisations, particularly smaller voluntary organisations. I worry—as do many other members including, I am sure, the minister—that the legislation will reinforce a trend in our society towards even greater risk-averse behaviour. I would welcome an assurance from the minister on that and his thoughts on what the Government can do to address the matter. That is not only about making the orders and the legislation more easily comprehensible and accessible to all, but about ensuring that people use them in the right way—which means using them to reduce risk, rather than to pretend that there is no risk or to discourage activity.

That latter point is the one that worries me the most. When I say “discourage activity” I am thinking about simple things such as comforting a child in a distressing situation. There are now situations in which an adult male in a school playground will not touch a child because of fear and anxiety. That is not healthy for our society. There is a worry that the legislation will compound that direction of travel. I would like an assurance from the minister that the Government is aware of the issue—I know that he is personally aware of it. What can be done to counter the issue? What messages can be written into the guidance and the legislation to give to parents and others?

**Adam Ingram:** I share many of the concerns that Mr Macintosh expresses. He will remember the nature of the debate that we had in the previous session of Parliament during the passage of the Protection of Vulnerable Groups (Scotland) Act 2007. Basically, I am presented with the job of trying to implement the 2007 act in the most appropriate fashion. Right up front in my opening remarks, I set out my two key objectives in introducing the orders. One is to make the scheme proportionate so that we do not adopt a scattergun approach that catches everybody in Scotland and creates an even worse culture, if you like, than we have now. The second objective is fairness. The scheme must treat individuals fairly.

Guidance is important in trying to keep things as straightforward as possible. The member will remember that there was a great deal of confusion during the implementation of the Protection of Children (Scotland) Act 2003, because of the way in which small local voluntary organisations were asked to interpret it and in relation to the training

and guidance that were available. I am conscious of all those matters and I am clear that we need to ensure that people have a clear understanding of what we are asking them to do and that we provide support and guidance for them in doing it. Basically, I share the concerns, but we have started down the road and we have to complete the journey.

11:15

**The Convener:** That concludes the committee's questions to the minister.

Under the next item on the agenda, I invite the minister to move motion S3M-6262.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 be approved.—[*Adam Ingram.*]

**The Convener:** Members now have an opportunity to debate the motion. I think that we strayed into points of debate a little earlier in considering the previous agenda item. I remind members that they cannot ask the minister any more questions; we can only debate the motion. Also, officials cannot respond; only the minister can make closing comments.

**Ken Macintosh:** I reiterate the final point that I made. I have a lot of sympathy with the minister. Having worked with him on the previous Education Committee, I know what his position is. I also have sympathy with the idea that, having started on a path, we are obliged to continue on it until its conclusion, but I think that steps can still be taken and that messages can come from the Government in particular. The clearer and stronger the Government and the minister are about the expectations on local authorities, for example, the simpler it will be for local authorities to fulfil their obligations and not to indulge in risk-averse behaviour. Repeated messages should be given along the lines that we still overwhelmingly trust the majority of our citizens in this country and that the measures do not provide a security blanket, but are merely part of a series of measures. The message should be that it is everyone's duty to ensure that our children are safe.

**Adam Ingram:** I agree with my colleague and understand what we need to do in getting those messages across. The last thing that I want to see is our destroying childhood. We need to rebuild the natural, supportive relationship between communities and children. I am afraid that some of that relationship has been lost over the past few years, and that we have a cotton wool culture—I think that that is the phrase that is used. We need to take a proportionate approach to that, and not just through the legislation that we are discussing;

we need to do other things to rebuild the sense of community and the natural relationship between children and the rest of the community.

**The Convener:** The question is, that motion S3M-6262 be agreed to.

*Motion agreed to.*

**The Convener:** Under the fourth item on the agenda, I invite the minister to move motion S3M-6263.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010 be approved.—[*Adam Ingram.*]

**The Convener:** We have an opportunity to debate the motion, but it appears that we have no points to discuss.

The question is, that motion S3M-6263 be agreed to.

*Motion agreed to.*

**The Convener:** Under the fifth item on the agenda, I invite the minister to move motion S3M-6264.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 be approved.—[*Adam Ingram.*]

**The Convener:** Members have the opportunity to debate the motion.

**Elizabeth Smith:** I do not want to stop proceedings, but we need a little bit more clarification. I would be happy to pursue one or two points on the order, as the area is difficult, and I know that teachers and parents have concerns about it.

**The Convener:** I share Elizabeth Smith's concerns. We need effective and transparent guidance that will ensure consistency. I hope that the Government or the minister is willing to respond to the committee's concerns.

**Adam Ingram:** I am happy to do that. I understand that clear guidance is needed, and, as I have said, I hope that we will be able to produce it by the summer. I am happy to send that guidance to the committee for its consideration.

**The Convener:** The question is, that motion S3M-6264 be agreed to.

*Motion agreed to.*

**The Convener:** Under the sixth item on the agenda, I invite the minister to move motion S3M-6265.



*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 be approved.—[*Adam Ingram.*]

**The Convener:** If there are no comments, the question is, that motion S3M-6265 be agreed to.

*Motion agreed to.*

**The Convener:** I suspend the meeting for a short comfort break and to allow our witnesses to leave. I thank the witnesses for their attendance.

11:22

*Meeting suspended.*

11:30

*On resuming—*

## Subordinate Legislation

### **Additional Support for Learning (Appropriate Agencies) (Scotland) Amendment Order 2010 (SSI 2010/143)**

### **Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 (SSI 2010/144)**

### **Additional Support for Learning (Sources of Information) (Scotland) Order 2010 (SSI 2010/145)**

### **Additional Support for Learning (Co- ordinated Support Plan) (Scotland) Amendment Regulations 2010 (SSI 2010/149)**

### **Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 (SSI 2010/152)**

**The Convener:** We resume with a reminder that everyone should switch off their mobile phones and BlackBerrys, not switch them to silent. They are interfering with the sound system in the committee room.

Agenda item 7 is consideration of subordinate legislation in relation to the Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009. For this item and the next, we are joined by Scottish Government officials, and I am pleased to welcome to the meeting Rachel Sunderland, team leader, Ian Glover, policy officer at the support for learning branch, and Robert Marr, solicitor in the children, education, enterprise and pensions division.

I understand that Ms Sunderland wishes to make an opening statement.

**Rachel Sunderland (Scottish Government Learning Directorate):** I thought that it might be helpful to provide a very short overview of the process to date, how we have got here and what we are seeking to achieve with these changes. The aim of the Education (Additional Support for Learning) (Scotland) Act 2009, which, as the committee is well aware, was passed by the Scottish Parliament on 20 May 2009 and received royal assent on 25 June 2009, was to strengthen and clarify the Education (Additional Support for Learning) (Scotland) Act 2004. Although the 2009 act did not represent a step change from the 2004 act, it very much built on that legislation. As a result of the passing of the 2009 act, we need to make changes to secondary legislation, which is

the purpose behind the regulations that we have brought to the committee this morning.

Before I talk about the individual changes, I will say a little about the process involved. Between 5 October 2009 and 8 January 2010, the Scottish Government held a consultation exercise that set out, and sought comments on, the proposed changes to secondary legislation as well as changes to the code of practice that we will discuss in a moment. Letters inviting comments were sent to more than 4,400 stakeholders including all local authority education and social work departments, health boards, all Scottish schools, colleges and universities, community councils and relevant voluntary organisations. In addition, we commissioned Children in Scotland to host five consultation and information events across the country. We received 237 responses from a broad range of consultees and have produced an analysis of those responses that I understand has been provided to the committee.

In addition to its consultation process, the Scottish Government established an additional support for learning implementation group, comprising key stakeholders such as the president of the Additional Support Needs Tribunal for Scotland; representatives from parents groups such as the for Scotland's disabled children liaison project; the national parental involvement co-ordinator; voluntary sector organisations such as Children in Scotland; Govan Law Centre, which has direct experience of representing parents in tribunal hearings; and local authorities and the Convention of Scottish Local Authorities. It might be worth mentioning that Govan Law Centre brought together a group of voluntary sector organisations and co-ordinated their responses to the consultation and their representation on the implementation group. The secondary legislation that is before the committee was informed by that consultation and the implementation group.

I will now pick out and comment on each of the regulations.

The Additional Support for Learning (Appropriate Agencies) (Scotland) Amendment Order 2010 amends the list of appropriate agencies under the 2004 act to include Skills Development Scotland and to remove references to Highlands and Islands Enterprise and Scottish Enterprise. The order was not part of the detailed consultation process that I set out, because it did not necessarily flow from policy changes. We made the change to reflect the changed landscape since 2004, notably the establishment of Skills Development Scotland.

The Additional Support for Learning Dispute Resolution (Scotland) Amendment Regulations 2010 were subject to full consultation and discussion at the ASL implementation group.

Currently, applications for dispute resolution are sent directly to local authorities. Under the regulations, such proposals will come to ministers. The Scottish Government will log the applications and direct them to the appropriate local authority. There will be no change to the overall deadlines for parents, young people or local authorities. The regulations will allow the Scottish Government to monitor and to log applications for dispute resolution. I am happy to comment further on the matter, because it was subject to some discussion. The regulations also cover the refusal of a request for specific assessment of additional support needs and exclude from dispute resolution a failure to provide the support that is contained in a co-ordinated support plan. Previously, there were two routes of appeal. It was felt that that was confusing, so the regulations clarify the situation by providing for one route—the tribunal.

The 2009 act enables Scottish ministers to make an order specifying certain persons from whom parents and young people can obtain advice, information and support, and places education authorities under a duty to publish information. The Additional Support for Learning (Sources of Information) (Scotland) Order 2010 adds Enquire and the Scottish Independent Advocacy Alliance to that list. When we originally consulted, we planned also to include the name of the organisation that will deliver the independent advocacy service. I am happy to say more about that later, if that would be helpful, but we are not quite in a position to know the name of the organisation that will deliver the service. For that reason, the regulations refer solely to Enquire and the Scottish Independent Advocacy Alliance. The change was supported by 85 per cent of those who responded to the public consultation.

The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2010 relate to the timescales and transfer of co-ordinated support plans and arrangements for sharing information about such plans and placing requests, when those cross local authority boundaries. The changes were subject to full consultation, discussion and agreement with the additional support for learning implementation group. I am happy to comment further on the regulations, if necessary.

The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 make a number of changes to the tribunal's rules and procedure. I do not propose to go through those changes in detail, but they were subject to full consultation and discussion at the ASL implementation group.

It is important to note that, following the report process, we did not take forward some of the proposals that we initially set out in the

consultation, as it was clear following the consultation and discussion at the implementation group that there were concerns about them. I will give a couple of examples. First, we originally suggested that the tribunal should be able to review its decision if new evidence came to light. Secondly, we originally sought comments on the suggestion that someone who had appeared as a supporter at a tribunal could not subsequently be called as a witness. Because of the feedback that we received from the consultation exercise and discussion at the implementation group, we decided not to pursue the proposals. I give those examples to emphasise that there was a genuine process not just of consultation, but of engagement. We changed the proposals to reflect the comments that we heard.

The other area of change that prompted some discussion but which was, ultimately, agreed related to clarification of the case statement period. I am happy to say more about that, if that would be helpful.

**The Convener:** Thank you for your opening comments, Ms Sunderland.

**Margaret Smith:** I hope that I will not stray into things to do with the code of practice that you are not able to answer at this point. One of the issues that I and colleagues highlighted during the passage of the legislation was the provision of information, particularly to parents. At the time, there was a certain amount of concern that we were asking for something that was disproportionate to the benefit to parents. In fact, we had heard a lot of evidence that a lot of parents felt that there was a need for the information. We are told:

"The code suggests"

that the information

"can be provided as a handbook or as a USB pen drive."

Can you give us a bit more information about the provision of information?

**Rachel Sunderland:** We recognise the importance of ensuring that all parents and young people have information about what they can expect and what the routes of appeal are. It is important that local authorities and schools make that information widely available in accessible formats, and it is important for the local authority to think about what works best to address the needs of those parents to whom it has a responsibility to provide information.

Linked to that, we have just completed the just ask campaign, which was a television and radio information campaign that was designed specifically to raise awareness of what is meant by additional support and which groups of young people might fall into that category. The campaign

aimed to inform parents that there are sources of support out there and to encourage them to ask about that support.

I am not sure whether that answers your question.

**Margaret Smith:** We all did a great deal of work on additional support, and there was real concern at the time based on what we had heard about access to information. The local authority side was concerned that we were asking for something that would be far too costly and onerous. However, from what we are now being told, it seems that the proposals that we put forward—for a handbook and so on—are being progressed. That suggests that what we asked for has been found to be neither too costly nor too onerous, but is regarded as a fairly sensible suggestion from the committee. Is that the case? A yes or no would do.

**Rachel Sunderland:** I am sorry if I appear to be hesitating, but that is partly because I was not in post then and was not privy to a lot of the discussions around that. I have been in post for only a couple of months.

One of the reasons for establishing an implementation group is that we want to look not just at the regulations and the code, but at some of the practical issues around how we can ensure that the act is implemented. The legislation having been passed, it is now incumbent on us to find ways to deliver it. As part of that, the code sets out clearly the expectations on local authorities, and local authorities are expected to deliver on their statutory duties.

**Margaret Smith:** There are a couple of other things that I would like to pick up on, in which I am particularly interested. I echo what you just said about the implementation group—that is essential.

On the collection of data, the code of practice states:

"Further details about the arrangements for collecting this data ... will be made available in due course."

Do we have any idea when that might be?

11:45

**Rachel Sunderland:** The 2009 act places duties on us to collect data on numbers, factors and cost. There are practical issues about how to do that in a way that does not place an onerous burden on local authorities and which produces data that are useful, meaningful and helpful—and, essentially, which meet the duties that the act places upon us.

We have established a sub-group of the implementation group, which includes people with policy responsibility in the Government, our statistical colleagues, who are experts at gathering

statistics, and representatives of parental organisations in the for Scotland's disabled children liaison group. We are considering how to secure a suitable mechanism. We have held one meeting, and we are due to hold a further meeting later this month. We do not have an answer as yet, but we are considering how we might proceed in the context of the aspirations that I set out earlier.

**Margaret Smith:** It is to be welcomed that there is an input from a parental point of view, from for Scotland's disabled children. It is good that that input comes from beyond Government. If my memory serves me correctly, I recall that there was an amendment to the bill that was generated from concern on the part of such organisations.

There is a further issue that is dear to the heart of all members of the committee: the position with respect to looked-after children. The new provision in the act effectively says that all looked-after children should be presumed to have ASN. There was some discussion about the different types of plans, about ensuring that there was no duplication, and about trying to streamline the process.

We were concerned that, proportionally, an awful lot of looked-after children did not appear to have the care plans in place that some non-looked-after children had. At the same time, there was a general feeling that any of those children would probably have additional support needs. That was particularly apparent after looking at the educational statistics—at achievement levels and so on. That concerns us all. What stage are we at in implementing that element of the legislation?

**Rachel Sunderland:** I am not sure that I can say an awful lot more at this point. You have touched on some very important principles about integrating the various pieces of work that we are doing on additional support for learning, the getting it right for every child agenda and the child plan, particularly for looked-after young people, as we ensure that we keep the child or young person at the heart of what we are doing. We will be seeking to discuss that issue with the additional support for learning implementation group, which will take us not just up to but beyond the implementation of the 2009 act. The implementation group will provide a useful sounding board for us in considering any issues that arise once the act is implemented. We can then start to pick up on the matters that arise.

In the code of practice, we have clearly set out what the expectations are, what the guidance says and how the provisions should be implemented. The code has been informed by our discussions with the implementation group, which includes local authority representatives. We will be monitoring how the measures and processes bed

down and whether any issues emerge. We are mindful about the need for and importance of linking the various strands of work in this area.

I hope that that was helpful.

**Christina McKelvie (Central Scotland) (SNP):**

One of the concerns that has arisen in the evidence that we have taken is the inconsistency of the use and quality of co-ordinated support plans across and within local authorities. Will you tell us about the code of practice and the implementation group's approach to considering best practice to address that issue?

**The Convener:** I ask that members restrict their questions to the regulations. We have a separate agenda item on the code of practice and Rachel Sunderland has a statement to make on it, so it might be better to return to that question when we get to agenda item 8.

**Christina McKelvie:** That is fine.

**The Convener:** Do you have any questions on the regulations?

**Christina McKelvie:** No, I am looking for the detail.

**Ken Macintosh:** How many of the responses to the consultation on the regulations came from parents or parents groups?

**Rachel Sunderland:** I am not sure about the detail of that. As I said, we had a response from the Govan Law Centre and the coalition that it represented. That did not include parents specifically, but the liaison committee of the for Scotland's disabled children campaign represents parental views.

I am afraid that I am not aware of the breakdown of responses from individual parents. We could find that information and provide it to you, if that would be helpful.

**Ken Macintosh:** It would. I am concerned that, although you circulated the consultation widely and held a number of events, there were only 46 responses—or possibly 42 or 48, depending.

**Rachel Sunderland:** There were 237 responses.

**Ken Macintosh:** Were there? Perhaps it was on specifics that you got the lower response rate. There were two hundred and how many, did you say?

**Rachel Sunderland:** There were 237 responses from a broad range of consultees. It is fair to say that not every respondent responded to every question.

**Ken Macintosh:** That explains it. I wondered why the figure was so low.

On the changes to the rules for the additional support needs tribunals, you had a little discussion of whether 20 days is a sufficient time to respond. I was a little concerned that the consultation was dominated by local authorities and others rather than parents. You say that, of the 46 responses on that issue, a huge majority was in favour of keeping the timescales short. However, I am not sure that parents would be convinced of that, so I wanted to know that you had heard parents' views, as opposed to depending on the fact that all local authorities agree that it should be short.

**Rachel Sunderland:** Perhaps it would be helpful if I said a little bit more about that specific issue and the process that we have gone through with it. It is about clarifying that 20 days of the 30-day case statement period should be for the parents or young person to submit and the remaining 10 would be for the local authorities to respond. Although the majority of respondents were in favour of that, there were some dissenting voices. Therefore, it was one of the issues that we took to the ASL implementation group and asked for its views on it.

Some of the dissenting voices in the consultation were actually members of the implementation group, so we discussed the matter in a lot of detail and I think everybody was reassured by the fact that, when the president of the ASNTS looked back at the statistics, it did not seem that delays and problems in submitting information had been an issue previously. She noted that, if there were any difficulties in meeting timescales, the tribunal would always be happy to extend time limits but the desire was to limit the amount of papers that circulated for the tribunal, for local authorities and for parents and their representatives and to keep the process as streamlined as possible.

Given those commitments, all members of the ASL implementation group, including those who had expressed some reservation at the consultation stage, were content to agree with that recommendation. At every stage in the consultation process, we were mindful of looking at not just the overall numbers of people who had responded, but the breakdown—were the respondents just local authorities or were particular groups concerned with specific aspects? We were mindful of that and we tried to address issues through the implementation group to take forward the recommendation.

**Ken Macintosh:** The response is reassuring, but I have one other concern. When the implementation group was first set up, it was staffed entirely by local authority members—directors of social work and so on. Who is on the group now? The membership was flagged up at the time, and I remember seeing the initial list.

**Rachel Sunderland:** I would be happy to read out the current list, although it is slightly lengthy so I would also be happy to provide a copy of it. We have Maggie Tierney, who heads up the support for learning division in the Scottish Government; Jenni Barr, who is principal educational psychologist at Stirling Council; Jessica Burns, who is the president of the tribunal; Allan Cowieson, who is an ASLO rep from North Ayrshire Council—

**Ken Macintosh:** Sorry, what was that organisation?

**Rachel Sunderland:** He is an additional support liaison officer, from North Ayrshire Council.

Perhaps I will just give the organisations that are represented. They include Skills Development Scotland, Orkney Islands Council, the Association of Directors of Education in Scotland and Dundee City Council. We have a couple of other people from the Scottish Government, a representative from the for Scotland's disabled children liaison project, someone from Jewel and Esk College, and a representative from Scotland's Commissioner for Children and Young People. There is also someone from Children in Scotland and the Govan Law Centre—I mentioned the Govan law coalition, and they represent that broader coalition. We also have a representative each from the Educational Institute of Scotland, COSLA and Her Majesty's Inspectorate of Education. It is therefore a broad church, and we have actually just asked Unison Scotland whether it wants to nominate a member, too.

**Ken Macintosh:** Perhaps I can give Rachel Sunderland a bit of the background. When the group was first set up during the passage of the first ASL bill, it was striking that there were no parental representatives on it. It was dominated by professionals, usually in the employ of local authorities, so it was a producer-dominated group. During the progress of the bill, I remember speaking to my colleague Margaret Smith, who I believe was able in discussions with the minister to secure an agreement to address that. I remember that Margaret Smith specifically asked the minister for parents to be represented on the group, because such representation was clearly missing, and it was secured.

**Margaret Smith:** I vaguely recall it.

**Ken Macintosh:** I remember it quite distinctly.

As I said, Ms Sunderland, I was pleased by the tone of your response as you have clearly taken into account not just the number of representations but who they came from and the background of those people. However, it strikes me that the group is still dominated as before. We will see the list when you give it to us, but the

people who tend to respond to consultations are the local authorities—parents and families never have the time and are sometimes totally unaware that such processes are on-going, so they do not respond. We must therefore go out of our way to ensure that we are addressing the real practical concerns. Having said that, it is clear from your tone that you are at least aware of the problem.

**Rachel Sunderland:** I want to mention, perhaps to give extra reassurance, the sessions that we asked Children in Scotland to run on our behalf as part of the consultation process. The aim of those sessions was to bring in parents and young people as part of the consultation, and not just for a written exercise. I am happy to provide further information about those sessions if that is helpful. We were mindful of how we would engage and involve parents.

12:00

**Ken Macintosh:** If I may, I will make a suggestion. I note that Govan Law Centre is represented on the group, but if you are looking to expand it at all, there are other organisations—including the Princess Royal Trust for Carers, other carers organisations and parents organisations—who could be in a position to help and advise on the matter, and who have direct contact with parents.

**Claire Baker (Mid Scotland and Fife) (Lab):** I note that the information on SSI 2010/145 refers to the free advocacy service that is to be provided. The notes state that we can expect another order to be laid, perhaps at the end of the year, but I seek an assurance that positive progress is being made on the issue.

**Rachel Sunderland:** We are going through a competitive tendering process to seek a preferred provider for that service. We will have a question-and-answer and information session with interested parties on Monday. There has been a significant level of interest to date, and the deadline is mid-June. We will be in a position to give details fairly soon, when we have a preferred provider. When we have that name, we will be able to make the relevant changes.

**The Convener:** Local authorities have expressed concern that applications for dispute resolution, instead of going directly to them, will go to the Scottish ministers. They thought that that was nothing other than bureaucracy gone mad. How have you engaged with local authorities to reassure them that that is not the case and to demonstrate that there will be some independence in the consideration of matters related to dispute resolution?

Also, what will the Government do beyond just monitoring the number of applications? Will you

actually publish and do something with that information?

**Rachel Sunderland:** The answer to your first question is that we discussed the issue with the ASL implementation group. When we looked at the breakdown of responses to the consultation, it was clear that a particular sector—local authorities—had a concern about the matter. We have a number of local authority representatives, including representatives of ADES and COSLA, on the implementation group.

There is an issue about ensuring that we do not needlessly add extra layers within a process, while also ensuring that someone has an overview of the number of applications that are coming in, how they are dealt with, and whether they are dealt with promptly. That is the balance that we are seeking to achieve through the change.

I am afraid that I am not sure whether we have specific plans to publish the information, but I do not see any difficulty in our providing it in due course. It is by no means secret information. I am just not sure whether publishing it is something that we specifically have in mind.

**Robert Marr (Scottish Government Legal Directorate):** Convener, I see no impediment to later publication if that is thought desirable.

**The Convener:** It just strikes me that, if the purpose is to have an overview, it is important that the overview does not rest internally with Scottish ministers, who might well act on it, but that those who have an interest in the area can see that there is a requirement for action or a problem with dispute resolution. Periodic publication of the information might therefore be worthy of consideration. I am not saying that it should be published all the time. Perhaps it could be published once a year.

**Rachel Sunderland:** We are happy to do that.

**The Convener:** Mr Macintosh, did I see you indicate that you have an additional question on that?

**Ken Macintosh:** No. My question is about the code of practice.

**The Convener:** In that case, that concludes our consideration of agenda item 7.

## Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009

### “Supporting Children’s Learning: Code of Practice (Revised Edition)”

12:05

**The Convener:** We come to agenda item 8. We are pleased to take further evidence on the code of practice from the panel. Ms Sunderland will make an opening statement.

**Rachel Sunderland:** My statement is short. I set out earlier the consultation and engagement process that we undertook on the regulations and on the code of practice, but it might be worth noting that the ASL implementation group considered a full draft of the code of practice at its meeting on 6 April. Therefore, in addition to going through a detailed consultation process, we shared a final draft of the code with the group and took account of their comments.

The Education (Additional Support for Learning) (Scotland) Act 2004 places the Scottish ministers under a duty to publish a code of practice. Clearly, the code of practice needs to be updated to reflect both changes in legislation and our experience since the legislation was introduced in 2004. In addition, the revised code takes account of comments and feedback, such as the desire to have a code that is shorter, clearer and more user friendly.

During the passage of the Education (Additional Support for Learning) (Scotland) Bill, a number of issues were identified as areas that would be clarified through the code of practice. The Minister for Children and Early Years advised that the redrafted code would place the legislation in the context of current policies on getting it right for every child, the early years framework and the curriculum for excellence. The revised code picks up those issues at the beginning of chapter 3. Following responses that highlighted this point, the revised code now makes it clear that, although the code should be set within the wider policy framework, there is a difference between policy and statute.

The minister also made a commitment that the revised code would provide further clarification of the term “significant” in the phrase “significant additional support”, the need for which is one of the criteria for a co-ordinated support plan. That issue certainly prompted a lot of discussion and debate. The Scottish Government has provided further clarification and guidance on that, as well as a number of examples. As the question of what

constitutes “significant additional support” has been considered by the courts, the revised code includes information on the Court of Session ruling on the matter. In taking that forward, the Scottish Government has sought to provide clarification without introducing a restrictive or limiting understanding of the term “significant”. We have sought to strike a balance between, on the one hand, providing clarification and, on the other, not producing a definition that is so precise that we unintentionally exclude some children and young people. The approach has been discussed and agreed with the implementation group.

Finally, the minister also agreed to clarify the process of making placing requests, which is now covered in chapter 4, “School attendance: rights, responsibilities and placing requests”.

I do not propose to go through the code chapter by chapter, but I wanted to pick up on those three issues, which were highlighted during the previous debates. I am very happy to provide further information or to deal with queries that might arise.

**Christina McKelvie:** The thrust of this question was probably addressed earlier. How does the implementation group intend to address the inconsistency of the use and quality of the information in CSPs among and within local authorities? I have seen some stark examples of inconsistency in cases that I have been dealing with over the past few weeks.

**Rachel Sunderland:** There are probably two elements to that. First, the code of practice now provides quite a bit of information on precisely what should be included in a CSP. We hope that the code now sets out very clearly what the expectations are about content. At the back of the code of practice there are also now a number of examples of CSPs that we hope will prove helpful.

Secondly, we are working with Learning and Teaching Scotland to provide some continuous professional development and resources that will support the act, with regard to CSPs in particular. We are doing work that could help to guide people towards good examples of a CSP.

**Christina McKelvie:** I will drill down into a particular issue about changes to a CSP. Section F of the notice is about seeking information, advice and input from parents, carers and other organisations. How can we arrive at a truly person-centred approach? I am dealing with a case that involves changes to the CSP of a wee boy with autistic spectrum disorder, and the lead-in time for the implementation of the changes is extremely short. I have a few similar cases and the matter arises consistently. The issue needs to be addressed.

**Rachel Sunderland:** Are you saying that the lead-in time is too short or that the parent and the

child do not feel that they are appropriately included in the discussion?

**Christina McKelvie:** Both.

**Rachel Sunderland:** The code sets out clearly what our expectations are, and says that there are timeframes that local authorities have to adhere to. There is a presumption that CSPs will need to be regularly reviewed and changed, but that that should be done in consultation and discussion with the child and their family, and that, if there are issues about understanding, efforts need to be made to ensure that young people are included in that process. Inevitably, there will be times when there are disagreements about the content or timing of a CSP, and, therefore, there are procedures in place by which such disputes can be resolved, including mediation, the tribunal, advocacy—once the new arrangements are in place—and, ultimately, the Scottish ministers. We hope that those factors strike an appropriate balance and enable us to address individual concerns.

**Christina McKelvie:** We are targeting local authorities, because they are usually the caseholder in the sense that we are discussing at the moment. However, we often come across problems with CSPs that have a health element, such as specialist occupational therapy or speech therapy, and there are still issues around the duty that is placed on the health authority to provide that service and who is responsible for it. Have you got anywhere with resolving that issue?

**Rachel Sunderland:** The code sets out clearly that local authorities have a duty to co-ordinate the services and to deliver the elements of a CSP for which they are responsible. They also have a duty to co-ordinate and seek to deliver the services and support that are provided by other agencies, in so far as they are able.

Ultimately, the local authority cannot deliver services that are the responsibility of someone else, but it has a responsibility to seek to ensure that delivery. Part of the agreement, and the purpose of having a co-ordinated support plan, is to have a named individual who parents can go to if there are problems and who is responsible for that co-ordination.

Local authorities have a responsibility to meet the needs of children with additional support needs in their area so, if it is clear that the relationship with the health board and other authorities has broken down, the local authority would have to reflect on whether it was meeting the needs of that child and, therefore, meeting its statutory responsibilities.

12:15

**Ken Macintosh:** I will continue with questions on consultation before I move on to advocacy.

Did you change the draft code of practice following consultation?

**Rachel Sunderland:** Yes.

**Ken Macintosh:** Can you think of any examples of changes that you made? I am thinking in particular of changes that reflected parental concerns.

**Rachel Sunderland:** The code of practice was changed significantly—an awful lot of changes were made to it. I cannot think of specific examples.

**Ken Macintosh:** An example of what I am thinking of relates to the definition of the term “significant”. You said that the code of practice now refers to the judgment of the courts in that regard. Have you also addressed parental concerns fully?

**Rachel Sunderland:** Many of the parental concerns that came out of the consultation, particularly from the Children in Scotland-led events but also from informal consultation, reflected a desire to get further clarification of the definition of “significant”. We have definitely sought to do that—that whole section of the code of practice has been significantly reworked. It is probably the main section of the code that has been reworked, to pick up on that extremely important point. I would certainly say that the concerns of parents have been reflected in our thinking and in the changes that we have sought to make.

**Ken Macintosh:** The Scottish Parliament information centre researchers have drawn it to our attention that the case studies that are listed in annex C of the code are perhaps too clear cut and do not relate to difficult situations. In other words, they are not that useful in the sense that, in those cases, the local authority would be able to make a decision very easily. Trickier examples where more help would be needed in making a judgment would be beneficial.

Are you thinking of revisiting the annex even at this stage? Could you do that?

**Rachel Sunderland:** That concern was raised about the draft code that went out for consultation. As a result of that, we added a number of examples of situations that are a bit more nebulous and less clear cut. One example that springs to mind is the case study that involves a child whose provision is not delivered directly by specialists because he lives in an extremely rural location but is delivered by teachers who have been given support and training to do that. We



took on board the comment that was made during the consultation phase. The fact that we have responded to it is reflected in the amended version of the code. We have included a number of new examples, in which the decision is less clear cut, which we hope will provide the additional guidance that people are looking for.

**Ken Macintosh:** An issue that came up during the passage of the Education (Additional Support for Learning) (Scotland) Bill was that section 70 of the Education (Scotland) Act 1980 was another avenue that parents had recourse to in the context of referrals, but from the SPICe briefing, my understanding is that the text of the code of practice has not changed from the text of the previous code to reflect that. Is that the case? Have you flagged up section 70 of the 1980 act as an avenue that is open to parents to pursue?

**Rachel Sunderland:** I will respond to that in two ways. First, I am not sure precisely how much the language has changed around section 70 of the 1980 act. We could check that.

Secondly, it is important to say that we would not necessarily see the code as being the primary vehicle for parents to find out about the different routes that are open to them.

Enquire will produce a short leaflet on the code that will be directed at parents. It will give them a lot of the information in a condensed format so that they do not have to read the whole code and it will highlight the elements that are of most interest to them. A key element will be the different routes of appeal available to parents. We must ensure that local authorities place in their various correspondence information about those routes of appeal because that is probably where parents will get most of their information. That will be crucial in raising awareness about routes of appeal.

**Ken Macintosh:** During the passage of the bill, ministers mentioned section 70 complaints as another avenue open to parents, but it was also said that nobody had ever successfully pursued such a complaint.

**Rachel Sunderland:** That has changed. A number of section 70 complaints are sitting with us. In the past few weeks, we have ruled successfully on at least two where we found in favour of the issues raised by the parents.

**Ken Macintosh:** That is encouraging. In the past, although that route existed, people were not necessarily aware of it.

I have a final question about advocacy. It has taken some time to establish the service. Is the service from Independent Special Education Advice (Scotland) still being funded in the interim?

**Rachel Sunderland:** Yes. We are committed to ensuring that there should be no disadvantage to

parents, so we have agreed to continue to fund ISEA. We also recognise that we cannot make assumptions about who will win the tendering competition to provide the new service. Certain organisations might need a little time to get up to speed on recruiting staff so we have given the commitment that, if it takes time to get the new service up and running, we will continue to fund ISEA. We are committed to providing an advocacy service and we will do it.

**The Convener:** As there are no further questions on the code of conduct, that concludes our evidence session. I thank the witnesses for their attendance at committee.

## Subordinate Legislation

**Additional Support for Learning  
(Appropriate Agencies) (Scotland)  
Amendment Order 2010 (SSI 2010/143)**

**Additional Support for Learning Dispute  
Resolution (Scotland) Amendment  
Regulations 2010 (SSI 2010/144)**

**Additional Support for Learning (Sources  
of Information) (Scotland) Order 2010 (SSI  
2010/145)**

**Additional Support for Learning (Co-  
ordinated Support Plan) (Scotland)  
Amendment Regulations 2010 (SSI  
2010/149)**

**Additional Support Needs Tribunals for  
Scotland (Practice and Procedure)  
Amendment Rules 2010 (SSI 2010/152)**

12:22

**The Convener:** We come to agenda item 9. Do members have any comments on the instruments?

**Ken Macintosh:** No.

**The Convener:** No motions have been lodged to annul the SSIs and the Subordinate Legislation Committee had no recommendation to make on SSI 2010/143, SSI 2010/144 or SSI 2010/152. The Subordinate Legislation Committee highlighted that SSI 2010/144 refers to a section of the parent act that is not yet in force and reported an inconsistency in terminology in SSI 2010/149. However, it reported that it was content with the Scottish Government's response to its queries. Unless any member has any further comment to make, does the committee agree that we have no recommendation to make on the instruments?

**Members** *indicated agreement.*

## Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009

**"Supporting Children's Learning: Code of  
Practice (Revised Edition)"**

12:24

**The Convener:** We come to agenda item 10. Members will have noted that the procedure to be followed in relation to the revised code is outlined in the paper previously circulated by the clerks. The committee will consider its draft report on the revised code at its meeting next week and the report will be published next Thursday. Do members wish to make any comments on the code of practice?

**Ken Macintosh:** I raised my concerns earlier. I do not know whether we can do more than reflect the nature of our discussion. My concerns are primarily to do with who has been consulted and whether parents' concerns have been responded to fully.

**The Convener:** Evidence heard under agenda item 8 will be included in the committee's report.

12:25

*Meeting continued in private until 12:43.*

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