

EDUCATION, CULTURE AND SPORT COMMITTEE

Wednesday 5 April 2000
(*Morning*)

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EDUCATION, CULTURE AND SPORT COMMITTEE

13th Meeting 2000, Session 1

CONVENER

*Mrs Mary Mulligan (Linlithgow) (Lab)

DEPUTY CONVENER

*Karen Gillon (Clydesdale) (Lab)

COMMITTEE MEMBERS

*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
*Lewis Macdonald (Aberdeen Central) (Lab)
*Mr Kenneth Macintosh (Eastwood) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Mr Brian Monteith (Mid Scotland and Fife) (Con)
*Cathy Peattie (Falkirk East) (Lab)
*Michael Russell (South of Scotland) (SNP)
*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
*Nicola Sturgeon (Glasgow) (SNP)

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

Robin Harper (Lothians) (Green)
Peter Peacock (Deputy Minister for Children and Education)

CLERK TEAM LEADER

Gillian Baxendine

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

The Festival Theatre

Scottish Parliament

Education, Culture and Sport Committee

Wednesday 5 April 2000

(Morning)

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

The Convener (Mrs Mary Mulligan): Good morning. I remind committee members and members of the public to switch off mobile phones. We are using temporary speakers and mobile phones interfere with transmission.

Standards in Scotland's Schools etc Bill: Stage 2

The Convener: This morning, we are starting stage 2 consideration of the Standards in Scotland's Schools etc Bill. I welcome the Deputy Minister for Children and Education. I shall read out a note of explanation to ensure that everybody is fully conversant with the way in which the process will be handled.

Members should have before them the bill, the marshalled list of amendments published this morning and a list of suggested groupings of amendment. Amendments on related issues that have been grouped will be debated together in a single debate. However, the order in which amendments will be formally called and moved is set out in the marshalled list. All amendments will be called in turn from the marshalled list and will be disposed of in that order. I remind members that the committee cannot move backwards in the marshalled list.

For each group of amendments, I shall call the proposer of the first amendment in the group, who should speak to and move the amendment. If any member does not wish to move their amendment, they should simply say, "Not moved" when it is called, and we shall move on to the next amendment. After the proposer of the first amendment has spoken, I shall call other members to speak, including the proposers of all the other amendments in the same group. That is the opportunity for those members to explain their amendments, but they should not move their amendments at that stage; they will be called later on.

I will call members to move their amendments when we reach the relevant point in the bill. Amendments that have already been debated in a group will not be debated again when they are

moved formally. As is usual practice, other members should indicate if they wish to speak. The minister will be called to speak on each group.

Following debate, I will clarify whether the member who moved the amendment still wishes to press it to a decision. If not, he or she may, with the agreement of the committee, withdraw it. If it is not withdrawn, I shall put the question on that first amendment in the group. If any member disagrees, we will proceed to a division by a show of hands. I stress that, if we proceed to a division by a show of hands, it is important that members keep their hands up long enough not only for a count to be taken, but for the clerks to be able to record members' names.

The committee is required to decide whether to agree to each section or schedule of the bill. Before I put the question on any section or schedule, I shall allow a short general debate that may be useful in facilitating discussion on matters that are not raised in amendments. However, members should be aware that the only way in which it is permitted to oppose an agreement to a specific section is by lodging an amendment to leave out the section.

I can see that everybody is now totally conversant with the way in which we will proceed, so let us make a start.

Section 1—Right of child to school education

The Convener: Amendment 71, in the name of Nicola Sturgeon, is grouped with amendment 34, in the name of Karen Gillon.

Nicola Sturgeon (Glasgow) (SNP): Amendment 71 seeks to make equal opportunities a more explicit feature of the bill. International obligations under the European convention on human rights and the UN Convention on the Rights of the Child demand the mainstreaming of equal opportunities in, for example, education legislation. This is an area in which the bill, as it stands, is deficient. Given the central role that education can and does play in tackling inequality, it is a deficiency that we should take the opportunity to rectify.

The deficiency has been commented on at stage 1 by the Equal Opportunities Committee. In its report to us, that committee said that equal opportunities have not been addressed specifically, without reservations, anywhere in the bill. Morag Alexander of the Equal Opportunities Commission also commented on the lack of mainstreaming of equal opportunities in the bill.

Although I support the intention of section 1, which is to give every child a right to school education, I think we require to state that that right will be based on equality of opportunity. Amendments 71 and 34 would do that, and would

therefore go some way to strengthen the bill—particularly section 1, which is one of the most important.

I move amendment 71.

Karen Gillon (Clydesdale) (Lab): Amendment 34, which would amend section 2, has been promoted specifically by Children in Scotland. That organisation has a considerable interest in children's rights and welfare. The amendment would place a new duty on education authorities to take into account a young person's religion, racial origin and cultural and linguistic background. Racism in schools is a particular concern, as children in certain parts of Scotland have been subject to considerable racial abuse. The amendment would give those children some element of protection and show the positive intention of the local authority to deal directly with racism.

I would like to hear the minister's views on how we can progress on this issue. I agree with Nicola Sturgeon that the bill's coverage of equal opportunities is deficient and that the issue needs to be included.

Michael Russell (South of Scotland) (SNP): Both amendments are worthy of support, particularly Karen Gillon's, which would encourage the parents of Gaelic-speaking children. Cultural and linguistic background will become an element for consideration, and I support that.

The Deputy Minister for Children and Education (Peter Peacock): Before I open the baton for the Executive, I would like to recognise the fact that we will spend quite a lot of time together over the next few weeks. As Nicola Sturgeon said to me, Sam Galbraith ensures that I get all the good jobs in the Executive. I hope that we can conduct our dialogue constructively and in good humour.

I understand the sentiments that lie behind amendments 71 and 34. The Executive shares those sentiments. The right of education should be enjoyed by all children of school age, without exception. In enjoying that right, the child or young person should receive an education that is directed at realising their potential. However, neither amendment is necessary, as the current versions of sections 1 and 2 already meet the intended objective.

Section 1 refers to "every child". That means every child in the context of that section. I do not believe that there is value in seeking to provide a definition of what every child means, as amendment 71 seems to do. By offering an exclusive definition, we would run the risk of excluding some children who are not covered by the definition.

Similarly, I do not believe that amendment 34 would take matters forward in the way that is intended. As drafted, section 2 is framed to focus on realising the potential of every child or young person. That begins from the position of the individual child and authorities will have to take into account a range of matters relating to the child in discharging their duties under section 2. Identifying specific factors in statute as ones that are relevant to the authority in the discharge of its duty may suggest that those factors should be given greater weight than others; that would not be a desirable development.

The Children (Scotland) Act 1995 sets out the factors that authorities must take into account in looking after a child. In the context of an authority being in loco parentis—having all the responsibility for the child's upbringing—the emphasis is rightly on preserving and nurturing the child's roots and culture so that they are not cut off from their family and community. Any attempt to strengthen those factors might be viewed as encouraging discrimination in the way education services are offered. In some cases that could be unlawful; in others it would be undesirable.

It should also be borne in mind that ministers, local authorities and all other people concerned are bound by existing UK legislation that covers matters of discrimination. For those reasons, I invite both members not to press their amendments.

Nicola Sturgeon: I do not accept the minister's explanation of why he will not accept the amendments. Rather than inviting discrimination in education, they are designed to ensure that there is no discrimination in education and that every child in Scotland has the same right to education regardless of their racial, cultural or religious background, gender or disability. There is a clear international obligation on the Scottish Executive to ensure that equal opportunities are mainstreamed into all education. That is especially important in legislation on education.

The opinion expressed at stage 1 by the Equal Opportunities Committee, the Equal Opportunities Commission and a range of organisations including the Commission for Racial Equality and Children in Scotland, was that there is a deficiency in this bill on equal opportunities. The bill must be strengthened to ensure—beyond any doubt—that the right enshrined in section 1 will be for all children, regardless of their background.

Karen Gillon made a good point about concern about the incidence of racism in schools. We could go a long way in section 1 to ensure that education is for all on the basis of equal opportunities. I do not intend to withdraw the amendment.

The Convener: The question is, that amendment 71 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 71 disagreed to.

The Convener: We now move to amendment 30, which is grouped with amendments 31 and 32.

Nicola Sturgeon: The amendment seeks to place a duty on education authorities—when they enter arrangements to provide school education—to ensure that the welfare of children and young people is their paramount consideration. Education authorities do not have a duty regarding the welfare of pupils in their schools, which is an anomaly in Scotland. Courts, local authority departments, children's hearings and other bodies that make decisions about children all have a duty to have regard for the welfare of children. Schools, which make decisions about children and their lives all the time, do not have that duty of welfare. The amendment seeks to close that gap and to ensure that local authority education departments—when they make arrangements under section 1—must bear in mind the welfare of children.

The amendment specifies that welfare should include physical, emotional and educational welfare. It is important that not only educational welfare is included, but that all aspects of a child's welfare are included. The amendment does not detract from section 1, but rather adds to and strengthens it.

I move amendment 30.

10:15

Karen Gillon: I will speak to amendments 31 and 32, which deal specifically with the welfare of the child in education. I would like the minister to say how he thinks the bill can be strengthened in that regard and whether, at stage 3, there will be

Executive proposals on improvements to the section on welfare. Both amendments are supported by Children in Scotland. I would like to hear assurances from the Executive that the issues raised by the amendments will be treated seriously.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I seek clarification from the minister regarding the placing of welfare as a primary consideration. How does he define "primary" in regard to this?

Peter Peacock: I welcome the opportunity to discuss the issues raised by the amendments, but I am convinced that the primary health and safety concerns that are implicit in the meaning of welfare are already properly safeguarded in a variety of ways.

On Brian Monteith's point—and the point that Nicola Sturgeon made—the primary focus of the bill is education. The context in which the bill operates gives it that focus. As I said in relation to the previous group of amendments, local authorities' welfare considerations when dealing with the whole life of, for example, a looked-after child, have a different primary focus from that in the bill.

The primary focus of the bill is education. I stress that education authorities already have a range of duties in relation to the health and safety and mental and physical well-being of the pupils in their care. They include a common law duty of care, the Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990, provisions governing medical and dental inspections of pupils, duties under the Children (Scotland) Act 1995 that safeguard children at residential schools, and a range of guidance on protecting children from abuse. Scottish Criminal Records Office checks must be done on the appointment of staff and Her Majesty's inspectorate of schools has a particular scrutiny role that relates to welfare. It seems unnecessary, given that battery of safeguards, that the aspects of welfare that those provisions cover should be refined further in legislation.

Amendment 31 refers to bullying. A great deal is being done about that problem. Authorities are required to take reasonable steps to ensure that children in their care are protected from mental and physical bullying. The Executive has acted to support schools and authorities in developing anti-bullying policies by establishing the Scottish Anti-bullying Network, which exists to disseminate and share good practice on bullying matters and on effective ways in which to tackle bullying. It is highly regarded for its work throughout Scotland.

The same amendment mentions supervision on school transport. Authorities are under a duty of

law towards people travelling on school transport. Guidance on school transport was issued to authorities in 1996.

I hope that the range of measures that I have outlined satisfies members to the extent that they feel able not to press their amendments.

Nicola Sturgeon: I thank the minister for that clarification. If I understand him correctly, he does not object in principle to an amendment of this nature; his objection is based on the fact that local authorities are already under such obligations. If that is a correct interpretation of the minister's position, it strikes me that there would be no harm in writing into the bill, which is exclusively about the provision of school education, an obligation on local authorities to have regard to a child's welfare. That would be sensible and it would strengthen the bill.

I hear the minister's point about looked-after children and local authorities having different considerations of welfare, but there is an obligation on local authorities to look after the educational welfare of children as well as the welfare of children at school in a broader sense. At school, children daily find themselves in situations in which their welfare—not just their educational welfare—must be of primary importance. If there is no objection in principle to the amendment, I can see no harm in writing such an obligation explicitly into the bill.

The Convener: The question is, that amendment 30 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 30 disagreed to.

The Convener: We now come to amendment 31, which has already been debated. I call Karen Gillon to move the amendment.

Karen Gillon: Not moved.

Nicola Sturgeon: I move amendment 31.

The Convener: The question is, that amendment 31 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 31 disagreed to.

The Convener: I call Brian Monteith to move amendment 50.

Mr Monteith: This is a probing amendment. I am interested to hear why the minister thinks section 1 is necessary. It is evident from other members of the committee's amendments that they and many people who have written to us feel that section 1 is incomplete. We have just had a debate on whether it should be added to. I am unsure of the motives for having this section at all, given that sections 1, 28 and 30 of the Education (Scotland) Act 1980 contain adequate explanation of the duties relating to parents, pupils and education authorities.

The explanatory notes say that the section

"reflects in the domestic law of Scotland the right to education which is enshrined in the European Convention on Human Rights",

and the minister has said that in the other areas that we have debated there are complementary sections dealing with points of welfare and equality. As we have incorporated the ECHR into Scots law, why do we need this section? I would like from the minister a fuller explanation of section 1, given that it has created much debate because, as other members have said, it is incomplete.

I move amendment 50.

Peter Peacock: I am glad that Brian Monteith has set out more clearly what lies behind his probing amendment.

I do not think that people believe the essence of the section is incomplete, but that some members want to flesh it out. The essence of the section is about turning round our view of education from a producer view, in which local authorities and

providers of education have been the focus of attention, to a child-centred approach to the delivery of service. We are turning from a producer view to a consumer-centred view. We intend to change the dynamics of how education is viewed by the providers and to allow them to address the needs of individual children instead of having a system that applies to all children. That is the spirit of the section.

For the first time in education legislation, a section articulates the right of the child to a school education that is provided by an education authority or by virtue of arrangements that are made by an education authority. The Executive is firmly committed to that approach and we have heard nothing that would cause us to reconsider our position. I therefore invite Mr Monteith to withdraw his amendment.

Mr Monteith: I am encouraged that the Executive wishes to move from a producer-dominated service to one that responds to consumer demand. Given that the section does not seek to replace the sections in the Education (Scotland) Act 1980 that I mentioned, I seek permission to withdraw amendment 50.

Amendment, by agreement, withdrawn.

Section 1 agreed to.

Section 2—Duty of education authority in providing school education

The Convener: We now come to amendment 13, which is grouped with amendment 17.

Nicola Sturgeon: Amendments 13 and 17 are very simple. The bill is about raising standards in Scotland's schools, and I see no reason to make a distinction between local authority schools and independent schools. It should be our objective to ensure that standards in all schools are high and improving. It is obvious that ministers have a greater remit in local authority schools, but in a bill whose purpose is raising standards in schools, we should make it clear that the expectations of improving standards apply to all schools, regardless of whether they are in the state or independent sectors.

I move amendment 13.

Peter Peacock: These amendments seek to place independent schools under the same duties as education authorities, to promote improvement and to develop each child to their fullest potential. I will deal with amendment 13 first. I understand the sentiment behind the amendment, but I believe that we should not constrain the diversity of independent provision in this way.

Article 2 of protocol 1 of the ECHR provides parents with the right

“to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

That right is protected in two ways in Scottish education law: through the requirement in section 28 of the Education (Scotland) Act 1980 that local authorities take account of the views of parents; and through the rights that parents hold under section 30 to exercise a choice to educate their children themselves, or to provide for education through the independent sector.

That choice is important in that it permits parents to choose an education for their children that is in accord with their religious and philosophical convictions. That choice may not be provided through the publicly funded sector. It is important that the Executive does not curtail that right, now enshrined in the Human Rights Act 1998. Accepting amendment 13 could be interpreted to have that effect.

That is not to say that any form of education is permitted. Independent schools must still be registered and education at home can be arranged only with the agreement of the local authority. The forms of legitimate education extend beyond what might be contemplated in section 2. For that reason, I believe that the amendment should be withdrawn.

10:30

On amendment 17, I understand the desire to extend to independent schools the duty to endeavour to secure improvement in the quality of school education. The bill introduces measures, which are widely welcomed by the independent sector, that are designed to ensure that the interests of children attending independent schools are safeguarded.

The committee will be aware that the duty of the Scottish ministers under section 3 applies to all forms of education, wherever it is delivered. We will use those powers to discharge that duty in respect of education delivered in independent schools.

We are already taking steps to secure improvement. The General Teaching Council and the Scottish Council of Independent Schools have been asked to come forward with a scheme to require GTC registration for all teachers, including those working in independent schools. HM inspectorate of schools will inspect independent schools more regularly, and parents, as the purchasers of the service, will have ready access to inspection reports.

Within the protections and improvements that are identified, it is best left to parents to decide whether a particular school offers the form of education that they would consider appropriate for their child. If a parent is not happy with the service

they receive, they can take their child elsewhere. That is a powerful force for improvement in the sector and it, rather than the duty that falls on local authorities with respect to publicly funded education, is appropriate to it.

On the basis of those explanations, I ask Nicola Sturgeon not to press her amendments.

Nicola Sturgeon: I welcome the minister's comments. Amendment 13 simply places independent schools under an obligation to direct their education towards the general aims set out in section 2. I do not believe that it would reduce the diversity of education that independent schools could deliver.

The aims as set out in section 2 of the bill, even if they are subsequently amended, still lend themselves to wide-ranging interpretation. They would not, in my view, restrict the ability of independent schools that offered, for example, specialist education to do their job—and many of them do that job very well.

I do not accept that the amendment restricts the diversity provided by independent schools; it goes some way instead to making it clear that education, wherever it is provided, must be directed towards the fullest development of a child, whatever interpretation—depending on the type of education—is put on that. I have considered the minister's comments, but I do not intend to withdraw the amendment.

On amendment 17, I was reassured by many of the minister's comments. However, he seems to be saying that, although he does not object to the amendment in principle, independent schools are already obliged to raise standards. Without wanting to press that amendment to an unnecessary vote later, I think that there is an important point of principle here, if it is the intention to place independent schools under obligations to raise standards. It would make sense for the bill expressly to state that, given that it deals specifically with raising standards. I do not intend to withdraw amendment 13, and I will move amendment 17 when the time comes.

The Convener: The question is, that amendment 13 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)

Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 13 disagreed to.

The Convener: Before I call amendment 14, I point out to committee members that they should consider amendments 14, 51 and 72 as alternatives. We will decide on each accordingly. Amendment 14 is grouped with 14A, 51 and 72.

Nicola Sturgeon: I whole-heartedly support the intention behind section 2 and I commend ministers for including a such a section. My concern is that the objectives of education, as framed in the section, are too vague. I recognise that the wording was taken from the United Nations Convention on the Rights of the Child and that it will attract some support because of that. However, there is a distinction between the UN convention and a bill that will become an act of Parliament. The UN convention is a vision and a series of aims; this bill is part of a tight legal framework. The wording of the section leads to practical concerns about the way in which we can measure concepts that are, to a large extent, intangible. I am thinking of terms such as "personality", "talents" and "fullest potential". Those concepts are so vague that the danger is that they will be unmeasurable. If they are unmeasurable, that will call into question the meaning and enforceability of the section.

Amendment 14, which sets out an alternative wording that is designed to bring about the same objective as the original section, gets round those problems by being more specific and by focusing on key skills such as citizenship, enterprise and creativity. The success or failure of local authorities in the delivery of education can be judged against those skills in a way that is much better than the present wording would allow.

It is important to point out that an amendment of this nature has broad support. A number of organisations have expressed support for an amendment to section 2, including the Convention of Scottish Local Authorities, the Educational Institute of Scotland and other teaching unions, Children in Scotland, and—strangely enough—the World Wide Fund for Nature and the Royal Society for the Protection of Birds. The committee will remember that, at stage 1, general support was given to the sentiment behind such an amendment.

I move amendment 14.

Karen Gillon: Amendment 14A changes the wording of Nicola's amendment slightly, and asks

local authorities to

"take account of the need to direct the provision towards setting aims and establishing conditions which encourage and enable"

children to do the things that are outlined in amendment 14.

I think that we need to be slightly more flexible in our approach to the ideas that are set out in section 2 and in Nicola's amendment. I hope that my amendment will be accepted.

I move amendment 14A.

Mr Monteith: Given the stage 1 debates on section 3 in this committee and in the chamber, I wonder whether Nicola is trying to add to section 2 so that there is some cross-referencing in the measurement of the improvement of standards. Is Nicola trying to establish some yardsticks and benchmarks for section 3, which is entitled "Raising standards"? It strikes me that the amendment would do more than simply say nice things about what education should be. I would be interested to hear her views on that.

Mr Kenneth Macintosh (Eastwood) (Lab): I, too, whole-heartedly back section 2 and the support that it gives to the rights of the child. Those rights are expressed in terms of the individual. However, the section does not give regard either to the benefits to society of a child having a good education or to the importance of good citizenship and the social context in which a child develops. We are describing and laying out the rights of a child, but, alongside that, we are not laying out the responsibilities and duties that we expect of a child. Amendment 51 is supported by the WWF, which hopes that it will draw attention to the importance of teaching about sustainable development in our society.

Robin Harper (Lothians) (Green): It is not strange that WWF, the RSPB and a number of other environmental organisations want to amend the section. Let me say something about the context. Outdoor education in Scotland has been on a downward trend recently. The Scottish Environmental Education Council is now defunct, and environmental organisations want the bill to contain a commitment to the environment. In that respect, the last line of amendment 72, which I lodged, is the most important one, because it calls for

"the development of respect for the natural environment".

It is a pity that Kenny, Nicola and I did not have the opportunity to discuss that phrasing, because we have three different phrasings for a similar objective. I have to argue my amendment against the others, and I think that

"respect for the natural environment"

is a superior phrase to include in the bill.

During the consultation on the bill, the Executive considered a text derived from the United Nations Convention on the Rights of the Child and one based on paragraph 12 of "Improving Our Schools: Consultation on the Improvement in Scottish Education Bill". In the event, the Executive chose the text based on the UN convention. The consultation response states:

"Reflecting this belief and the weight of comments received in the consultation process, Scottish Ministers propose the following new provisions (which follow in form the text of the United Nations Convention on the Rights of the Child)".

However, the bill does not include all the relevant text from the convention. Article 29 of the convention consists of two paragraphs: section 2 of the bill consists of only article 29.1(a). My amendment proposes that all article 29.1 be included in the bill.

The use of the UN convention as a source of wording for the bill has the advantage of basing Scottish education unequivocally within a major international framework, thus removing from section 2 any taint of short-term or political bias. Parliament debated the rights of the child on 3 February, when the Deputy Minister for Children and Education said:

"First, I am pleased to reaffirm the Executive's commitment to the Convention on the Rights of the Child."—[*Official Report*, 3 February 2000; Vol 4, c 837.]

It is entirely appropriate to use the convention as a globally accepted standard on which to base Scottish school education, but why use only part of it? It is not clear why the Executive chose only one small part of article 29. The question should be restated: what justifies the exclusion of the majority of the article? The excluded material covers: human rights and fundamental freedoms; respect for parental rights, national and cultural values; peace, equality and friendship; and the natural environment.

Karen Gillon: Robin, I seek clarification. Line 3 of your amendment refers to

"the development of respect for the child's parents".

You will accept that that might not be easy to achieve in Scotland, particularly if one of the parents has abandoned the child at some point in their life. I know from personal experience how difficult that can be for a child. It might be difficult to develop respect when a parent has abandoned or let down a child. How can that be taken forward?

Robin Harper: As a former member of Lothian children's panel, I know that, regardless of what a parent has done in the past, they have a right to be consulted. The way in which children's panels

work means that both parents can be consulted. However bad the parent, there is a residual right to respect in the way in which the law works.

The Convener: As members have no other comments, I invite the minister to respond.

Peter Peacock: I will try to answer in some detail all the points that have been raised. I welcome the opportunity to speak to these amendments, and I understand the spirit in which they were lodged.

In considering how to express within statute a purpose for education, we sought to find a formulation that would be easily understood and widely endorsed. Robin Harper asked why we used the phrasing that is in section 2. We adopted the high-level wording set out in the United Nations Convention on the Rights of the Child. There are many other ways in which the same ideas could be expressed—Nicola Sturgeon and others referred to the variation in the wording of the versions that are before us. I do not consider that listing each and every skill or outcome separately in this statute is appropriate, as legislation should set the broad framework.

I will address each amendment in turn. Amendment 14 offers five groups of outcomes for education. We are consulting on the national priorities system for education, which provides an on-going, flexible mechanism for reflecting developing views about education and about what is important in education; I will consider the five areas raised in the amendment in that context.

Elements of the formulation used in the amendment might be included in guidance issued under section 12 of the bill. I note that comments about sustainability are a feature of all the amendments. The wording of amendment 14 is lacking in precision and would be inappropriate in statute.

10:45

Karen Gillon spoke to amendment 14A, which is an amendment to an amendment. It is important that I explain why the Scottish Executive does not accept amendment 14A. The Executive has been clear that the intention of the bill is to put the child at the centre of education. We want to give every child the opportunity to develop a range of skills that will equip him or her to make the most of opportunities throughout his or her life. For that reason, the bill deliberately requires local authorities to direct education

“to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.”

The Executive does not want that duty, which focuses on the individual child, to be diluted and to

become a duty to direct provision. That would move the focus from the child who receives the service, which we discussed earlier, to the service that is provided. That is not what we seek to do and we do not find the proposal acceptable. Equally, the Scottish Executive does not want to weaken the section 2 duty by downgrading it to take account only of the need to direct provision. For that reason, I believe that amendment 14A should be rejected.

As amendment 51, in the name of Kenny Macintosh, suggests, we are involved in a much larger enterprise than the gaining of qualifications and knowledge alone. We are preparing our children and young people to go out into the world with the skills, knowledge, confidence and commitment that will make a difference in their lives and in the lives of others. I firmly believe that the bill, with its focus on realising the broad potential of the individual child, is a significant step forward in embedding that vision firmly at the heart of educational legislation.

If we were to set out the aims of education as amendment 51 suggests, however, I would want to reflect the role of education in enriching cultural life. I would also want to cover other matters—I am sure that other members can think of many other candidates suitable for inclusion as well. That is why the Executive will not support amendment 51, although, as I said, we support the ideas that are contained within it. It would be unfortunate if an amendment such as amendment 51 were to limit unduly our conception of what education should achieve. Accepting it would mean the inclusion of some aims with others being forgotten in the process. We believe that the wording of the amendment lacks precision and would be inappropriate in statute.

Amendment 72 would extend significantly the duty under which local authorities are to be placed under section 2 by adding a list of outcomes or aims for education. I make it clear that the Scottish Executive fully agrees with the aims of the UN Convention on the Rights of the Child; I do not want to contest any of the elements taken from article 29 of the convention that are presented in the amendment. We have demonstrated our commitment to the convention both by including elements of it in the bill—the high-level elements to which I referred—and by the approach that we have taken to the consultation on the bill. The convention is also reflected in the broad curriculum in Scotland, which aims to offer a wide range of skills and knowledge, including citizenship, tolerance and equality.

However, although the Scottish Executive is committed to the convention, we do not think that amendment 72 is appropriate. The aims of education that it identifies are not solely the

preserve of school education, which is the subject of the bill. In drafting the bill, the Executive has been careful to make a clear distinction between the duties that it is appropriate to place on education authorities—and, through them, on schools and teachers—and the duties that fall equally on schools, parents and the wider community. The aims that this amendment identifies fall largely in the latter category. Although schools have a role in promoting such aims, it would be unfortunate and, in our view, unhelpful if the bill suggested that those aims were primarily the responsibility of schools. They are not; they are shared responsibilities, and parents and the wider community can play a key role in fulfilling them.

Amendment 72 also raises a problem in relation to competence. Although the Parliament may legislate on some equality issues, it does not have the power to impose new duties to promote equality. If the amendment were accepted, it might take the bill beyond the competence of the Scottish Parliament. Although I welcome the sentiments that have been expressed by Robin Harper, and share his commitment to the UN Convention on the Rights of the Child, I cannot support his amendment, for the reasons that I have set out. Nor can I support any of the amendments in this group.

Nicola Sturgeon: I thank the minister for his comments; I shall make a few comments in summary. First, I would like to reassure members and the minister that amendment 14—like the other amendments in this group—makes no attempt to limit our education system. It should be remembered that the motivating force behind section 2 and the amendments to section 2 is a concern that our education system has in recent times been narrowed, and that its objectives have been narrowed by statistical measurements of its success or failure. The purpose of amendment 14 is to embrace a more broadly based view of the education system and its objectives.

I agree with the minister that any wording of section 2 must be easily understood and widely endorsed. However, the wording in section 2 is not widely endorsed and several organisations have expressed concern about it. It is important that, as well as being understood and endorsed, the section should be clear and meaningful.

The minister mentioned national priorities and gave an assurance to consider the five objectives in that context. We will come to that discussion presently. However, national priorities are designed to be capable of implementation and to work towards the general objectives that are set for education in the bill. It is not for the national priorities themselves to set those objectives.

Ken Macintosh made a good point about the

benefits of education to society. Section 2 is rightly concerned with the individual, but the education system has wider benefits and section 2 should recognise them. Amendment 14 would ensure that it would.

The emphasis throughout the bill is on improvement, but especially in section 3. If we are to measure improvement properly, we must first know what we are trying to achieve. Section 2 must set out clearly the aims of the education system. In response to Brian Monteith's point, I suggest that those aims will, and should, act as a benchmark for determining whether we are succeeding or failing in raising standards.

I conclude with some important views that have been expressed by COSLA. In its background note, it says:

"COSLA considers that the current wording of section 2 is so open-ended as to leave authorities wide open to legal action by parents and pupils."

It states that there is

"a likelihood that parents and pupils would seek to exploit the loose wording in the section"

and that there is

"the risk that an authority could be found not to have a child's personality, talents, and mental and physical abilities"

developed to their fullest potential. Local authorities are concerned that the section is too widely and vaguely framed. Amendment 14 would go some way to setting out clearly what we are trying to achieve. I am happy to accept Karen Gillon's amendment 14A.

The Convener: Karen, do you wish to press amendment 14A?

Karen Gillon: For the reasons that the minister has given, I am content to ask to withdraw the amendment.

Amendment 14A, by agreement, withdrawn.

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

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)

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

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 14 disagreed to.

Amendment 51 not moved.

Amendment 72 moved—[Robin Harper].

The Convener: Robin, would you like to add anything before I put the question on amendment 72?

Robin Harper: Karen Gillon's objection to my amendment was somewhat unexpected. The phrase "respect for the child's parents", under the terms of the UN convention, is clearly expected to apply to those people who are legally in charge of the child at a given time. If, under our laws, a child has been taken away from his or her parents because of parental abuse, that phrase would clearly not apply to those parents. It is a matter of interpretation.

Because Nicola Sturgeon's amendment has not been accepted, this is the committee's last chance to include in the section a commitment to the general aims of the convention, including sustainability. Kenneth Mackintosh has withdrawn his amendment, but I do not understand the minister's objection to including a commitment to the whole of the UN convention. If it applies to education anyway, why not just include it?

The Convener: The question is, that amendment 72 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 72 disagreed to.

Amendment 32 not moved.

The Convener: I call Karen Gillon to speak to amendment 33, which is grouped with amendment 33A.

Karen Gillon: Amendment 33 is a probing amendment. One of the areas in which the bill is particularly weak is that of consultation with children and young people in respect of their own education. That is an issue on which the committee has expressed strong views. Indeed, we were at the forefront of pushing for the wide-ranging consultation exercise on the bill. This amendment seeks to place an obligation on local authorities to consult with children and young people in matters affecting their education.

I understand that my colleague Jamie Stone has lodged an amendment to my amendment, which I would be happy to accept.

I move amendment 33.

The Convener: I ask Jamie Stone to speak to amendment 33A.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): With pleasure. I fully support Karen Gillon's amendment, but some of us felt that it might be too prescriptive to require local authorities to consult young people in

"all matters affecting the child or young person"

That could be something of a hostage to fortune, as irrelevant objections could be made on all sorts of fronts. For the sake of housekeeping and prudence, we felt that it was best to remove that one three-letter word, "all", which has caused ministers and civil servants some concern.

The Convener: Surely not.

Mr Stone: I move amendment 33A.

11:00

Mr Monteith: I am unsure as to how the minister will interpret

"give due regard to the child's or young person's views".

Karen Gillon has already said that the bill is weak in that area, and her amendment seeks to strengthen it. However, the way in which the amendment is drafted leaves considerable room for interpretation. I am interested to hear the minister's views on that.

Taking out the word "all" makes the bill more ambiguous. I hear what Jamie Stone is saying, in the sense that "all" may be too prescriptive, but by taking the word out we are left with dubiety about which issues local authorities will have to seek children's views on.

I am also unsure about why proposed subsection (3) of amendment 33 refers only to

"the generality of subsection (2)(b)"

and not also to subsection (2)(a). It strikes me that if we are trying to define the views of a child as the views of

"a child of twelve years of age or more",

the proposed subsection (3) should also apply to subsection (2)(a). I would be interested to hear the minister's views on that.

Lewis Macdonald (Aberdeen Central) (Lab):

The clarity and simplicity of sections 1 and 2 are critical to the way in which this bill provides a framework. However, we need to address the issue that is raised in this amendment. I wonder whether the minister, when responding to the amendments, will comment on the proper role of the national priorities in addressing consultation with young people. From the discussion so far, it appears that that has not been given due weight either in the bill or in discussions about the national priorities.

Nicola Sturgeon: I would like to support amendment 33. On a number of occasions, this committee has reflected on the importance of proper consultation with young people, and the Executive deserves credit for taking that into account in some aspects of this bill. Children must be consulted properly at all levels of decision making that affect their education. The amendment would make it clear that local authorities had a duty to consult children properly. I am happy to support it on that basis.

Fiona McLeod (West of Scotland) (SNP): I have a comment on amendment 33A. I do not accept Jamie Stone's justification for the change that he proposes. This committee is totally committed to consultation with young people in all areas of their lives, so the inclusion of the word "all" is important. Will Karen Gillon clarify why she is prepared to accept amendment 33A, which waters her amendment down and gives people an opportunity to tell young people, "That's not an important issue", when everything is?

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): This is a practical point. If local authorities are required to take into consideration children's views on all matters, they can be got at for not taking into account something that they did not have time to consider. Of course we should ask children about, for example, the food that they want in the school canteen, but not every day and not about every item. All means all. The principle of consultation should be included in the bill, but it would be unreasonable and unworkable to prescribe that local authorities should consult on every issue.

Mr Stone: Amendment 33A was a probing amendment that aimed to explore the committee's feelings on the matter. I am not prepared to go to the wire over it. However, I want to support Lewis Macdonald's view that it is a perceived weakness of the bill that the principle of consultation with children is missing. We have an opportunity to

take the courage to grab that principle and insert it in the bill. We can significantly change things for the future. The evidence from Children in Scotland has been well thought out, researched and advocated. It would be a mistake to disregard that evidence. I will be listening hard to whether the minister can offer us any comfort on that matter.

Nicola Sturgeon: I am sympathetic to the spirit of Jamie Stone's amendment. While we are all committed to the principle of consulting young people, it must be recognised that the young people's views will not always prevail. Sometimes local authorities will act in a way that is contrary to the views of young people. However, I am not convinced that the amendment is necessary, because amendment 33 places an obligation on local authorities to give due regard to a child's views. That takes account of the fact that children do not always rule the roost and that sometimes the local authority will know best.

Mr Monteith: In the light of some of those comments, I would like to ask the minister whether he thinks that if he were to accept this amendment, there would be a danger that he was legislating for every eventuality—a complete wish list, one might call it. I understand that the Executive supports the creation of school councils for pupils and that it would like to see that good practice adopted across Scotland. I am not suggesting that that is the only way in which to consult school pupils. However, if we were to accept the amendment, we would be starting down the road of legislating for every eventuality when much of what we would like to achieve can be done without legislation.

Peter Peacock: I welcome the opportunity to comment on amendment 33. I want to emphasise that we regard this as an important and developing area. We are not in a static situation; we are learning new techniques and ways of involving young people. I suspect that those skills will increase as time goes on.

The Executive has already signalled its intention to promote the involvement of children and young people in decisions on matters affecting their education. Indeed, sections 6(2) and 5(1) of the bill impose a duty to involve young people in a way that has not previously been the case. That is a significant step forward. The process through which we consulted on the draft bill showed our commitment to that, as do the new provisions to which I have referred. For the first time, schools will be required to say what they are doing to consult and involve children and young people on decisions that concern the everyday running of the school. Local authorities will be required to give children and young people an opportunity to make known their views on local improvement objectives for school education.

We have also made a commitment to bring forward new regulations to give children and young people a right to be heard in relation to exclusion from school. The process by which personal learning plans are developed will also directly involve the child or young person in discussions on their needs. That system is currently being implemented in the new community schools and we intend to extend that to the whole system of state education in the next few years. The personal learning plans will be prepared in consultation with the pupil. That is a manifestation of the process of constructively involving young people in decisions that affect their future.

We believe that, by promoting the involvement of children and young people in this way, their experience of education will be significantly improved. The Executive considers this to be a developing area. As the committee knows from its own experience of consulting young people, involving children and young people effectively requires a range of new skills and techniques. We must be clear about the circumstances in which we should involve children and young people and when it is sensible to ask for their views.

It is right to consult on major decisions and matters that are important, but day-to-day matters of what is taught in lessons should not be open to debate on every occasion. Any new duties must balance the interests of children with the need for teachers to be able to teach in a way that will ensure that all children can have the benefit of education.

Lewis Macdonald commented on national priorities. That is one vehicle by which people can raise concerns about the way in which we can further involve young people. The matter can be approached in that context. However, major provisions are already proposed in the bill to progress that matter.

I shall deal briefly with the amendment in the name of Jamie Stone. I understand the spirit in which he has lodged that amendment to amendment 33. He explained that fully and tried to qualify the level of engagement by young people in the school system when that is appropriate. We share his concern that there would be an expectation that local authorities would have a duty to have regard to the views of children and young people on every matter that might affect their interests, no matter how trivial. However, we do not believe that the amendment achieves its objective, well intentioned though it is. There seems to be no substantive difference between Jamie Stone's version and the original amendment. The omission of the word "all" does not qualify the generality of the provision.

The measures that are included in the bill should

be implemented and assessed before we decide what further measures might be required. We certainly do not have closed minds on further measures being required and encouraged as time moves on. Accordingly, I invite Jamie Stone to withdraw his amendment to the amendment.

Karen Gillon: I thank the minister and committee members for those comments. I accept Brian Monteith's point that there might be some drafting difficulties. However, I was disappointed that the minister did not come forward with any suggestions for changing or improving the bill. My colleagues and I will withdraw the amendment, but will return with a further amendment at stage 3, if the Executive has not done so.

Mr Stone: I withdraw amendment 33A. However, I support amendment 33.

Amendment 33A, by agreement, withdrawn.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 33 disagreed to.

Amendment 34 moved—[Michael Russell].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)

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

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 34 disagreed to.

The Convener: I will just intimate that after the next amendment we will be taking a short break for those who are getting fidgety.

I call Brian Monteith to move amendment 53 on its own.

Mr Monteith: The committee will be pleased to know that this is a probing amendment that was in much the same spirit as the amendment to leave out section 1. In the light of the explanation that the convener gave in relation to that amendment, with which I am content, I intend not to press the amendment.

Amendment 53 not moved.

Section 2 agreed to.

11:15

Meeting adjourned.

11:30

On resuming—

The Convener: I remind those with mobile phones to ensure that they are switched off.

After Section 2

The Convener: We now move to amendment 35, which is grouped with amendment 35A.

Karen Gillon: Children with special needs are very obviously omitted from the bill. The point of amendment 35 is to place children with special educational needs on a statutory footing and to listen to their views in assessing, recording and reviewing special educational needs.

The minister will know that the committee is undertaking a review of SEN. The responses that we have received show that there is a substantial body of support among parents, teachers and organisations for SEN to be recognised and adequately resourced. This is a probing amendment, because we think that there should be a reference in the bill to children with special educational needs. I will be grateful for the Executive's views on the matter.

I move amendment 35.

Mr Stone: My problem is that I am frustrated—I wish I were a lawyer, as Nicola Sturgeon is. We are concerned that some parents might try to use a child with special education needs, not always with the best interests of that child in mind. That is

why we thought it would be better to add a rider to say that the welfare of the child is paramount, which we regard as a cardinal principle. That would keep the bill on track and shove it in the right direction.

I am aware of the work that has been done on this front by the Executive. Is the Scottish Executive willing to make the same commitment to consult children's views in this area as it has done in school exclusion guidance? Could it place a requirement to consult children with special educational needs in guidance or regulations?

I move amendment 35A.

Cathy Peattie (Falkirk East) (Lab): I am interested in records of needs. A review is under way. I am cynical about the use of records of needs. Last week, we discussed ways of removing that way of working. I am reluctant to support the amendment because I think that we need to go forward and examine other ways of dealing with children with special educational needs and their families. I think that the record of needs is used as a tool against the provision of a good education for children. If the amendment is accepted, we will be tied into the record of needs issue.

Nicola Sturgeon: On balance, I support the amendment. My one concern relates to Cathy Peattie's point that the amendment may pre-empt the debate that the committee is about to have on special educational needs. I would like to test the opinion of the committee on this, but I think that we have to take care.

Peter Peacock: I hope that I can be helpful and give some strong signals. The Executive shares the view that the committee tends towards about how provision for children with special education needs may be strengthened. I will try to spell out how we might do that.

I am conscious of the point that Nicola Sturgeon made—that the committee is examining these matters and might be able to make an even more important contribution to this debate in the light of the experiences that it is considering.

We all have the welfare of children and young persons with special education needs at heart. Technically, however, we think amendment 35 is unnecessary as the current record of needs process already requires an education authority to include young persons' views.

Current guidance from the Scottish Executive stresses the importance of encouraging younger children to participate in discussions about their education. Education authorities are advised always to ascertain—and, where possible, to take into account—the feelings and perceptions of children and young persons with special education needs. Where necessary, education authorities

should provide children with help in expressing their view and in participating in the planning of their educational provision.

As Cathy Peattie said, the current record of needs process has drawn criticism from a number of quarters, including local authorities, parents and professionals. There is a widespread feeling that the present system is too cumbersome and time consuming and is discriminatory in a variety of ways. The new national special education needs advisory forum, which is now established under my chairmanship and which met for the first time two weeks ago, will examine, as its top priority, all aspects of the record of needs process, which it clearly identified as the issue on which it wanted to make progress, having discussed the section on special education needs that we will lodge in due course as an amendment to the bill. At present, therefore, we do not consider it desirable to add new statutory elements to a process which, many people argue, needs to be replaced or streamlined.

Amendment 35A changes the emphasis of amendment 35, which is about giving due weight to the views of children and young persons. More important, it prescribes one key factor as paramount when decisions are taken on the education of children and young people with special education needs.

Later in the debate, when we introduce a new section on a presumption of mainstream education for children with special education needs, it will become apparent that a range of factors has to be considered when such decisions are taken, including what is in the best interests of the child or young person. I believe that the committee will have an opportunity to debate those issues much more fully and in an appropriate context when it discusses the new section. Nothing that has been mentioned today would be excluded from that further debate.

Allowing us time to refine the section that we, in conjunction with the national special education needs advisory forum, seek to introduce, will provide a better section and a better opportunity to debate the issues. In that spirit, I invite Karen Gillon and Jamie Stone not to press amendments 35 and 35A.

Karen Gillon: Given the nods I am getting from committee members, the minister's reassurances and what I have heard about the new section, I am prepared, if the committee agrees, to withdraw amendment 35.

Amendment 35A, by agreement, withdrawn.

Amendment 35, by agreement, withdrawn.

Section 3—Raising standards

The Convener: Amendment 15 is grouped with amendment 18.

Nicola Sturgeon: Amendment 15 would delete “endeavour to”, in section 3(1); amendment 18 would delete “endeavour to” in section 3(2). They would result in there being obligations on ministers and local authorities respectively to secure improvement in the quality of school education. At present, both must simply try to secure improvement in the quality of school education.

The amendments are motivated by real concerns about the meaning and enforceability of section 3. The committee considered the issue at stage 1, when it took evidence from Tom Mullen of the University of Glasgow. I thought that his comment on section 3 was very clear. He said that, in his view, section 3 as it stands is not meaningful or necessarily enforceable. He also said that the duty under section 3 is weaker than the existing duty on local authorities under the Education (Scotland) Act 1980. The duty is simply to endeavour to secure improvement. Ministers and education authorities would therefore meet their legal obligation merely by trying to improve education; there would be no obligation actually to meet the underlying aim of the legislation, which is to improve standards. In theory, they could meet their legal obligations even if educational standards were to go down.

That is not what any of us, including the minister, is trying to achieve. There is much to commend section 3, but we owe it to children and parents to make the formulation meaningful and enforceable if any parent or child feels that they have a right of action against a minister or a local authority. The problem with section 3 is the degree of discretion that is afforded to ministers and local authorities by the word “endeavour”. By deleting that word, we would create a stronger and more enforceable section that would be more likely to bring about the underlying objective of the bill.

I move amendment 15.

Mr Stone: Is there not a danger in concreting this in—if I can use that expression? The amendment would remove any room for manoeuvre and would make the section so prescriptive that it might create tension between the relevant ministers, education authorities and the Parliament. Does not the amendment over-tighten the section?

Mr Monteith: It would be interesting to remove “endeavour”, as that would put the onus on ministers to secure improvement. If the purpose of section 3 is to make ministers secure improvement, the word “endeavour” undermines that purpose. I would be interested to hear the minister's response. In the light of the evidence

the committee has heard, that word weakens rather than strengthens the section. Although taking out “endeavour” may seem strict, it must go if the section is to achieve what it sets out to achieve.

The Convener: Nicola, you will have an opportunity to speak after the minister. Do you want to come in just now?

Nicola Sturgeon: Just to answer Jamie Stone’s point. The amendment would not tighten the section too much. It is better for the section to be tight rather than loose, as it then has more chance of achieving its underlying aims.

The amendment would require ministers to secure improvement, but ministers themselves would determine how improvement would be measured and whether they would be judged successful. There would still be a fair amount of flexibility for ministers. If ministers and local authorities are to be under any duty at all, that duty must be to bring about the desired result rather than simply to try. As Tom Mullen said, if they are found to have tried but failed, they have still fulfilled their legal obligation. That seems rather curious.

Lewis Macdonald (Aberdeen Central) (Lab): I disagree with Nicola’s suggestion. We should seek to support and assist schools and councils in achieving improvement. The discretion that the word “endeavour” allows is important to that and makes a positive contribution. If a parent took an education authority to court, it would be a reasonable defence to show that the authority had done everything in its power to secure improvement. If the word “endeavour” is removed, that defence is removed. We all know that the challenges for the improvement of education vary from area to area and from school to school. That discretion is an important protection. It allows people to demonstrate that they are doing their utmost to fulfil the terms of the bill.

Mr Monteith: As the bill stands, if the minister were to get a report card that said “Must try harder” that would be acceptable. To most people, however, that phrase translates as “Not good enough.” Nicola’s amendment seeks to make clear the fact that simply trying hard is not enough. We should support the amendment.

11:45

Mr Macintosh: The words have to be in the bill. Removing them would make it unrealistic. We do not want to set targets that it is impossible to achieve. That would undermine the point of the bill. The amendment is not helpful. The wording in the bill places a duty on ministers and ministers will understand that and act accordingly.

Peter Peacock: I will deal with the amendments in turn, starting with amendment 15.

In section 3, we have indicated our commitment to work to improve Scottish education. The concept of the improvement agenda was generated by the Executive and we do not intend to step back from it. Our central purpose is to have a continuing agenda of improvement in Scottish education. We will use such resources as are available to us to make changes that will make a difference for children and young people. That requires a commitment to making improvements over time.

The duty that the bill places on ministers takes account of the shared responsibility for delivering improvement over time. That responsibility does not fall on one organisation or individual. In developing the bill and the framework for improvement in it, Scottish ministers have been clear that improvement can be delivered only on the basis of a partnership between the Scottish Executive, local authorities and schools and by effectively involving parents and pupils. That continues to be our position. For that reason, we believe that it would be inappropriate to place Scottish ministers under an absolute duty to secure improvement in education. Ministers do not have all the levers to hand that would enable them to achieve that on their own.

There must be a balance between the central direction of education and the input that local authorities legitimately have to the administration of education and education policy. If ministers had an absolute duty, substantial duties might have to be removed from local authorities. We do not favour that option and I suspect that the Parliament as a whole does not either.

I assure the committee that our use of “endeavour” does not indicate any reduction in the Scottish Executive’s commitment to raising standards and delivering improvement; it simply reflects the key element of partnership.

Nicola Sturgeon referred to the evidence given by Tom Mullen. To be fair, I must say that his comments were made before the final version of the bill was published. Contrary to what Nicola Sturgeon implied, ministers may be called to account in the courts for their efforts in respect of improvement. I believe that Tom Mullen agreed that that is the case, in principle. The courts will consider, on the basis of evidence—not conjecture—whether the duty has been discharged. In addition to the process of judicial review, Scottish ministers may be held to account by Parliament for the discharge of their functions. That is the standard against which we would expect to be scrutinised.

I have set out the Executive’s reasons for

resisting amendment 15 in respect of the duty that falls on Scottish ministers. The argument with regard to amendment 18 and local authorities is similar. The bill requires local authorities to endeavour to secure improvement in the quality of school education and to exercise their functions in relation to such provision with a view to raising standards. As with the Scottish ministers, that requires a commitment to seek improvement over time. Again, it is appropriate that the duty take account of the shared responsibility for delivering that improvement over time. In the same way that Scottish ministers will work in partnership to secure results, local authorities also are expected to work with others to achieve those results.

The Scottish Executive's proposal is to extend the scope of section 70 of the Education (Scotland) Act 1980 to give ministers the power to direct a local authority to comply with this or any other duty under the bill and, should an authority fail to do that, to take appropriate action. The Scottish Executive has already lodged an amendment to that effect, which will be considered later. Ministers will have an absolute commitment to improvement and excellence in schools and local authorities can expect us to use our powers if they fail to discharge their duties under the act, although I do not expect that to be necessary. For those reasons, the Scottish Executive cannot support either of these amendments.

Nicola Sturgeon: I would like to repeat a statement in Tom Mullen's evidence:

"In theory they"—

ministers and local authorities—

"could meet their legal obligations even if educational standards go down."

That is a fairly damning indictment of section 3 as it stands. It means that a minister could stand up in Parliament and say, "I'm sorry that education standards in literacy and numeracy have gone down. I am sorry that school buildings are now in a worse state than they were when I took office. I am sorry that teachers' morale has plummeted even further. In spite of that, don't get on at me, because I tried my best."

I do not think that that is what parents want to hear. They want to hear that ministers elected and appointed to do a job will get results. Under my amendments, they would have to secure improvement. Improvement means different things in different circumstances. It does not mean that there has to be the same standard of education in all schools in all local authorities, because they are starting from different bases. However, it means that there must be improvement. There is more than enough flexibility in the bill already, in that it allows ministers to set the priorities and the performance indicators.

Peter Peacock said that it was important to have evidence rather than conjecture. The word "endeavour" is entirely subjective and invites conjecture. We want objective standards and ways of measuring objectively whether ministers and local authorities have fulfilled their legal obligations. The way to do that is to remove the discretion that is introduced by the word "endeavour".

If we do not accept the amendments, section 3 will become, in effect, meaningless. If it is meaningless, that begs the question why it is included, other than to make ministers look as if they are being tough on standards.

Ian Jenkins *rose*—

The Convener: If you must.

Ian Jenkins: I think that I must. The truth is that neither of these forms of words is ideal. If we take out the word "endeavour", we are setting people an impossible task. It is not possible to guarantee improvement in every case. However, as Nicola Sturgeon says, endeavour is an aspirational word and therefore not quite satisfactory. It might have been all right if a phrase such as "take steps to" had been used.

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

Members: No.

The Convener: There will be a division.

FOR

Mr Brian Monteith (Mid Scotland and Fife) (Con)
Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 15 disagreed to.

The Convener: We now come to amendment 16.

Nicola Sturgeon: Amendment 16 is in the same vein as the previous two amendments, which probably means that it will suffer the same fate—never mind. It attempts to strengthen the duty on ministers and to place it in a new context. What it proposes is also important from the point of view of local authorities, because the ability of local authorities to secure improvement will be

determined to a large extent by the job that ministers do.

Most people in local authorities would agree that the most important function of ministers in relation to education is to provide resources that are adequate to allow local authorities to do their job properly. If one asked the many local authorities that were forced to make £23 million in cuts a few weeks ago, I am sure that they would agree.

It is important to include that provision, to make clear the principal duty of ministers and to create the right environment for local authorities to do their job properly. At the moment, local authorities are being put under an obligation to do something that is not entirely within their control.

I move amendment 16.

Michael Russell: This is a very important amendment, because it reaches to the heart of the relationship between the Executive and local authorities. Without adequate finance, local authorities will not be able to do their job, as we have seen in recent months. It is essential that the bill should refer to the fact that adequate funding must be provided. That reference must be clear and transparent.

One of the unfortunate things about the local authority settlement is that the figures have suffered from sleight of hand; there have been claims of increases where there is no doubt that the authorities are being asked to do more with less money. Those are the facts and we should be honest about them. We must be clear in the bill about the need to resource education properly.

Fiona McLeod: The amendment reflects the feeling that emerged in the stage 1 debate. Members from all parties said that it is all very well to talk about raising standards, but we cannot do that if local authorities are constantly denied the necessary resources. The committee has also found that although there is great will to raise standards and to do exciting things in schools, individual schools are constantly constrained by the lack of resources.

Mr Stone: We are in danger of sailing the good ship Education Committee on to the shoals and reefs of party politics. I am grateful to Mike Russell for proposing that I should have a roving commission on rural schools. I have discovered first hand from three authorities that there is extra money and that that is recognised by authorities and teachers. As Mike knows, there is a problem with the state of the schools' infrastructures. Had the amendment referred to that specifically, I could have supported it. I hope that at a later stage ministers will address that pertinent issue. Even my old school, Tain Royal Academy, has said to me that it was pleased to have the extra resources, but that there are still holes in the wall.

Lewis Macdonald: Like amendment 15, amendment 16 runs the risk of confusing the accountability of ministers to the law with the accountability of ministers to the electorate. If ministers fail to provide adequate resources, they will be accountable to the electorate. That is how it should be. It should not be a matter of statutory accountability to the courts.

Mr Macintosh: The amendment is wrong on several counts. It implies that the relationship between central Government and local authorities is that of banker to financier and that the role of the Executive is to fund local authorities to carry out their educational responsibilities. That is not the case. The Executive should fund and resource authorities effectively, but it is up to locally elected authorities to decide what to do with the money. The spirit of the amendment is revealed by the references of Mike Russell and Nicola Sturgeon to the so-called fact that education authorities have been underfunded in recent years. That is not true. The settlements have been very generous and more money than ever is going into education. The amendment is fundamentally unhelpful and inaccurate.

12:00

Peter Peacock: The bill places a duty on ministers and education authorities to raise standards in schools, with a theme of continuous improvement over time. Amendment 16 does not sit particularly well with that duty, as it is cast in terms of maintaining high standards, which might be existing high standards or high standards that are yet to be defined. It implies a static situation, but one that is undefined. In a sense, it is the reverse of the arguments that we heard from Nicola Sturgeon on the previous sections that we debated.

The Scottish Executive is committed to providing resources to support continuous improvement on existing high standards or on whatever high standards are achieved in future. We should never take our foot off the accelerator of improving Scottish education. However, amendment 16 implies that we should reach a certain standard and seek to maintain that standard rather than improving further.

The amendment also mentions resources. As members will be aware, local authority grant-aided expenditure on education has grown by 17 per cent since 1997-98. The excellence fund alone will provide more than £400,000 over three years to support new initiatives, employ new teachers, promote inclusion and raise standards. I could give a long catalogue of the things that are being done to improve Scottish education and the additional resources that are being given to local authorities. I can testify to what Jamie Stone has

said: local authorities recognise that resources are growing, thus making their task of improving education much easier than it was in the past.

The amendment does not mention the sum that would be necessary. Perhaps that omission in itself reveals how inadequate the amendment is. The member concerned has chosen not to mention a sum in the amendment. If there is a fixed sum that represents the necessary resources, it would have been more straightforward to name that sum in the amendment. One can draw one's own conclusions about why that has not been done.

The financial resolution, which was agreed by the Parliament, allows for any expenditure that arises as a consequence of the bill. The amendment therefore serves no purpose if it is concerned only with expenditure required by the bill. However, if the intention behind the amendment is to go beyond the financial resolution, the amendment itself is incompetent. Either way, I believe that it should not be pressed.

Nicola Sturgeon: Amendment 16 reflects the fact that one of the key aspects of the relationship between ministers and local authorities concerns the provision of resources. Local authorities' ability to carry out their obligations under the bill is determined to a huge extent by the resources that are made available to them by ministers. My amendment reflects that reality. A number of members have said that the amendment carries risks, but it strikes me that the only risk that it carries is that of making the bill meaningful. If that is what it would do, that is a good reason to support it.

If the Executive's rhetoric about spending on education is to be believed—let us not enter into a debate on that now—what objection can there be to amendment 16? In future, it could protect local authorities against less allegedly benign Governments than the present one. There is a good argument for it.

Jamie Stone made a good point about school infrastructure. The bill to repair Scotland's schools is £1 billion. There will be a limit on the ability of local authorities to fulfil their own obligations under the bill unless they are given the resources to do that. My amendment is about injecting a healthy dose of realism into a bill that is a bit heavy on structures and frameworks and a bit light on reality.

The Convener: The question is, that amendment 16 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)

ABSTENTIONS

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

The Convener: The result of the division is: For 4, Against 6, Abstentions 1.

Amendment 16 disagreed to.

The Convener: I call Nicola Sturgeon to move amendment 17.

Nicola Sturgeon: Which is that?

The Convener: It was debated with amendment 13.

Nicola Sturgeon: Yes. I move amendment 17.

The Convener: I will put the question on the amendment. Which is it again? Is it amendment 13?

Members: It is amendment 17.

Karen Gillon: Do not confuse us, Mary.

Nicola Sturgeon: It is the one on independent schools.

The Convener: That is right. The question is, that amendment 13 be agreed to.

Members: Amendment 17.

The Convener: Sorry. The question is, that amendment 17 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 17 disagreed to.

The Convener: Amendment 18 has already been debated with amendment 15. Would Nicola like formally to move the amendment?

Nicola Sturgeon: Why not?

The Convener: You do not have to.

Nicola Sturgeon: I move amendment 18.

The Convener: The question is, that amendment 18 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Fiona McLeod (West of Scotland) (SNP)
Michael Russell (South of Scotland) (SNP)
Nicola Sturgeon (Glasgow) (SNP)

AGAINST

Karen Gillon (Clydesdale) (Lab)
Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)
Lewis Macdonald (Aberdeen Central) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Con)
Mrs Mary Mulligan (Linlithgow) (Lab)
Cathy Peattie (Falkirk East) (Lab)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 18 disagreed to.

The Convener: We now come to amendment 36.

Karen Gillon: I hope that the Executive will be able to support the amendment. Of the amendments so far, it is the only one that has support from all the parties on the committee.

Section 8 of the bill introduces a provision requiring an education authority to delegate management functions to the head teacher. The amendment ensures that the duty to secure improvements in the quality of school education will apply to all those involved in delivering education, not only to the education authority and schools managed by it, but to head teachers, in relation to delegated functions.

Section 3(2) places a duty on authorities in respect of schools managed by them. As I said, section 8 requires authorities to delegate certain functions to head teachers of those schools. In principle, an authority could delegate all its functions to a head teacher in a school. The head teacher's position in a school is obviously vital. If a head teacher, despite all the efforts of an education authority, were to carry out his functions in such a way as to conflict with the duty of the authority to raise standards of education in that school, there would be a clear conflict between the provisions in section 3(2) and those in section 8.

The purpose of the amendment is to ensure that such a conflict does not arise, by putting beyond doubt the fact that the new duty to raise standards applies generally to the education authority and to the head teacher, following delegation to him. Such an amendment appears to be entirely appropriate if delegated functions are to be discharged consistently with those of the education authority.

I move amendment 36.

Mr Monteith: I lend my support to the amendment, even though it says, "endeavour to". Given that the minister, under section 3(1), will "endeavour to", it is entirely consistent that the local authority and the head teacher should "endeavour to". There is no point in putting a stricter responsibility on either the local authority or the head teacher. Notwithstanding the fact that the words "endeavour to" are there, it is important to encourage delegation. For the reasons that Karen Gillon outlined, it seems entirely appropriate that we should be consistent all the way through, so that we spread the duties that section 3 seeks to introduce.

Mr Stone: I wholeheartedly endorse what Karen Gillon and Brian Monteith have said. I will make two small additional points. First, the potential for what a head teacher can do in future is great. Secondly, I think that the amendment fits very well with the minister's thoughts on community schools. There have been developments on that front and we expect further developments. The amendment will enable the further development of community schools in Scotland, and I have great pleasure in supporting it.

The Convener: Nicola, do you wish to speak?

Nicola Sturgeon: No.

The Convener: I had noted you as a supporter of the amendment.

Nicola Sturgeon: I am, but everything that I wanted to say has been said.

Peter Peacock: I recognise the helpful intent that lies behind the amendment, although I think that it does not fully recognise the current position, which I will try to clarify.

This amendment seeks to impose on head teachers the same statutory duty to promote improvement that is being imposed on the Executive and local authorities. Although it is desirable that all parts of the education system work to raise standards, I believe that it is inappropriate to impose such a duty on head teachers. The head teacher is an employee of the local authority, which has the power to ensure that he or she acts in a way that is consistent with the local authority's duty to promote improvement.

The Scottish Executive considers that that arrangement, whereby authorities are responsible for managing school provision for their areas, is appropriate for the needs of Scotland, and that to go down the route that is suggested in the amendment is to move toward the English system of education, in which there is far greater autonomy for head teachers and schools.

It may be helpful if I make it clear that the education authority continues to have power over any of its functions that are delegated to head teachers and has the power to structure its delegation scheme, under section 8, to make it clear how those delegated functions are to be carried out. In addition, the bill makes it clear that the school development plan must take account of local improvement objectives. Therefore, I recommend that the amendment be withdrawn.

Karen Gillon: There is a difficulty with the response. It is certainly the view of my colleagues that this issue needs to be clarified, as we understand that, because there is devolved management to schools, head teachers could block improvement objectives and it would be very difficult for local authorities to deal with that. Perhaps the minister could clarify the position on that, as he has not done as yet. I do not think that we wish to withdraw the amendment at this stage.

Peter Peacock: The head teacher is the employee of the local authority. Therefore, the local authority, as the employer, can require the head teacher to act as it sees fit. The duty is on the local authority to ensure that that improvement objective is being followed. That duty flows from the local authority down to the head teacher.

However, because of the statutory duty to have a scheme of delegation, the local authority continues to have power over any of its powers that are delegated to head teachers, and under section 8 has the power to structure its delegation scheme to make it clear how delegated functions are to be carried out. There is no danger of the situation that Karen Gillon described coming to pass, because the local authority, which has the statutory duty under the provisions of the bill, has the power to ensure that that duty is carried out. If the amendment is withdrawn, we will avoid the danger of moving into a system of education, to which we are not accustomed in Scotland, in which local school head teachers have much more authority.

Mr Macintosh: The minister argues that the duty on head teachers already exists because head teachers are employed by local authorities. Surely if this amendment were introduced, matters would be clarified? Head teachers are responsible for carrying out many tasks that are delegated to them and the improvements framework is very much his or her responsibility. Therefore, I think

that the amendment clarifies and improves the situation, as there is currently some ambiguity. The local authority must improve standards but an individual head teacher does not necessarily have to do that.

12:15

Peter Peacock: The argument would be that the duty lies with the local authority. The head teacher is an employee of that authority, and therefore cannot escape the duty that lies with it. Through its management systems, control systems and appraisal mechanisms of head teachers, the local authority has levers over the actions of the head teacher. Section 8 makes clear the way in which the delegation can be carried out to define the necessary relationship between the head teacher and the local authority.

We would not want to set an unfortunate precedent for further changes to the ways in which Scottish education has worked traditionally, through the existing relationship between head teachers, local authorities and the wider community interests. That is why we strongly recommend that we do not move down that particular route.

Mr Macintosh: I was trying to clarify whether the imposition of this obligation would cause difficulties for the Executive or local authorities.

Peter Peacock: We believe that it is unnecessary, as the duty already lies with the local authority. It would change the basis of the relationship in the current system, and would begin to define specific duties on individual head teachers. Under the present system, those duties are on the local authorities. Significant implications, which we cannot anticipate today, could flow from any change, which is why we think that it would be wise to be extremely cautious of such change.

Karen Gillon: This issue is the focus of considerable debate. Duties are already placed on head teachers in the Scottish education system, under devolved management of resources. Under section 8, further duties are placed on the authorities to delegate management functions to the head teachers. Although you feel strongly that this amendment would move us towards an English system, we have clearly already taken steps to devolve management in schools.

Ian Jenkins: I am inclined to counsel caution. I worry about a head teacher being exposed to legal challenges because of the provisions of the bill. I am also not sure that the section strengthens the position of the head teacher. When a local authority advises movement in a certain direction, through an improvement structure, a head teacher can duck and weave and try to negotiate on behalf

of his own school and staff. However, if the duties were devolved as they are in the bill, the system would be changed significantly. That change would require more consideration than we are able to give it at the moment.

Peter Peacock: I would be happy to reflect further on the arguments that I have heard today and provide a memorandum to the committee without prejudice to stage 3. Following that, I would be happy to consider how these issues could be addressed at stage 3.

I would like to make it clear that the scheme to devolve management is distinct from the devolving of a legal duty on a head teacher. It would perhaps be helpful for us to provide more background information on the matter before we return to it.

The Convener: There are further points to be clarified.

Mr Stone: I hear what you say about not wanting to move towards an English system. However, the bottom line is that we want what is best for our schools, regardless of whether the system is English, Italian, Catalan, or whatever. With respect, I have to say that that argument does not weigh with me.

Mr Monteith: I listened intently to what Ian Jenkins said, and I could not agree more that we should treat this amendment with caution. Nevertheless, one can see that it contains phrases that allow us to support its intentions. It contains the phrase "endeavour to", and we have had a debate about that wording. Were the amendment to say simply that a head teacher "shall" secure improvement, Ian Jenkins would be entirely correct to say, "Whoa! Wait a minute." However, it says, "endeavour to", and, after all our argument, we have reached the point where a head teacher would be able to show that he or she tried.

The amendment also says

"as are delegated to him"—

or to her, if I may add that—which is important, because it passes down a chain of authority. On the possibility that that approach somehow turns the system into an English one, heaven forbid that we should reject something just because it is English.

In section 8, on delegation schemes, there is yet more discussion of delegation, which goes down the same route as that proposed by amendment 36. For all that there are good arguments to treat the amendment with caution, there are also sufficient safeguards in the amendment to support it.

Peter Peacock: I emphasise that the Executive is happy to reflect on the amendment. There may be an opportunity to come back to it when we

reach section 8, and for further information to be provided. I want to stress that there is a clear distinction between the delegation of management functions and the delegation of legal duties. It would be an absolute first to delegate a legal duty in the way that is being suggested, and the consequences of such an action require to be contemplated much more fully.

I am not trying to say that one should not take that action because it takes us down the road that England is following. I am simply using the English situation as the nearest comparison, to characterise what effect the changes might have. In judging what is best for Scotland, members are free to reflect on many other systems.

Karen Gillon: The minister is putting himself under severe pressure of time. While the committee may agree to allow the amendment to be withdrawn, amendments for section 8 have to be lodged by Friday of this week. I am prepared to withdraw the amendment, with that proviso.

Michael Russell: That is an important point. Minister, you said at the start of this session that you were looking forward to co-operating with the committee, but perhaps you were not, because you have not co-operated much on any issues so far. Karen Gillon is right. You have a short time scale if you are to come back honestly with a positive proposal, in the light of today's discussion. If, however, that is a delaying tactic, I am afraid that you will be caught out. I counsel you, minister: if you are going to be positive, please come back to us with a positive proposal.

Peter Peacock: If I may respond to that, there are many matters ahead of us on which, as Mike Russell knows, we have already offered to make changes on the basis of amendments that he and his colleagues have lodged. I have heard the arguments, on which we want to reflect. However, with genuine intent, we must think through more clearly the wider consequences. It is in the spirit of trying to reflect on the views that have been expressed that we want to take the issue away.

The Convener: Brian, do you have a question?

Mr Monteith: It is not so much a question as an observation on section 8. It is possible for the minister to reflect on the amendment, if it is agreed to, and to amend section 8 subsequently, at stage 3.

The Convener: Does the committee agree to amendment 36, in the name of Karen Gillon, being withdrawn?

Michael Russell: Subject to that proviso, which should be recorded. The record will show that there was a proviso, and I think that most members of the committee share that view.

Mr Monteith: Can we clarify that proviso?

Karen Gillon: The proviso was that the minister will come back to those who lodged and supported the amendment by the end of this week, to enable us, if we so wish, to lodge an amendment to section 8 by 5.30 on Friday.

Peter Peacock: There is nothing to prejudice an amendment being lodged at stage 3.

Mr Macintosh: I suggest that the minister should come back to all members of the committee.

Amendment 36, by agreement, withdrawn.

Section 3 agreed to.

The Convener: I suggest that we move on from item 1 of the agenda, as we have three other items to deal with.

I thank you for attending, minister. No doubt we will meet again.

Committee Business

The Convener: Does anyone wish to raise any business under item 2?

Michael Russell: Correspondence has arisen on the film inquiry, which we had agreed to leave until the summer. With the committee's permission, I will discuss that correspondence with Gillian Baxendine after the recess in order to start sending out letters.

Nicola Sturgeon: We have already discussed this issue, but this morning we all received a letter from Henry McLeish about a learning accounts bill that is to be introduced. Do we have a locus on that bill? Will we be asked to comment on it at stage 1?

Gillian Baxendine (Clerk Team Leader): While the bill will go to the Enterprise and Lifelong Learning Committee, any member is free to comment on it. If the committee wishes to examine the bill, we could put it into the timetable.

The Convener: Are there any other update items?

Mr Monteith: I want to record that I met representatives of the University of Edinburgh and the preferred bidders for the Cramond site, to allow them to outline to me the current negotiations with the City of Edinburgh Council's planning department. They informed me that they are discussing the proposed idea of flipping the planning brief, but that they would undertake a section 75 agreement, which would ensure that, if such a change were to go ahead, they would not be able to develop the remainder of the site. If that happens, it will accord with the wishes that we stipulated in our report on Cramond.

Petitions

The Convener: The first petition is PE114 from Julia Clarke.

Do members agree with the recommendations on this petition?

Members *indicated agreement.*

The Convener: The second petition is PE122 from St Mary's Episcopal Primary School.

Do we agree with the recommendation?

Members *indicated agreement.*

School Infrastructure

The Convener: Item 4 concerns the committee's intention to hold an inquiry into school infrastructure. The paper before us suggests that the committee should submit a request to the Parliamentary Bureau to appoint an adviser. Do members agree that we should do so?

Members *indicated agreement.*

The Convener: Thank you for your attendance.

Meeting closed at 12:26.

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