



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 9 June 2010

Session 3

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CONTENTS

	Col.
LOCAL GOVERNMENT FUNDING OF EDUCATION AND CHILDREN'S SERVICES	3699
SUBORDINATE LEGISLATION	3726
Protection of Vulnerable Groups (Scotland) Act 2007 (Vetting Information) Regulations 2010 (SS1 2010/189)	3726
Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) Order 2010 (SSI 2010/190).....	3726
Protection of Vulnerable Groups (Scotland) Act 2007 (Health Professionals) (Health Service Lists) Regulations 2010 (SSI 2010/191)	3726
Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Manner and Place for the Taking of Fingerprints and Prescribed Personal Data Holders) Regulations 2010 (SSI 2010/192) ...	3726
Protection of Vulnerable Groups (Scotland) Act 2007 (Administration of the Scheme) Regulations 2010 (SSI 2010/193)	3726
Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010 (SSI 2010/194).....	3726

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
18th Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)

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

*Ken Macintosh (Eastwood) (Lab)

*Christina McKelvie (Central Scotland) (SNP)

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

Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Ted Brocklebank (Mid Scotland and Fife) (Con)

Hugh O'Donnell (Central Scotland) (LD)

Cathy Peattie (Falkirk East) (Lab)

Dave Thompson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Sarah Fortune (Convention of Scottish Local Authorities)

Ailsa Heine (Scottish Government Legal Directorate)

Barbara Lindsay (Convention of Scottish Local Authorities)

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

Robert Nicol (Convention of Scottish Local Authorities)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 9 June 2010

[The Convener *opened the meeting at 10:02*]

Local Government Funding of Education and Children's Services

The Convener (Karen Whitefield): Good morning. I open the 18th meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I have received apologies from Margaret Smith, who is unable to join us today. Claire Baker hopes to be here in the next half hour—I think that she has had problems with her train this morning.

The first item on the agenda is evidence from the Convention of Scottish Local Authorities as part of the committee's scoping exercise on local government funding of education and children's services. I am pleased to welcome Robert Nicol, who is the team leader at COSLA with responsibility for children and young people. He is joined by Barbara Lindsay, strategic director, and Sarah Fortune, policy manager. Before we move to questions, I invite Barbara Lindsay to make an opening statement.

Barbara Lindsay (Convention of Scottish Local Authorities): Thank you and good morning. Thanks for inviting us to give evidence.

I will make some brief introductory remarks to get us going. As members will all be aware, COSLA's role is to represent the 32 local authorities in Scotland. Our major role is to lobby, negotiate and exert influence to get the best circumstances for local government. Holding negotiations on resources, the settlement and budgets is by far the most important and far-reaching part of that role. A great deal of such discussion takes place in the run-up to a spending review, but smaller-scale discussions on finance happen throughout the spending review period.

In some ways, many people see the 2007 settlement as being somewhat different from previous settlements, but for us it was just part of a continuum in which we recognised the need to have a relationship between local government and national Government. During the discussions on the 2007 settlement, it was clear that there was an appetite to develop that relationship further, alongside the resource negotiations. That led to the concordat, which covered the financial

settlement, as well as aspects of the relationship. The concordat set out the framework for the relationship and the resources that were available to local government.

As far as spend was concerned, from our point of view the process was reasonably straightforward, in that COSLA established a minimum level of resources that we felt we could live within, which was based on the idea of a base budget. Subsequent negotiations focused on how much would be available on top of that in recognition of specific commitments that the Government wanted to deliver. It is important to stress the scale of that discussion. The total spend in local government is more than £11 billion, and the concordat commitments represent a relatively small part of that total. From the committee's point of view, education spend represents a significant proportion of the £11 billion.

Shortly, we will enter into discussions about the next settlement. We expect a United Kingdom announcement in the autumn, which will be followed by figures. As always, we are starting to think about that now, in advance of the announcement. As in 2007, our view is that it is better to do that in partnership with Government and the Scottish Parliament, particularly in a context of diminishing resources. As those discussions about the next settlement proceed, we will be happy to provide the committee with further details or to come back to talk through any aspects of the process.

I hope that those brief opening comments will help to get us going.

The Convener: Thank you very much.

As I am sure you would expect, the committee has a number of questions for you, the first of which I will ask. How do local authorities determine which priorities are their main priorities? How do national Government priorities interface with local government priorities? What part does COSLA play in the discussion about what will be delivered?

Barbara Lindsay: I will say a bit about the general position, after which Robert Nicol will probably want to comment on the education aspects.

If we take the most recent settlement as an example, we were involved in early discussions around the 15 national outcomes. Although the process was shortened because it took place after an election and it was necessary to get the settlement in place, we got involved with the Scottish Government in trying to influence what the national outcomes looked like. Clearly, the national outcomes reflect the Government's priorities, but we hope that we had an influence in shaping them.

Once the national outcomes had been set, as part of the concordat we got involved in drawing up single outcome agreements. As part of that, each community planning partnership took the 15 national outcomes and came up with a single outcome agreement that reflects their local circumstances and priorities but sits within and helps to deliver the national outcomes.

Robert Nicol (Convention of Scottish Local Authorities): I can say a little bit more about that from an education and children's services perspective.

The first point to make is that there is not always an artificial split between what local authorities want and what national Government or, indeed, COSLA want. In many ways, there are quite big overlaps, and I will say a little about where those overlaps lie.

An obvious area of overlap is the curriculum for excellence. Delivering an improved educational experience is as much a priority for local authorities as it is for national Government. It is certainly one of the areas that we have focused on in developing partnership work.

There is also a fairly big overlap in early years and early intervention. We have done an enormous amount of work on that over the past two years or so, including the development of the early years framework. Every authority buys into early intervention, even if it is not always easy to achieve.

What I am saying is that there is not always an artificial split between what a council wants and what national Government wants—there are big overlaps. I know that the committee has spoken to councils, so I hope that you saw that.

The Convener: Undoubtedly there are areas on which local authorities and the Government agree. Most education authorities agree that having smaller class sizes is worth while. However, each local authority has its own position on whether its number 1 priority is having smaller class sizes or having a maximum class size of 18, and whether that should be left to the discretion of the headteacher, whose decision will be based on local needs. Each local authority might take a different view on the matter, but the Government has a national priority in relation to class sizes. How does COSLA ensure that local authorities are confident that they can deliver on that national priority and that there are sufficient resources to allow them to do so?

When the Government's officials came to the committee, I was struck when they said that they did not sit down and work out how much the class size reduction was going to cost before they asked you whether you could deliver it. They did not work out how much it would have cost you to implement

the free school meals commitment either. I accept that you do not have to do that now, although it was in the original concordat. In signing up to that policy, how could COSLA be confident that councils could deliver when there was no real understanding, either from the Government or COSLA, about whether the national priorities were affordable?

Robert Nicol: I will answer first, but Barbara Lindsay might want to say more about the political things that happened in 2007.

I think that your question is about how COSLA maintains the relationship between the Scottish Government and councils on areas such as commitments. Telling councils what to do is not part of our role, but our role does contain an element of trying to work between our members and the Scottish Government where there are implementation issues. We all know that we have had to overcome challenges on the commitments. We understand the pressures that our members are under and reflect them back to the Scottish Government while listening to what the Government and ministers say they are looking for. It is a two-way process and there is, I hope, a mature discussion, such that each of us understands the pressures and demands on both sides.

Last year, as part of an agreed process with the Scottish Government, we determined to go round the whole of Scotland and visit every authority specifically to talk about class sizes. We did that jointly with officials. We were told about the different challenges that councils face and fed that back. That was a process of building the Government's understanding of the complexities at local level while giving it a picture of progress.

The Convener: Did those visits take place before the class size commitment was altered?

Robert Nicol: The visits took place last summer, from about this time last year to October 2009.

10:15

The Convener: I assume that, as a result of those visits, the amount of progress that had been made and the challenges for local authorities became far more apparent, and that that was an influencing factor in the Government's decision to reduce its class size commitment considerably.

Robert Nicol: I would not like to say that there was a causal relationship, but the visits provided some of the information that was available to us and to the Scottish Government. The Scottish Government also has relationships with individual councils, so there was not necessarily a direct relationship with what happened later in the year.

Barbara Lindsay: We always have to be conscious of our role as a membership organisation. We have to be careful that, if we reach agreements with Government, they are on the basis of political soundings from our membership. You have spoken about our being confident of delivering—we are careful not to think that we can just go off and negotiate something, and neither could a few politicians do so. We must keep it in mind that we have 32 member councils. When we enter into an agreement, we have to have done sufficient groundwork among our own membership to have confidence that we can deliver. Under the original settlement in 2007, it was felt that the package of additional resources was enough overall to allow us to get involved with the concordat commitments. However, as Robert Nicol said, we have an on-going mechanism for having discussions with the Government as circumstances change.

The Convener: Was that financial package sufficient to allow you to begin the process? Were you confident at that point that there was sufficient funding over the three years to allow you to meet the pledges on class sizes, school meals and additional hours for nursery places? To be honest, I was not at all confident that there was sufficient money. Having spoken to some local government representatives, I know that some local authorities were not at all confident that there was sufficient money to implement all those policies fully.

Barbara Lindsay: There are two slightly different points here. In announcing the settlement, we were clear that its tone should convey the fact that it was the best that could be achieved in the financial circumstances facing the Government at the time. We had done our groundwork on the concordat commitments—we had spoken to local government and were satisfied that, in accepting the increased resources, we could deliver the commitments. You are saying that you do not agree with that, and that is perfectly—

The Convener: I am struggling a little bit with this. If there were sufficient resources, why have none of the commitments been met? Why have we had to renegotiate the agreements around education? I accept that the Government could argue that in future it might not have the income that it expected, but it does have the income that it expected for now. If the agreement, at the time of sign-off, allowed the Government to proceed, and if you were confident that the national priorities could be met, I am at a bit of a loss to understand why we have not met the national priorities.

Robert Nicol: I might disagree about whether we have or have not met any of the commitments, but obviously the financial situation changed quite quickly following the 2007 spending review. That

aside, some of the commitments were not even intended to be implemented until part of the way through the year, such as free school meals for primary 1 to primary 3. The policy on class sizes was always intended to be gradual—not in terms of making gradual progress, but in terms of being implemented throughout the period of the concordat process. There was never to be a point by which the policy on class sizes had to be implemented; it was very much about making the progress that we could, taking into account the different circumstances that councils faced.

We went into the last spending review in good faith to negotiate the best deal for councils. Not doing that and signing up to something that we firmly believed would be bad for local government would not seem right to us.

The Convener: I am not for one minute suggesting that COSLA went into this without being committed and willing to work and engage with national Government. I agree that that is always your objective. However, I am slightly confused by your belief that the national priorities that the Government set in 2007 have been met. Can you point out for me which national priorities for education and children's services that the Government set in 2007 have actually been met, because the commitment and the national priority on class sizes was very clear: it was for all P1 to P3 children?

Robert Nicol: The commitment was to make progress towards class sizes of 18 as quickly as possible.

The Convener: That is not what Alex Salmond said in the chamber in September. He said that it would be met in the lifetime of this Parliament, and it quite—

Christina McKelvie (Central Scotland) (SNP): Convener, on a point of order. I have a real problem with the convener of this committee continually taking a partisan view when questioning members of the panel. I am very concerned about that. What Alex Salmond said in the chamber has got nothing to do with the committee's inquiry or our questions about what COSLA thinks has been met.

Alasdair Allan (Western Isles) (SNP): Can we stick to COSLA?

Christina McKelvie: Absolutely.

The Convener: Well, first of all, Miss McKelvie, that is not a point of order.

Alasdair Allan: It is true, though.

The Convener: I am afraid that this committee has a right to ask questions of COSLA. I do not think that at any time I have asked a question that COSLA could not answer. I am sure that if the

COSLA representatives felt uncomfortable about answering my questions, they would be more than quick enough in telling me.

Who is responsible for scrutinising the implementation of the agreements that COSLA makes with national Government through the concordat? Whose job is it to scrutinise the decisions?

Barbara Lindsay: The concordat itself sets out an infrastructure for getting together and monitoring the relationship and the delivery of the commitments. There are bi-monthly meetings with representatives of the Cabinet and there is a yearly meeting with the Cabinet itself, which is the forum in which we discuss any issues around the relationship and progress towards the concordat commitments. As I think Robert Nicol alluded to, if we felt that the parameters needed to change, we would discuss that in that forum. Meetings happen fairly regularly between our presidential team and/or our political group leaders and representatives of the Cabinet. We report back on those through COSLA. I assume that the Government has its own processes for reporting back.

The Convener: Are local authorities satisfied that that level of scrutiny is not too burdensome? Are they quite confident that it gets the balance of scrutiny right for the implementation of the single outcome agreements and the concordat commitments?

Barbara Lindsay: I would not like to answer that question for local government. As a representative of the body that represents local government, I simply say that a light scrutiny burden is always a key plank for us, because we want staff and financial resources to be focused on service delivery and we want the minimum amount of resources to be used for monitoring and scrutiny, commensurate with showing that the job that is supposed to be being done is being done. We look for a fairly light-touch concordat commitments scrutiny process that reassures our partners in Government that we are reporting back on whether we have done what we have been asked to do.

As members know, there is a single report to the local community on the progress that is being made on the single outcome agreement and a single report on progress to the Government from each local authority. While the existing inspection and best value scrutiny system is still in place, we see that as a far more streamlined system.

The Convener: I hope that sanctions never need to be used, but what would happen if a local authority was unable to meet a commitment that had been nationally agreed? I do not want to get into the debate on class sizes, but that issue

illustrates what we discussed in Clackmannanshire yesterday. Clackmannanshire Council is working hard to meet its class size commitment on all P1 classes having no more than 18 children. It was evident from our visit yesterday that the council leadership, including at director level, is working hard to meet that commitment, but meeting it is outwith the council's control to some degree. It is taking policy decisions to ensure that all its P1 classes have no more than 18 children, but it will undoubtedly be unable to meet that commitment if it gets placing requests in some schools. The council is showing willingness and is trying hard to deliver, but it is unable to guarantee that it can meet the commitment. We asked it what would happen if it could not meet it; it said that it did not know. Is COSLA clear about what would happen in those circumstances?

Robert Nicol: In order to answer that question, it must be understood how we work with our members. Our executive group has quarterly meetings on education and children's issues at which every council is represented. The councils are certainly not backward in coming forward in telling us about the pressures that they face. Obviously, placing requests have always been relevant, but they have probably been more of an issue over the past few years.

On how we reflect issues back to the Government and how that impacts on its decisions and what it says nationally, the relationship that we must have with the Government—informally with officials and politically with ministers— involves reflecting back to it what we have heard from councils, including the good will and good faith in approaching commitments that you mention. I alluded to our visits last year to talk about class sizes, and from those we and the Government heard about issues from a number of authorities. It is about trying to build a rounded picture of what progress means in different circumstances. You are right that placing requests have an impact on a council's ability to reduce class sizes, and clearly we want that to be taken into account.

10:30

The Convener: Is the target of having 20 per cent of P1 to P3 pupils in classes of 18 or fewer a target for all local authorities collectively? For example, if Clackmannanshire Council were unable to meet the target but some other local authorities exceeded it, would that be sufficient for the national Government to believe that local authorities had shown willing and met the target?

Robert Nicol: The 20 per cent target is a collective target for all councils. Part of the process will be listening to councils as well. For

example, Clackmannanshire Council might try to educate more pupils in smaller classes but, if the situation changed and it received an increased number of placing requests, we would want to know that and would relay that back to the Government. That would then be part of the discussion that we would have about the implementation of the 20 per cent target.

The Convener: You do not expect there to be any consequence for a local authority if it were unable to reach the target.

Robert Nicol: As a membership organisation, we would not argue for consequences along those lines for a council such as Clackmannanshire Council.

The Convener: I am not suggesting for a minute that COSLA would argue for that; you would probably represent the council and say that that was unfair. However, in your discussions with the Scottish Government, have you been made aware that there would be any negative consequences?

Barbara Lindsay: We are relying on the fact we have a relationship with the Government. We have committed to doing something and we are working with member councils to ensure that that is delivered. There is a two-way process of communication and we are not thinking in terms of sanctions; as Robert Nicol says, we are thinking more about what we can do collectively. Every council is making its best efforts, and if there are problems or issues we will discuss those with you. Equally, if you have problems and issues, I am sure that you will come back to us. It is about two-way communication rather than an approach based on sanctions if councils fail to meet the target.

The Convener: Thank you.

Alasdair Allan: One of the issues that COSLA faces is the fact that there are so many different potential measurements of what local authorities are doing financially. Is there some way of bringing together the disparate themes of spend, service delivery, progress and national outcomes that would be helpful to COSLA? Is there something that COSLA can do to bring those perhaps competing measurements together to provide a more complete picture?

Barbara Lindsay: I suppose that the move to single outcome agreements and the rationalisation of scrutiny is part of that process, and we would look to take that approach wherever possible. As you know, the single outcome agreement approach is in development. We have made a start on it, and it brings things together to a degree. We want to see that develop. I do not know whether you have a specific issue in mind or whether that general comment is enough.

Alasdair Allan: Does COSLA attempt to monitor local authority spending in a way that is helpful to local authorities at a time of pressures on the amount of money that is available to Scotland as a whole? Do you attempt to provide advice to local authorities that are trying to deliver what is required of them at a difficult time?

Barbara Lindsay: In broad policy terms, yes, but we do not monitor every individual council.

Robert Nicol: I have talked about our executive groups. Part of the reason for holding those meetings is to get councils to tell us about the difficulties, challenges and pressures that they are experiencing. We do not monitor spend in a rigorous way, but there is a flow of information to us. Sometimes, a council will tell us about an issue that it faces and we can research it a bit further, but we do not monitor in the sense of asking councils to return specific information to us.

Barbara Lindsay: We have quite a complex political structure: we have a finance executive group, which Sarah Fortune serves, and the education executive group; we have meetings of leaders; and we have much interaction with the Society of Local Authority Chief Executives and Senior Managers, directors of finance and the Association of Directors of Education in Scotland. Therefore, if there are particular pressures or concerns, we get to hear about them pretty quickly and can discuss ways of dealing with them among ourselves. Then we can take the issues to the Government.

Alasdair Allan: There is rightly now a focus on outcomes. Do you find that the timescales with which you work sometimes make it difficult to adjust policy in the light of assessing outcomes? Are you attempting to provide advice or assistance to councils on outcomes perhaps over a longer period?

Barbara Lindsay: As you say, outcomes are quite long term. However, individual local authorities set themselves milestones along the way so that they have those against which to benchmark themselves and assess whether they are making progress.

Alasdair Allan: Is COSLA comparing notes between local authorities' attempts to meet national or local outcomes?

Barbara Lindsay: Not specifically, although the Improvement Service works with local government on the development of the outcomes. That is probably where that activity would take place.

Robert Nicol: Yes. On certain other matters—for instance, the early years framework—we have a continuing relationship with councils and the Scottish Government. In that relationship, we attempt as far as possible to allow councils—or

rather community planning partnerships—to talk to one another, communicate and share information about and experience of different things that they are doing that might be relevant to early intervention and progress on early years work. We are developing not an outcomes framework but a tool that will allow the long-term outcomes for early years to be traced back to short-term action. We are developing that with the Scottish Government and it should be published relatively soon.

Christina McKelvie: You have spoken a lot about how partnership working has functioned, and I will probe that a wee bit further. Have you had to change your approach to partnership working? Are you still changing your approach? Is it a continuous evolution—a development—of how you communicate with local and central Government?

Barbara Lindsay: I suppose that it is. We have always recognised that we will work best when we have an established relationship with national Government. That approach has not changed for quite a long time—we have been working constantly towards it, even since before the previous election. You have only to consider our approach to successive spending reviews to see that relationship develop from being, to be frank, a bit of a stand-off, as I suppose it was when I joined COSLA, to much more a case of sitting down and having a discussion.

Even before the previous election, we were firmly in the territory of sitting down together to consider a base budget. I suppose that the 2007 election represented a step forward because we captured in writing what elements of the relationship might look like. We put our ball firmly in the court of needing a relationship with whichever Government is in place because we all deliver services to local communities. Whether it is the Parliament legislating for them or us delivering them on the ground and setting priorities, we need to work together.

Christina McKelvie: A huge amount of trust from both sides was established in the concordat. How has that developed and how well was it received by local authorities generally?

Barbara Lindsay: I would say that it was well received in the sense that it has allowed us to move forward with some long-held ambitions. We had been pressing for a reduction in ring fencing, more financial freedom and the single outcome agreement approach for a long time, and the establishment of that level of trust has been quite a step forward in that regard. Trust is a significant factor—just as it is, obviously, in any relationship.

Christina McKelvie: I absolutely agree that trust is key to any relationship.

That element of trust and the partnership-working approach will have an impact on how you deliver national policies and on the cost of doing so. Do you think that the costs of the national policies should be part of the calculation of the local government settlement?

Barbara Lindsay: Sarah Fortune can tell you more about how we arrive at the base budget, but we want a realistic appraisal of the costs of delivering policy. In our previous negotiations on the settlement, we have recognised that there is never enough money to do everything, so it is not simply developing a bidding process; we have to be realistic.

We have put quite a bit of work into developing a realistic appraisal and arriving at a base budget. In the financial climate that we are going into, in which there will be an unprecedented decrease in resources, we will all have to have a long, hard think about how we do that, as that will be an ever more important factor in our discussions.

Sarah Fortune (Convention of Scottish Local Authorities): We are into the negotiations for the current spending review and, as part of that process, we are trying to work out the actual cost of the current policies, and we have developed quite a sophisticated model to help us do that.

As Barbara Lindsay said, the process is still in its infancy. When the discussions have progressed further, we will be happy to come back and share that information with you.

Christina McKelvie: I would expect that process to be quite difficult. When we took evidence on the pilot for the free school meals policy, the calculations for the price of a free school meal varied markedly across councils. There was no formula that fitted all the councils, which is as it should be, as local concerns must be taken into account.

Do you think that it will be difficult to come up with that sort of formula, or have you made sufficient progress that you think that you will be able to come up with a figure for the cost of the current policies? I do not think that such a calculation could be universal, as councils have to deal with local priorities as they see fit.

Sarah Fortune: The financial model has been prepared at quite a high level. It assumes that there will be no growth in the system and that the current policies, as they stand at the moment, will continue into the next two spending reviews, up to 2016-17.

The process of developing the model has been difficult—it is being worked up at the moment by Scottish Government and local government officials. We are trying to road test it with local government and national Government to ensure

that it fully reflects what the situation will be, with the caveat that it is based on the current level of service—it contains no growth element, and future demand is difficult to predict.

Christina McKelvie: I have managed to get to three local authorities during this inquiry. One of the things that I picked up concerned private finance initiative liability. In answer to a parliamentary question, I was informed that that amounted to around £244 million out of the education budget, before a pencil or a jotter was bought or a teacher was employed. That is quite worrying. I also find it worrying that, yesterday, during the hour and a half that we spent critiquing Clackmannanshire Council's budget, the council's chief executive could not tell me how much that liability was. In Edinburgh, the figure was between £33 million and £40 million, and, in South Lanarkshire, it is shaping up to be about £30 million. What impact will that liability have on the negotiations and on working out the costs?

Sarah Fortune: Such costs are fixed and must be reflected in the budget in the future. They are reflected in the financial model.

10:45

Kenneth Gibson (Cunninghame North) (SNP): The local government settlement is fixed to delivery of concordat policies. Ms Lindsay said that the concordat commitments were only a small part of the £11 billion. Roughly what percentage of the entire budget are concordat commitments?

Barbara Lindsay: I do not know the percentage.

Robert Nicol: I do not know whether I can do that calculation in my head.

Barbara Lindsay: The amount is probably about £200 million—the proportion is small.

Kenneth Gibson: The figure is only about 2 or 3 per cent.

When you negotiate annual settlements with the Scottish Government, how do you identify figures? How do you know exactly what sum you should ask for?

Barbara Lindsay: Are you asking about the rest of the settlement?

Kenneth Gibson: I ask about both aspects—the baseline and the concordat commitments.

Barbara Lindsay: I will ask Sarah Fortune to say a bit about the base budget process.

Kenneth Gibson: Does an overlap exist, for example?

Barbara Lindsay: That is right.

Kenneth Gibson: If an overlap exists, how do you work out how much you need to deliver policies? How do you reach that figure?

Barbara Lindsay: For the previous settlement, we had a group that met Government officers frequently and which sought to arrive at a local government base budget. We said what the minimum budget was that we needed to deliver our existing set of services. In those discussions in 2007, that level of resource requirement was recognised. The incoming Government also wanted specific commitments to be met and was prepared to make additional resources available for that, so we discussed the additional resources. Behind the scenes, we have a detailed system that involves directors of finance, the Society of Local Authority Chief Executives and Senior Managers and local government officers arriving at what might be an appropriate global sum for us to deliver services. I do not know whether you want a description of that system.

Kenneth Gibson: My colleague Christina McKelvie referred to an issue that I will raise. It is clear that sweeping a street does not cost the same in Glasgow as it might in a rural community in the Highlands. The distribution formula has been relatively fixed in the past three years, but demography—rising and falling populations—plays a part. How do you get together to produce something to present to the Scottish Government that is robust enough for it to accept that as a position that it must address as realistically as possible?

Sarah Fortune: The distribution process is overtly complex and has been built up over several years, but it is probably recognised that the process is the best that we can have at the moment. Every year, a group that involves directors of finance, COSLA and the Scottish Government considers changes in indicators and their impacts. That is part of a continuing process.

The underlying theory of the distribution process is to achieve stability, which is key to the process of councils delivering three-year budgets. Changes might occur in indicators such as population, but stability is needed to ensure that councils' resources do not fluctuate too much. That enables councils to deliver their services over the years.

Kenneth Gibson: In your discussions with the Scottish Government, how do you deal with issues such as cost pressures? How do you monitor cost pressures and how do you deal with the fact that they vary? The cost of PFI has been talked about as a fixed cost, but it is not really a fixed cost. The cost to my local authority tripled over a period of one year. Some of the costs are not fixed but are growing dramatically in some parts of the country, although not in other local authority areas. How do

you deal with the fact that cost pressures can be different? How do you ensure that each local authority is represented in negotiations and that the deal is equitable, so that the local authorities that went down one particular policy road are not penalised through the distribution formula?

Sarah Fortune: As both Barbara Lindsay and Robert Nicol suggested, a complex process of scrutiny is in place whereby we have regular dialogue with directors of finance, SOLACE and the respective directors. As part of that dialogue, we should be getting an indication—certainly, at officer level—of the pressures that are coming up. Equally, through the political process, we have discussions through the resourcing and capacity executive group in which I am involved. That group deals with the finance side, and all 32 local authority conveners are represented on it. We also get feedback about the pressures that councils face through the other executive groups.

Kenneth Gibson: One of the issues that we face is how the Scottish Government is able to get its policies implemented. Ring fencing—which you touched on—has been abolished in most of the areas where it existed previously. Has that aided the implementation of those jointly agreed policies? Has it freed up additional resources and made local government more efficient? Have there been cost savings as a result?

Barbara Lindsay: The feedback that we receive from local government confirms what we thought going into that process, which is that it is far more efficient not to have a plethora of different ring-fenced budget lines that we must monitor and report against. Having the flexibility that a pool of resources provides and deploying those resources at reaching a local authority's objectives is more efficient. That is the feedback that we receive. Some councils have attempted to put a figure on that, but we have not specifically put a monetary figure on it.

Kenneth Gibson: Has that helped in the delivery of the concordat? The question was raised earlier whether that has made it easier or more difficult for the Scottish Government to get its policies delivered. Do you think that that has encouraged a greater sense of co-operation, or has it just allowed local authorities effectively to do as they wish, regardless of the Scottish Government's policy priorities?

Barbara Lindsay: For us, the driver behind it is the idea that, if councils have that flexibility and do not have specific budget lines, that invites the community planning partnership to be involved in the process. It is the council's role to deliver outcomes but it is the community planning partnership's job to deliver against outcomes in an area. We see the single outcome agreement process, delivery against outcomes and the lack of

ring fencing as enabling that to happen, and we get a better result from that process. Perhaps Robert Nicol would like to add to that.

Robert Nicol: I will use the early years framework as an example. The whole principle behind it is to use to best effect the global sum of money that is available to a community planning partnership for delivery of specific outcomes for children in the early years. It is hard to see how that would work without the ability to determine how money was to be spent globally across the area and instead having to look at what individual pots of money could be used for. The philosophy behind the early years framework is based on having greater flexibility in determining how health services, councils and so on spend resource.

Kenneth Gibson: Basically, you are saying that it is a win-win situation, because local authorities and the Scottish Government are better able to deliver their priorities through the current mechanism than they were under the previous ring-fencing mechanism.

Robert Nicol: COSLA has long argued for a reduction in ring fencing. We see that as a better approach. However, as I said, the amount of money that was ring fenced in education was always pretty small, but it has been reduced further. It seems more sensible to us for councils to have more flexibility in deciding how to use the money and the ability to adapt to local pressures.

Ken Macintosh (Eastwood) (Lab): I want to ask about outcomes. The new relationship between central and local government has, at least in theory, moved from an input-based system to an outcome-based one. I am not sure how you measure outcomes. Does COSLA measure them or do local authorities do it and, if so, how?

Barbara Lindsay: Outcomes are set out in single outcome agreements that are agreed between community planning partnerships and the national Government. The agreement sets out the local priorities on which the area will focus and how it will deliver them. It is for the community planning partnership to report to its local community and, in a single report, to the Scottish Government. COSLA does not do that; individual councils sign the reports.

Ken Macintosh: So COSLA does not collate or gather that information; individual authorities sign an outcome agreement. Can you give me an example of how the information on an outcome is assessed, monitored and delivered to local councillors, local people, elected representatives or the Scottish Government?

Barbara Lindsay: I do not have an example with me, but we would be happy to ask an individual local authority to provide examples, if that would be helpful to you.

Ken Macintosh: It would be helpful to get such an example, for example on class sizes, although I am not sure whether the class size target is an outcome. Is it?

Barbara Lindsay: I suppose that I would say that it is an input, although that is not to say that some councils have not reflected certain aspirations in their outcome agreements. However, we would not describe that target as an outcome.

Ken Macintosh: So, although class sizes and school meals are perhaps the most high-profile education policies from the Scottish Government perspective, neither of those are outcomes—they are both inputs.

Barbara Lindsay: Outcomes would be described in terms of quality of life improvement. A council might choose to prioritise the delivery of breakfast clubs or free school meals overtly as part of an overall outcome to deliver better quality of life.

Ken Macintosh: Obviously, there is a changing landscape. To be fair, it has always been a confused landscape and the relationship has always been slightly blurred. We have outcomes, yet at the same time the issues that we talk about are always described in terms of inputs. We are moving to outcome agreements, but we talk about class sizes, school meals and so on, which are nothing to do with outcomes. The outcomes would be about improving children's lives, tackling poverty and so on. However, those are not measured, are they? What is measured is a straightforward input—for example, whether a council has achieved a 20 per cent target in class size reduction. That is an input measure, is it not?

Barbara Lindsay: We have agreed a combination of things with the Government. We have agreed the single outcome agreement approach, which is overtly outcome based. Councils measure those outcomes and report to their communities and the Government. We have also agreed a small number of input measures that the Government felt were important when it came into power. As any Government does, it wanted to do certain things and we have agreed to deliver those. We also look at those measures and discuss them with Government, so there is a combination of things.

Our view is that we are firmly in the territory of the outcomes approach. There is sometimes a strong emphasis on simply looking at the inputs, which is perhaps to the detriment of that and means that the story on outcomes does not quite come across.

11:00

Robert Nicol: Councils and directors of education say that the focus should continue to move towards outcomes rather than inputs, because they see outcomes as a more important measure of success.

Ken Macintosh: I do not necessarily disagree that it is important to focus on outcomes. I am just worried about how outcomes are measured, or whether they are measured at all. I am also a bit worried that you cannot give me an example. I cannot think of an example, either. I am particularly concerned about outcomes being assessed as part of the accountability process. The committee is looking at accountability.

Barbara Lindsay: We do not actually do that, but we have the contacts—either through the education route or more generally—to get examples for the committee.

Ken Macintosh: I understand and hope that by focusing more on outcomes, there will be far less emphasis on the sort of inspection and monitoring of figures and services that local government complained about in the past. We have had a series of informal chats with local government—there does not seem to be much of a decline in that kind of monitoring. In other words, huge effort still seems to be spent on collating information and reporting to various bodies which, again, focuses on inputs and budget lines rather than on outcomes. Are you aware of a shift in inspection in that regard?

Robert Nicol: It is fair to say that organisations such as Her Majesty's Inspectorate of Education have changed their inspection regime over the past couple of years and are taking quite a different approach to how they inspect schools and education authorities. I am sure that there will be instances where authorities would say that they had a specific issue with HMIE, but HMIE has tried to move to a far more risk-based approach by looking at the self-assessment materials that councils and schools have and saying to schools, "We don't have to be here for the whole week. If we're satisfied right at the beginning that you are doing quite a good job, we can turn this into a conversation about how you can improve further, rather than pull you up for things that you are not doing." HMIE has changed its approach to school inspection and child-protection inspection. Ultimately, the long-term shift will be to take that approach right across children's services inspection. That is on-going work in which we are all involved.

Ken Macintosh: The change in HMIE is very good—the model has been used elsewhere. However, I was really wondering about the number and extent of the inspections and reports.

Has that declined? Is it in decline? Has there been an improvement?

Barbara Lindsay: Our view is that all that has been streamlined, but it is only a direction of travel. We in local government are always saying that we can do more and that we can make things better for councils. Clearly, there is a job to do for the Government and national inspection agencies to deliver on that aspiration. We feel that things are better, but that more can be done.

Ken Macintosh: The committee is looking at accountability. There will always be a difficult relationship, because local authorities are accountable to their own elected representatives, but they draw on a lot of resources and respond to policy directives nationally. Do you think that we will use outcome or performance measures more and, if so, how will that improve the relationship in relation to accountability?

I will give an example. In England and Wales, a lot of money is allocated to disabled children. In England, that fund is ring fenced, but when the sum of £34 million came to Scotland, it was not ring fenced but was given to local authorities. That is fine, but there is a difficulty in trying to establish whether the money has improved outcomes. To be honest, it is difficult to know what the money is being used for. How can we, as parliamentarians, question the minister on the issue, when he says that the money has been given to local authorities and local authorities are unable to report on it?

Robert Nicol: Sarah Fortune may want to say a little about consequentials and how those work. You are right to say that down south there is a programme—I forget what it is called—for disabled children. I understand that, when we get the consequentials of that programme, which total roughly £34 million, those go into the big Scottish block. It is up to the Scottish Government and Parliament to decide how the Scottish block is spent. There is no direct connection between moneys that are spent on disabled children down south and the money that is spent on disabled children—or any other children—here. There is an issue about whether the £34 million is a real figure.

The committee is interested in accountability for disabled children—and all children. At some point, we should capture how outcomes are focused on locally, because disabled children will benefit from elements of the system from which every child benefits. Even if there were an individual pot of money, it would be hard to pin down what that would do for a child, because the whole system and other resources would come into play.

Ken Macintosh: There are a number of issues. First, ministers make statements on policy and, in theory, allocate or do not allocate money. Clearly,

there is an issue of transparency. The second issue is how we make a judgment about whether money has been appropriately or best used—between local authorities, as well as across authorities. For example, how do we know that money that has been put into additional support for learning is delivering better outcomes in Dundee than in Glasgow or the Highlands? The committee finds it difficult to establish whether that is the case. We can interview professionals and discuss the matter with them, but there is little information on budget spending and it is difficult for us to track exactly how much is spent on each pupil in each area and how money is used. Does COSLA gather information on such matters? How do you compare the performance of different authorities?

Robert Nicol: We do not collect information from councils on a performance management basis, either on additional support for learning or generally. Organisations such as Audit Scotland do work on best value in authorities. On the specific issue of ASL, we argue—we argued this during consideration of the Education (Additional Support for Learning) (Scotland) Bill—that it is best to focus not on tracing money and how it is spent but on whether the experience of a child with additional support needs is positive. That experience could involve a range of services and money coming from a range of sources. It is important that a child's experience in a school, which can be picked up by HMIE inspections and councils' performance management systems, is the measure of whether an authority is doing a good job.

Ken Macintosh: I ask for your advice on how the committee can further explore the matter. I will give an example. Some local authorities heavily mainstream their pupils with additional support needs. They keep all or most of them in mainstream settings and very few go to special schools. Other local authorities are far more likely to use special schools. There is quite a variation in the costs of those two approaches. How should the committee assess the effectiveness of the performance of each council in that regard?

Barbara Lindsay: I suppose that there are two fundamentally different approaches. The one that we take is about firmly going with the outcomes approach. As Robert Nicol said, we feel that that delivers the best result locally in terms of quality of life and improvement. We believe that councils and local elected members are in the best position to decide on local outcomes and to report to their local communities on them.

Ken Macintosh: I do not understand. How are you measuring outcomes for pupils with additional support needs? What outcomes are individual local authorities measuring?

Barbara Lindsay: I suppose that the question suggests that, as Robert Nicol said, we would follow a specific pot of money and be prescriptive about a specific policy area and that specific pot of money. That is not really the approach that we have taken.

Ken Macintosh: I am just trying to get at how you know whether pupils are better off or have better outcomes in one local authority than they would in another. I will give you an example again. I am not being critical—I am just trying to explore the matter. It is a question of fairness and of accountability. All sorts of things come into it. Obviously, the subject gets political at times as well, but that is not necessarily at the heart of it.

If a child is in an authority that, for historical or other reasons, happens to have a lot of special schools, it is far more likely that the child will go to a special school. An authority that does not have special schools is far more likely to support the child in a mainstream environment. There are arguments for both approaches, but the feeling that we are left with is that the choice of approach is driven by the services that the authority has available rather than by outcomes for the child. A special school is an expensive resource or service to provide and the authority has to fill it to capacity, so it will tend to use it for children with additional support needs. In other cases, authorities do not have special schools, so they mainstream the children. One approach is potentially more expensive than the other.

The committee is left with the question about which produces the better outcome. It is difficult for us to get to the bottom of that. It is difficult to know how much it costs in each case and it is difficult to know which approach is proving to be better for the children. It is a tricky situation, and there is so little transparency about the process that it is almost impossible to follow it.

Barbara Lindsay: I do not want this to become a tussle, but I cannot accept that there is not transparency. From where we sit, we would say that local elected members are best placed to make the decisions and to decide whether the results are being delivered. The concern at national level ought to be very much about outcomes and the quality of life for people in Scotland, but at the local level, local elected members, local authorities and their partners are best placed to determine the results that are delivered locally.

Robert Nicol: The only point to add is that there is work by Government and inspectorates on good practice in the delivery of services.

You are right—if a local authority wants to move from one service model to another, that takes time and resources, and it would want to base that

change on the best evidence that is available. Councils have that and they are able to make those choices.

As Barbara Lindsay said, we would argue—it is not necessarily to say that there is not another point of view—that the best people to make scrutiny decisions are local elected members.

Ken Macintosh: I—

The Convener: Mr Macintosh, could you make this your last question, please?

Ken Macintosh: Certainly. It is just a statement. I do not object to what has been said. I agree that local elected members are the best people to make local decisions. Clearly, our concern is about tracking. It is about the accountability of national decisions and their fairness. Thank you.

11:15

Claire Baker (Mid Scotland and Fife) (Lab): In our visits to councils, it has been clear that most of the budget is fixed cost, for example staffing, or demand led, such as children's services or services for children with additional support needs. We have spoken this morning about the impact that significantly decreasing budgets will have on councils' future decisions. Are you concerned that that might start to impact on councils' ability to lead on policy innovation? Elizabeth Smith is going to ask about devolved school management, so I do not want to discuss that at this point. However, yesterday we visited Alloa academy, whose headteacher had been able to target money specifically at vulnerable young people who were struggling at school. That headteacher had also developed a successful college link. Nonetheless, he was having to take that money out of a budget that was becoming increasingly tight for existing commitments. Although that is a small local example, local authorities are also making policy decisions and trying to be innovative with budgets. Will it be more difficult for councils to take such an approach?

Robert Nicol: You are right that there is a range of pressures on councils. Obviously, there are certain things that councils have to do—things that they have no choice about—some of which are manageable and some of which are less manageable, and which have to be taken into account as well. If you have a declining level of resource, there are fewer things that you will be able to spend it on. The question is what the priorities will be. If pressures within the system continue, how are they managed to allow as much resource as possible to go to those priorities? Sarah Fortune spoke about the financial model that we are developing to consider the coming spending review. Part of that is to consider the global pressures and so on, and what that might

mean in terms of a gap that could have consequences throughout local government.

Barbara Lindsay: That declining resource will be the central challenge throughout the public sector. At the same time, we have got to be able to continue to deliver public services. How can we arrive at a more focused set of priorities? How can we strip things out of the system? It has to be a combination of things. I do not think that anyone would set their face against innovation. I have been involved in discussions already on the future of older people's services. We have considered a range of issues, for example what costs might be able to come out and what things we might be able to do differently. It will be more difficult, but we cannot say, "Oh, we can't have innovation and we can't have change." All the same, at the end of the day local authorities must balance their budgets.

Claire Baker: When we visited Dundee, we saw the impressive autism services that the council is delivering throughout the city. Money that is spent in certain areas will lead to savings for local authorities in other budgets down the years. For example, investment when young people leave school is key, so that they have positive destinations and self-confidence. The issue is how to protect such areas when the budget is under pressure from staff costs, and other costs that have to be met.

Barbara Lindsay: One of the high-level debates that we have to have is about the idea of getting in early through prevention and early intervention. It has certainly been debated a great deal at our leaders meetings, and the current financial climate will possibly force us to think about an actual model for doing that. It has been talked about a lot—people want it to happen—and, as you say, it is probably happening in little pockets all over the place. As we move forward, we will probably all want to think about how we can do early intervention and prevention work more consistently across the board, because it is the way in which to free up resources in the medium-to-long term.

Robert Nicol: The good example in Dundee is in autism services, but early intervention is something that we are looking at across the piece. There are challenges because councils, health boards and everyone else have to deal with the problems of today just as much as they want to try to get at the problems of tomorrow. Trying to make that balance work is a big challenge even with an increasing level of resource, but doing it in the face of declining resources makes it even more challenging. That is not to say that we do not want to get to the heart of it as part of our future work.

Elizabeth Smith (Mid Scotland and Fife (Con): Mr Nicol said at the start in an answer to

the convener that placing requests are a considerable challenge for local authorities and one that you cannot necessarily control. Why do you think that the number of placing requests is increasing?

Robert Nicol: I do not know whether I could put my finger on one specific issue that is leading to the increase in placing requests. It is down to parental choice and family decisions on where kids should go, so I suspect that a range of issues lead to placing requests. They have perhaps become more of a highlighted issue because of the resonance between placing requests and class size reduction.

Elizabeth Smith: If you cannot, or are not prepared to say, what you think the reasons might be, will you say whether you foresee that the trend will continue?

Robert Nicol: It is not that I cannot answer, but that I think that there is a range of potentially complex issues that affect placing requests.

The number of requests could increase. I know that the Government is conducting a consultation, which is possibly closing right now, on regulations to set 25 as the backstop number in primary 1. If that comes in, it will at least allow councils to defend placing request decisions in P1—we would have to see what happened in other parts of the school. Whether it will have an impact on the sheer number of placing requests remains to be seen.

Elizabeth Smith: Is your ability to deliver on the concordat affected by the increase in placing requests?

Robert Nicol: Placing requests have had an impact on councils' ability to pursue class size reductions. I do not think that that is any secret. If a council knows that it is more likely than not to lose a placing request, it will be less likely to contest it and will just accept kids into a school. That placing request has therefore had an impact, but there are other impacts and challenges, some of which we acknowledged at the beginning of the concordat and which we knew would impact on different authorities, such as school rolls going up or down, pressures of people moving into an area and school capacity. A range of things can have an impact on policies such as class size reduction.

Elizabeth Smith: Some people would argue that the concordat is perhaps not the best way of delivering education services. They might be right; they might be wrong. Do you foresee a further development in allowing headteachers to have a far greater say in the delivery of education, rather than it being set out on the basis of a concordat in which it is a one-size-fits-all policy?

Robert Nicol: We might contest the idea that it is a one-size-fits-all policy. If an ADES representative were here, they would probably say that, in fact, there is a good relationship between directors, central staff and headteachers, that they need to maintain that working relationship, and that they approach it in different ways. The autonomy that headteachers have might vary across authorities, but I would find it hard to think of any authority that did not want a good working relationship with headteachers.

Elizabeth Smith: I totally accept that, but let me just pursue the point about the policy's being one-size-fits-all. With devolved school management being very much on the agenda at the moment, some people would argue that headteachers would like to have a little bit more say over management of their schools. To what extent might management be pushed further down the scale such that headteachers have more say over how they spend their budgets, and perhaps over teachers' salaries and so on? Might that come to fruition, or will we still be stuck with national guidelines on most such things?

Robert Nicol: I think that councils would probably say that many things—although perhaps not teachers' salaries and terms and conditions—are already within their gift. Councils can pursue different models and ways of working with schools and headteachers that they feel are most appropriate. I suspect that the debate on the governance of schools will run and that we will take part in that, but a lot can and will happen within local authorities as they try to improve education generally within their areas.

Elizabeth Smith: Is there not a bit of a contradiction in the sense that the concordat is based around an agreement between local government and national Government about what the priorities should be—

Barbara Lindsay: I suppose that the concordat—

Elizabeth Smith: Let me just finish my point, please.

That is the basis on which the concordat has been developed. At the same time, it is being suggested that there will be more devolved school management, whereby headteachers will have the increased flexibility that Mr Nicol has described over how they spend that money. Is not that a contradiction?

Barbara Lindsay: Let me just clarify that the concordat involves a combination of things, including the bulk of the more than £11 billion local government settlement and a small number of policy commitments. Our £11 billion settlement includes the bulk of spend on education, which is

governed by the existing political governance structures—

Elizabeth Smith: What I am driving at is that the decision-making process—and, therefore, the delivery of education—is at present an agreement between national Government and local government. Is not that correct?

Robert Nicol: I think that the Scottish Government recognises that the delivery of education is a partnership issue—

Elizabeth Smith: That is exactly what I am saying. The delivery of education is an agreement or, if you like, a partnership—

Robert Nicol: It has always been an agreement. Even before the concordat, there was an acknowledgement that different things happen at national level and local level in education. Teachers' terms and conditions are a classic example. Through the Scottish Negotiating Committee for Teachers—the SNCT—we have a three-way discussion involving Government, the unions and ourselves as employers on national terms and conditions for teachers. Equally, there are things that happen, quite rightly, at the local level in connection with the management of schools, such as the devolution of responsibility and implementation of the curriculum.

Elizabeth Smith: If that is correct, what is the point of devolved school management?

Robert Nicol: I am not arguing against devolved school management. Devolved school management is something that quite rightly happens at the local level. It allows headteachers to take decisions that are appropriate for their schools.

Elizabeth Smith: This is my last question. Should that be pushed further to allow headteachers to have more flexibility over more issues?

Robert Nicol: As I said, that is a local decision and is a debate that will continue to be had. COSLA does not have a policy on whether devolved school management should increase. We see that as an implementation decision for local authorities—

Barbara Lindsay: It is currently a local government service.

The Convener: I thank our witnesses very much for their attendance at committee and for answering all our wide-ranging questions this morning.

Barbara Lindsay: If the committee feels that there is anything that we have not covered on which we should provide written information, please just say afterwards.

The Convener: That is very much appreciated.
I suspend the meeting for five minutes.

11:37

On resuming—

11:29

Meeting suspended.

Subordinate Legislation

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Vetting Information)
Regulations 2010 (SSI 2010/189)**

**Police Act 1997 (Alteration of the Meaning
of Suitability Information relating to
Children and Protected Adults) (Scotland)
Order 2010 (SSI 2010/190)**

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Health Professionals)
(Health Service Lists) Regulations 2010
(SSI 2010/191)**

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Prescribed Manner
and Place for the Taking of Fingerprints
and Prescribed Personal Data Holders)
Regulations 2010 (SSI 2010/192)**

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Administration of the
Scheme) Regulations 2010 (SSI 2010/193)**

**Protection of Vulnerable Groups
(Scotland) Act 2007 (Unlawful Requests
for Scheme Records) (Prescribed
Circumstances) Regulations 2010 (SSI
2010/194)**

The Convener: The second item on the agenda is the fourth batch of Scottish statutory instruments on the Protection of Vulnerable Groups (Scotland) Act 2007 that the committee will consider. It is the final batch before the summer recess, with a further batch expected in early autumn.

I am pleased to welcome a regular visitor to the committee, Mr Andrew Mott. Members will remember that Andrew Mott is the protection of vulnerable groups implementation legislation manager. He is joined by Ailsa Heine, who is a senior principal legal officer with the PVG and schools solicitors' division at the Scottish Government. Mr Mott will make an opening statement on the SSIs.

Andrew Mott (Scottish Government Children, Young People and Social Care Directorate): Convener, thank you for giving me the opportunity to make an opening statement about these instruments, which, as you said, are the fourth batch to come before the committee in respect of the PVG scheme and the last batch before the

summer recess. We will return in the autumn with a few Scottish statutory instruments dealing with cross-border provision, changes to how organisations register with Disclosure Scotland and some consequential amendments in respect of family health services. We would also be happy at that time to provide members with a briefing on progress with wider implementation, if that would be helpful. As members are, I hope, becoming quite familiar with the scheme, I will turn immediately to the instruments before you. This batch comprises six negative resolution instruments that all relate to PVG scheme membership, vetting and disclosure.

The Protection of Vulnerable Groups (Scotland) Act 2007 (Vetting Information) Regulations 2010 prescribe information about certain civil orders made under the Sexual Offences Act 2003 and the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 as vetting information for the purposes of the PVG scheme. That means that information about any such civil orders in force about an individual will always be disclosed on a scheme record and that the making of such an order could trigger a consideration for listing of an existing scheme member.

The Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) Order 2010 prescribes the same information about civil orders for enhanced disclosures, in cases where such disclosures include suitability information. In other words, where an enhanced disclosure includes a check of the children's or adults' barred lists, the disclosure would also include information about any such civil orders. Examples include enhanced disclosures obtained for adoption purposes or guardianship orders under the Adults with Incapacity (Scotland) Act 2000.

The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Manner and Place for the Taking of Fingerprints and Prescribed Personal Data Holders) Regulations 2010 make provision for the manner and place of taking fingerprints for the PVG scheme. The taking of fingerprints will sometimes be necessary as a last resort where, for example, there is no other way of confirming that a conviction belongs or does not belong to the individual applying to join the PVG scheme. The regulations also make provision for information to be gathered from the General Register Office for Scotland, the UK Border Agency and the Driver and Vehicle Agency in Northern Ireland for the purposes of confirming an individual's identity. The provision in these regulations mirrors that for basic, standard and enhanced disclosures and registration in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010, which came before the committee three weeks ago.

The Protection of Vulnerable Groups (Scotland) Act 2007 (Administration of the Scheme) Regulations 2010 make provision allowing Disclosure Scotland to require documentary evidence of a change of name or gender. In practice, Disclosure Scotland will not routinely require documentary evidence as that will be unduly burdensome on PVG scheme members. The regulations also set a three-month time limit for an individual to make a request to correct a scheme record under section 51 of the 2007 act to ensure that any error can be properly investigated and corrected. That kind of investigation becomes much more difficult if a long period of time has elapsed.

The Protection of Vulnerable Groups (Scotland) Act 2007 (Health Professionals) (Health Service Lists) Regulations 2010 make provision for health boards to access scheme records for the purposes of assessing an individual's suitability to be included on their lists of family health service practitioners. The provision replaces provision for access to enhanced disclosure in the current criminal records regulations, which will be revoked by the new criminal records regulations.

Finally, the Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010, or what are called the contractors and disclosure regulations, form the last of the seven significant statutory instruments that were consulted on in draft between November 2009 and February 2010. The regulations make provision to allow third parties to ask to see disclosure records where they have been sought in respect of the transportation of children and/or protected adults in certain circumstances. For example, they allow a local authority to ask to see the disclosure records of bus drivers employed by a bus company contracted to transport children to their schools. I stress that these regulations do not in any way change the scope of regulated work with children or adults. I also emphasise their rather narrow scope in applying only to transport services in particular circumstances, which we believe best takes account of the views and concerns of Scottish stakeholders.

That concludes my introductory remarks, which I hope have been helpful. Obviously, I am happy to take any questions from the committee on the instruments.

The Convener: Thank you, Mr Mott. Do members have any questions?

Ken Macintosh: I want to ask about SSI 2010/192, which deals with the taking of fingerprints. Ministers will make the decisions, but who will suggest to them that a fingerprint check is necessary?

11:45

Andrew Mott: It is quite clear in the Protection of Vulnerable Groups (Scotland) Act 2007 that the taking of fingerprints is the last resort if identity cannot be confirmed in any other way. We are talking about somebody saying that a conviction on their disclosure record is not theirs. If a fingerprint record is attached to the conviction on the police system, the individual can choose a police station in Scotland to go to in order to give their fingerprints, which can then be matched against those on the police system. That will prove one way or the other whether the conviction belongs to the individual. However, that will need to happen quite rarely. As I said, it is a last resort if there is no other way of confirming identity.

Ken Macintosh: I take it that that power did not exist and therefore has not been used before.

Andrew Mott: It does exist under the current criminal records regulations for enhanced disclosure. The procedure will not be changed too much.

Ken Macintosh: Has the power been used often?

Andrew Mott: I do not have the exact number of times that it has been used, but I have numbers for disputes—for people who have contested anything on a disclosure. In the 2009 calendar year, there were 324 vetting disputes that involved individuals contesting information on their disclosures. To put that in context, that is a rate of 33 per 100,000 disclosures, which is quite low. A process is gone through. Sometimes the individual is right and the data are corrected and sometimes they are wrong and the data are not corrected. Some 57 per cent of the 324 challenges were upheld and the information on disclosures was changed. I hope that that is evidence that there is currently a meaningful process that works and produces results. Information is changed as a result of it.

Ken Macintosh: I want to ask about that, but let us stick with fingerprints for now. The minister must give permission for a fingerprint check, but who applies to the minister with a suggestion that such a check is necessary?

Andrew Mott: I will talk members through the process to put matters in context. Normally, if an individual who gets a disclosure back after an application is not happy with it, they will go to Disclosure Scotland and say that they do not agree with the information on it.

Ken Macintosh: Would a fingerprint check probably happen in such situations?

Andrew Mott: Yes. It would happen only because an individual had contested something. The individual would raise the matter with

Disclosure Scotland, which would write to the individual and to the registered body that had received the disclosure. It would say that there was disputed information. It would then say to the police or wherever the data came from that there was a problem and would ask for that problem to be looked into. In some instances, there will be no way of resolving the matter without a fingerprint test. The individual will then be asked to nominate a police station to go to in order to give their fingerprints.

Ken Macintosh: So, in effect, it is Disclosure Scotland as opposed to the employer or the individual that makes the decision.

Andrew Mott: Yes.

Ken Macintosh: The applicant must give their permission, but Disclosure Scotland will say, "This is the route we'll take to resolve this identification."

Andrew Mott: Yes.

Ken Macintosh: I will move on to SSI 2010/193, which includes a three-month time limit. You mentioned the number of disputes in the system. Could you give a fuller description of the process by which anyone can appeal against or contest information that they believe is held on their record? If they apply for and are granted a disclosure, I take it that it is sent to them and to the organisation that will employ or use them at the same time.

Andrew Mott: Yes.

Ken Macintosh: Will you talk us through what happens if someone disagrees with what they find in the record?

Andrew Mott: Certainly. Perhaps it is easiest if I start with the current process, after which I can talk about the elaboration for PVG if you would like me to do that. Basically, disputes divide into three types, the first of which is on identity. For example, a police record may be incorrectly matched to an individual. That means that everything on the record is potentially wrong. The individual's police record may have six convictions and those are put on the disclosure record only for the individual to say, "None of these are mine."

The second type of dispute is on the accuracy of convictions. For example, an individual who finds four convictions on their record says, "The third one does not belong to me." Another example is when the individual disagrees with the description. They may say, "I was sentenced to two years in prison, not five years." In other words, the description of the conviction is wrong.

The third type of dispute is on the accuracy of other relevant information from police forces. For example, the individual may say that they are unhappy with the accuracy or relevance of

information on their enhanced disclosure. They do not agree that it is a fair description of what happened or dispute the relevance for purpose. The chief police officer makes the determination of relevance, but the individual can dispute it. That is a summary of the three types of dispute: identity, accuracy of convictions and accuracy of other relevant information. If the individual disputes any of that, they go to Disclosure Scotland and the process that I described is followed.

There are a number of tools for resolving disputes. For example, if the individual can provide a bit more information on their personal data, that may be sufficient to resolve the matter. In the worst case scenario, they may have to go to fingerprints. Currently, an individual can contest what is on a disclosure certificate and they will be able to do so in future. Under data protection, they can also make a subject access request. As they can with any other public authority, someone can walk into their local police station and say, "I'd like to know what information you hold on me." I think that a fee has to be paid for that. The police provide the individual with the information, subject to various prevention and detection of crime tests—they will not disclose everything if doing that would jeopardise on-going police operations.

Someone can ask for the information on their disclosure certificate by way of a subject access request. The new provision in the PVG scheme is that, if the information indicates that it may be appropriate for an individual to be listed, a consideration case is triggered. One example is when someone applies to join the scheme and information of concern is found; another is when new information arises on a scheme member. Obviously, the consideration case gives the individual in that situation the opportunity to get the full set of information and make whatever representation that they see fit. When a consideration case is triggered, the individual can say, "That is not my information." In that case, everything can be wrapped up and dealt with quickly at the start of the process.

I could waffle on for hours, but—

Ken Macintosh: No, no—that is helpful, but I am sorry to say that your description has sparked more questions.

Andrew Mott: Okay. Carry on.

Ken Macintosh: In speaking of Disclosure Scotland, you described the consideration case process. Is that an appeal process? When someone questions identity, accuracy of record or accuracy of other relevant information, is that—

Andrew Mott: I may have confused you. Let us put to one side for a moment the consideration case. If someone raises one of the three types of dispute that I mentioned—identity, accuracy of

conviction or ORI—it is classed as a vetting dispute. That is dealt with by way of the dispute procedures that Disclosure Scotland goes through, which are slightly different depending on the type of dispute. If the individual questions their whole record, the matter is slightly different from what happens when someone questions one conviction or the description of a conviction in the record, in which case they normally have to go to the source system or local police force where the data originated to try to resolve it.

Ken Macintosh: In the event of a dispute, is there an appeals committee or does an individual decide? Does Disclosure Scotland make the judgment?

Andrew Mott: Normally, the relevant police force is asked to resolve the dispute. For example, if an individual questions the accuracy or relevance of information that has been included on their disclosure as other relevant information, that was originally the decision of a police force, so the dispute would be raised with that police force—it would be asked to review what it had included. The police may or may not decide to change the information and the individual may or may not be happy with the outcome.

Ken Macintosh: Let us say that the police decide not to change the information. In that case, does the individual have a right of appeal?

Andrew Mott: The individual is provided with contact details for progressing the issue. Disclosure Scotland will have raised the issue with the police. If the police say that they will not change the information, that fact will be communicated to the individual and the countersignatory. The individual will be told in a letter how to pursue the matter if they are not happy.

Ken Macintosh: The person can pursue the issue with the individual police force but, if that is unsuccessful, do they have a legal right to challenge the decision? Can they take it to court?

Andrew Mott: It would be judicial review.

Ailsa Heine (Scottish Government Legal Directorate): Yes, it would be by means of judicial review of the police force's decision. There is no provision in the PVG act for Disclosure Scotland to have any process for that.

Ken Macintosh: So Disclosure Scotland refers the issue back to the original providers of the information. If that reaches an impasse, Disclosure Scotland gives information on whoever the contact person is—such as the chief constable of the police force—to the individual, who then has to pursue the matter individually.

Andrew Mott: Yes.

Ken Macintosh: You say that the police force is the only body that provides other relevant information.

Andrew Mott: Yes.

Ken Macintosh: I believe that, if an employer is worried about an employee's behaviour and is considering whether to take action, but the person leaves that employment before being sacked or before any disciplinary action, the employer has a duty to report that information.

Andrew Mott: Yes.

Ken Macintosh: Who does that information go to?

Andrew Mott: You are describing the grounds for referral. If two conditions are met—broadly speaking, that the individual has harmed a vulnerable person and that, for that reason, the organisation has or would have dismissed them—the organisation should make a referral. To answer the question that I think you are getting at, that would not appear on the disclosure certificate. The organisation would provide that information to Disclosure Scotland, which may or may not lead to a consideration for listing case. However, the only information that would appear on the disclosure certificate is that the person is under consideration for listing, if that was the case. The fact that there has been a referral, or that there was a referral that was dismissed, would never be on a certificate, and nor would information on what was in the referral.

Ken Macintosh: Can you give an example of the sort of information that a police force might supply under other relevant information?

Andrew Mott: It is sometimes about cases that are pending prosecution or cases that were abandoned. In the Ian Huntley case, which kicked off the whole process, there were nine serious pieces of information. I think that he had gone to court three times on rape charges, but the proceedings were abandoned because the witnesses withdrew. For Ian Huntley, the ORI should have been that he had been charged with rape in those cases and so on. ORI can be very serious information. The police apply what is called a five-by-five-by-five matrix to intelligence. That takes into account the reliability, the intelligence evaluation—how the source knows the information—and any restrictions on further sharing. The police apply a fairly high threshold before they release data. The information must be reliable and corroborated and its release must not, for example, jeopardise somebody else's safety.

12:00

Ken Macintosh: You have had 324 disputes. How do they break down by category: identity,

accuracy of record or accuracy of other relevant information?

Andrew Mott: Of the 324, 62 related to identity, of which 49 were upheld—changes were made as a result—147 related to accuracy of convictions, of which 91 were upheld; and 115 related to the accuracy of other relevant information from police forces, of which 46 were upheld.

Ken Macintosh: Have any cases that were not upheld been taken further, because someone has applied for a judicial review, for example?

Andrew Mott: I would have to look into that. I think that there have been cases in England and Wales where people have challenged what is on an enhanced disclosure issued by the Criminal Records Bureau. I can get you more information on that.

Ken Macintosh: On the accuracy of record of convictions, my colleague Mike Pringle has drawn to the minister's attention a case of a young man who accepted the grounds for referral under the children's hearings system when he was 14, but was not aware that that would give him a criminal record when he turned 18. He then applied for a job in child care and the record was disclosed, but he was not able to contest it. What would you do in such a situation? Are we able to address the fact that because that young man accepted the grounds for referral when he was 14, that is treated as a conviction? Under the current system—before we change it—is judicial review the only means by which he can contest that record?

Andrew Mott: I admit that I am not best placed to answer that question. I know that there are discussions about that issue in the context of the Children's Hearings (Scotland) Bill and the Criminal Justice and Licensing (Scotland) Bill, so I hesitate to offer an opinion. If you do not get the answer through those channels, I would be happy to try to get it for you.

Ken Macintosh: We are introducing a three-month limit. If someone accepts the grounds for referral as a juvenile, that translates into a criminal record as an adult, which would be disclosed. In theory, a child would be aware of that, but perhaps they would not be.

Andrew Mott: The three-month time limit is rather different. It has nothing to do with when the conviction was recorded on the police systems. It has to do with the situation in which someone gets a scheme record disclosure back and they do not like the vetting information on it—any of the stuff that we have talked about. We are asking those people to come back within three months. There is a possibility of that period being extended on cause shown.

I will explain why we are doing that. At the moment, if someone applies for a job for which an enhanced disclosure is required, every time they get a new job, they have to get a new enhanced disclosure, so the enhanced disclosure is a snapshot at that time. What was on a previous enhanced disclosure is irrelevant. The issue that arises with the scheme for the first time is that the person's scheme record is portable, and they might use it in the future after some time has elapsed. Someone might do a scheme record update and the employer might want to see the scheme record to which that relates.

The problem arises when an individual has a scheme record with information on it but gets the first job that they apply for. They might not like some of the information on the record but not be too worried about it because they got the job. However, two years down the line, they could use the same scheme record to try to get another job, but that employer could say that they will not employ them because they do not like the information on the record. The individual could tell Disclosure Scotland that there is a problem with the information, but by then the trail will have gone cold. At that point, it is much harder for Disclosure Scotland to work out if and when something went wrong—for example, whether a vetter made a mistake or whether something was wrong on the source system. However, if an individual comes back fairly quickly to Disclosure Scotland, it can look through the information and ensure that it all adds up. The three months provision is made because of the portability of the disclosure. It is helpful if people come back quickly if there is a problem.

Ken Macintosh: Three months is a very short time.

Andrew Mott: Getting a disclosure is normally the last stage of getting a job. A person can be successful in an interview, with the job offer being conditional on disclosure. Given that an individual requests a disclosure and expects to receive the information—it does not come out of the blue—we think that it is not unreasonable to give them three months in which to raise any concern about it. As I said, provision exists to allow that period to be extended for a shown cause.

Ailsa Heine: Ministers can extend the period if they consider it reasonable to do so, so the time limit is not absolute. There may be a particular reason why someone cannot not raise a concern within the three months.

Andrew Mott: We set the period at three months after talking to Disclosure Scotland. Operationally, that is the window within which it is easier to try to resolve disputes.

Ken Macintosh: Just for information then, if a 19 or 20-year-old discovers that they have a criminal record—although in theory they should have known about it at the age of 12, or whatever—can they challenge that record?

Andrew Mott: We need to keep two things separate. On the one hand, there is information that the police hold about convictions, and there are the Rehabilitation of Offenders Act 1974 rules about when convictions are disclosed and when they are not—all the legal infrastructure and systems that the police have for weeding data and ensuring that it is accurate. On the other hand, there is the Disclosure Scotland process. All that it does is to take information from source systems and—to put it crudely—print it. Often, it is only when somebody gets a disclosure and sees the information that is held on them that they have an issue with it. Disclosure Scotland is only a window on to that information. If there is a problem with the information, the individual raises a dispute with Disclosure Scotland, which then pursues it with the data owners. However, Disclosure Scotland and the PVG scheme cannot change the procedures for recording and that side of things—that is out of their scope.

Ken Macintosh: Okay. There are any number of ways to address that, one of which could be that the disclosure scheme would not have to disclose all acceptance of grounds for children and young people under 18. In some cases, it might be a matter of a criminal record that should be disclosed. However, my understanding is that, when young people accepted grounds initially, that did not become part of their disclosure record; it was only the decision of a police force and a legal decision by Government lawyers that changed that practice. It is therefore a matter of practice rather than necessarily one of principle.

Andrew Mott: I am not familiar enough with all the detail of that to give you an intelligent answer. My best offer is that, if you are not getting the answers that you want through the Children's Hearings (Scotland) Bill process or that of the Criminal Justice and Licensing (Scotland) Bill, please write in and we will answer your questions.

Ailsa Heine: It is perhaps worth adding that under the Protection of Vulnerable Groups (Scotland) Act 2007, Disclosure Scotland or Scottish ministers are required to disclose certain pieces of information on a scheme record. That links back with the definitions of convictions set out in the Police Act 1997 and, as a result, Disclosure Scotland has no discretion over disclosing whatever falls within the definition of a conviction. That is why that information appears on a scheme record.

Ken Macintosh: Indeed. However, in the past a child's acceptance of grounds was not disclosed.

Such disclosure has become a matter of practice without any parliamentary scrutiny of whether such a policy decision was a good one. The issue is certainly worth considering.

The Convener: Do you have a question, Mr Allan?

Alasdair Allan: I was going to ask about disclosure, but I think that Mr Macintosh has covered the matter. As no member has lodged any motion to annul the instruments, I see no need to say anything more.

The Convener: Why was it felt necessary to introduce the so-called contractors and disclosure regulations? Moreover, how exactly will the provision work? I would have thought that if a contractor had an employee whose scheme record contained a disclosure that made them unsuitable to work with children or vulnerable groups, the company would no longer employ that individual or let them perform tasks that gave them access to those people. Would it not be breaking the law if it allowed that to happen?

Andrew Mott: The classic example of this relates to school buses. A bus company might employ a whole bunch of drivers to do all sorts of stuff, among which might be a contract with a local authority for school bus runs. Which drivers are employed on the school bus run? In most circumstances, the issue of disclosure and suitability is a purely a matter between the individual in question and their employer. However, the contractors and disclosure regulations allow the local authority, in this circumstance, to ask to see the disclosure records. They do not confer a right on the local authority in that respect, because the company or the individual can still refuse to grant the request.

The reason for introducing the regulations is that with regard to school bus provision the local authority has, and is regarded by the public as having, some responsibility for that service, even though technically it is delivered by the bus company. Furthermore, the local authority might have more expertise in or concern about the child protection side of things; after all, the bus company's first and foremost concern is its drivers' driving ability. In circumstances where expertise might reside in a different place or where the perception—and, to a limited extent, the reality—is that the local authority is responsible for those children, it seems reasonable to allow the authority to ask to see disclosure information. Without the regulations, local authorities would be committing an offence by asking to see such information; the provision simply allows them to make a request. Similar arguments apply to protected adults being transported to hospital and so on.

When we consulted on these regulations in 2007 and 2008, we initially proposed a much wider set of regulations and received quite strong feedback rejecting the other three scenarios that we suggested—and which, I must admit, I have forgotten. However, there was quite a lot of support for regulations applying to transport services, which is why we have introduced them.

The Convener: On a point of clarification, who can apply to see disclosure information? Does the provision cover only local authorities or can individual schools, institutions, hospitals and so on make such applications? I can imagine that, for example, a school parent council might want to see those records. Is that how it would work or is it only the local authority or the health board that has the right to make such a request?

Andrew Mott: I should make it clear that the individual and the employer—that is, the bus company—would still be dealing with Disclosure Scotland and would get the disclosures back. As a result, there will be nothing different about the disclosure process. The issue, then, is who can ask to see the disclosure records that have been issued to the individual and the employer. I think that it is the council and the—

12:15

Ailsa Heine: It would be the person who was contracting with the bus company to provide the service, not anyone else who had an interest in the transportation of the children. If, say, an individual school had contracted the service, it would ask to see the record; if the local authority had done so, it would make the application.

The Convener: That concludes our questions.

I advise members that no motions to annul these instruments have been lodged and that the Subordinate Legislation Committee did not raise any issues in relation to them. Unless any member wishes to make any further comment, I will move to the question. Does the committee agree that it has no recommendations to make on SSI 2010/189, SSI 2010/190, SSI 2010/191, SSI 2010/192, SSI 2010/193 and SSI 2010/194?

Members indicated agreement.

The Convener: That concludes the meeting.

Kenneth Gibson: On a wee issue about the clerk's briefing on future meetings, I understand that there will be a meeting in the chamber on 30 June, which means that we will have to meet on 29 June. Will that be a morning meeting as usual?

The Convener: I am happy to have this discussion in private—in fact, I was going to bring the point to the committee's attention at the end of

our meeting—and I suggest that we do so. There is no need to keep the official report here for it.

Meeting closed at 12:17.

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