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Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 27 October 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
26th 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 ALSO ATTENDED:

Adam Ingram (Minister for Children and Early Years)
Des McNulty (Clydebank and Milngavie) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Michael Kellet (Scottish Government Learning Directorate)
Michael Russell (Cabinet Secretary for Education and Lifelong Learning)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 5

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 27 October 2010

[The Convener *opened the meeting at 09:00*]

Decision on Taking Business in Private

The Convener (Karen Whitefield): Good morning. I open the 26th meeting in 2010 of the Education, Lifelong Learning and Culture Committee with a reminder to everyone present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

The first item is to decide whether to take in private item 2, which is consideration of the committee's approach to stage 1 scrutiny of the Public Records (Scotland) Bill. Are members agreed?

Members *indicated agreement.*

The Convener: We now move into private session.

09:01

Meeting continued in private.

09:13

Meeting continued in public.

Teacher Employment

The Convener: The fourth item on the agenda is an evidence-taking session with the Cabinet Secretary for Education and Lifelong Learning on teacher employment issues. I am pleased to welcome the cabinet secretary, Michael Russell, and Michael Kellet, the deputy director for schools: people and places division in the Scottish Government. I believe that the cabinet secretary wishes to make an opening statement before we move to questions.

09:15

Michael Russell (Cabinet Secretary for Education and Lifelong Learning): Strangely enough, I have brought a statement with me.

I thank the committee for its invitation to discuss what I must first acknowledge is a difficult issue for Scotland, for the Government and for me. I say quite openly that this problem beyond any other that I deal with regularly probably causes me the most difficulty, the most heartache and the most sleepless nights.

Although I appreciate that this is perhaps scant comfort to teachers who are still trying to find a job, it is perhaps worth noting at the outset that the situation in Scotland is not as bad as it is elsewhere in the United Kingdom. The latest jobseekers allowance figures, which are for September 2010, indicate that the claimant rate in Scotland is 10.9 per 1,000 of the workforce, whereas in England the figure is 14.5; in Wales, it is 20.8; and in Northern Ireland, it is 41.6. There is a glimmer of hope in the latest figures, which show a slight drop in the number of claimants since this time last year. That is the first such year-on-year drop since May 2008. I will come back to that issue in a moment.

There is no disputing the fact that for the past few years there has been an oversupply of teachers, and the only steps that we can take in the current circumstances will take time to have an effect. As members know, the lion's share of responsibility for the position that we are in lies with the previous Administration; after all, most of the teachers who graduated during this Government's period in office are the output of the previous Government's teacher supply decisions.

In fairness, though, no one could have anticipated the sea change in our economic circumstances, and it will be of little comfort to the teachers who are still looking for work to hear us arguing over who is to blame. We need to re-

establish an appropriate balance between teacher supply and teacher demand.

I can sort out the supply side of that equation—indeed, almost a year ago, I took the toughest decision on that front. Last December, I announced a reduction in the number of student teachers that universities should recruit this autumn. That was not just a token reduction; we cut intake numbers by 42 per cent from the previous year's figure of 3,650 to 2,100. That was hard for the universities concerned and I am aware that the move has in some cases led directly to redundancies. As I say, the decision was tough, but the irony is that it does not instantly solve the problem. As the decision was taken in December 2009, it will be August 2011 before the reduction actually results in fewer probationers in our schools and a further year before it results in fewer post-probation teachers looking for work.

Although the reduction will take time to work through, we have some clear evidence that it will work. I referred earlier to the claimant figures, which show a drop for the first time since May 2008. That coincides with the impact of a smaller cut of 500 that my predecessor made to student intake numbers in 2009, which led to fewer probationers in our schools since August and, apparently, more jobs for post-probation teachers. It is not rocket science but, reassuringly, it demonstrates the link between cause and effect.

I accept that cutting student intake does little in the short term for teachers who are unemployed and looking for work. I am doing what I can to support those people by, for example, introducing CPDStepIn, a new on-line resource that is available through glow, the national schools intranet, for teachers who are not regularly employed and have difficulty in accessing continuous professional development. The resource will enable them to keep in touch with issues relating to, for example, the curriculum for excellence.

We are also exploring whether there might be opportunities in developing countries of which some could avail themselves to develop their skills and gain invaluable experience until employment prospects at home improve. I am not suggesting that every unemployed teacher could or will volunteer to work in a developing country—indeed, opportunities might be limited—but some might wish to go down that route. If I can help to facilitate that, I will.

In February, I wrote to directors of education, drawing to their attention the importance of supporting teachers in such a position and recommending to them refreshed guidance by the national CPD team on CPD for supply teachers. I welcome constructive suggestions from any quarter as to what else we could be doing on this front, bearing in mind the reality of the current economic situation. Of course, I will give serious consideration to any constructive suggestions that committee members might make this morning.

We should also bear in mind that the employment situation in any year eases as the year progresses. We would not expect every teacher to be employed in the August following their probationary year. If they were, schools would be sending children home as winter ailments took their toll on teachers. We know that jobs become available throughout the year. For example, the surveys that the General Teaching Council for Scotland has conducted in both autumn and spring in each of the past few years show a significant reduction in the number of unemployed teachers as the year has progressed.

Of course, it was all very well for the previous Administration to grow the teacher workforce in times of plenty by providing ring-fenced funding. However, the target of 53,000 was essentially arbitrary and, indeed, we now know that it was unsustainable at the best of times and is most certainly so in the present financial circumstances.

Although I have taken steps to sort out the supply side, solving the demand side falls to local authorities. Local authorities, not the Government, are our teachers' employers, and I am worried by the prospects there. We know that local authorities shed more than 2,000 teachers between 2007 and 2009, in a period when budgets were still growing—perhaps not as quickly as before, but still growing nonetheless. I am disappointed that local authorities shed all those teachers. I will not go into details of which authorities shed the most teachers just now—perhaps that will come up later—but there are serious questions to be asked about why some authorities found it necessary to reduce teacher numbers so drastically while others were able to grow their numbers.

Let us be clear: we are moving into a period of falling local authority budgets. Roughly 40 per cent of those budgets is allocated to education, and roughly 50 per cent of that 40 per cent is accounted for by teachers' salaries. It does not take much to work out that it will be impossible to protect teacher numbers as we move forward. To avoid further shrinkage of our teacher workforce, we need local authorities to do what they can not to allow further drops in teacher numbers. I am satisfied that the demographics of the profession are such that significant numbers of teachers will be leaving each year for the next 10 years or so. We need local authorities not to look on each retiring teacher as an opportunity to save money, but to recruit recently qualified teachers to as many of those posts as possible. We need them to do that for two reasons: first, to ensure that the educational aspirations and outcomes of

Scotland's children are not jeopardised; and, secondly, to ensure that the investment that we, as a society, have made in training teachers is protected and enhanced.

I will conclude with a brief reference to the on-going review of teacher education that Graham Donaldson is conducting. I am particularly keen to hear his views on how we can arrive at a more stable pattern of student intake numbers moving forward. As members know, his report is due at the end of the year.

I hope that those remarks have been helpful. I am, of course, happy to discuss them and any questions that arise.

The Convener: Thank you for those comments. I am sure that many of the points that you have raised will be covered in our questions to you this morning.

I refer you back to your comment that the target of 53,000 teachers was arbitrary and unsustainable. If that is so, why was it in your election manifesto? Is it your view that it would be inappropriate for any Government to affect a local authority's decision in relation to the number of teachers that it employs?

Michael Russell: The statistics for the number of teachers over the past 10 years or more—since devolution—show that the numbers were steady during the first Administration, when the previous Labour First Minister was the education minister and I was the shadow education minister. I do not remember there being an enormous debate about teacher numbers at that stage.

It seems to have been during the second Administration that a decision was made to raise numbers from around 50,000—the figure fluctuates—to the magic figure of 53,000. I can only assume that that was an objective of the then education minister, and his spin seems to have been very successful, as everybody seems to have accepted that that was a wonderful thing to do. However, the number of pupils was falling at the time and with hindsight—which is a great thing in politics, as in other areas of life—that can be seen to have been an arbitrary number. I congratulate Peter Peacock on his success in persuading people that that arbitrary number was the right one, although it turns out not to have been, particularly in the context of the financial difficulties that have hit so severely.

Sorry, convener—what was your second question?

The Convener: Is it right for the Government to determine teacher numbers in Scotland, or should that be entirely a matter for the local authorities?

Michael Russell: That gets to the nub of the issue—whether that is right and whether it is possible. Under the present dispensation, it is difficult for the Government to do that. The committee will reflect on the relationships between local authorities and the Government in the delivery of education, and I know that it has been looking at the funding of education. Nevertheless, in the present situation, it is very difficult to do what the convener suggests. If the Government ring fenced the money and provided it year on year, and if local authorities were prepared to use it in that way, given the balance that we have, I suppose that it could be done. However, I do not think that that would be sustainable given where we are at the moment.

It is also an input measure, and we have moved much more to output measures. We should perhaps have a genuine debate about whether we need to look more closely at the output measures in education and not worry so much about the input measures, although we can discuss teacher numbers in conjunction with class sizes, as class sizes are also an input measure. There may be reasons why that input measure is of particular importance, but there we are.

The Convener: In some ways, that leads on to the next question. You seem to be saying that this is entirely a matter for local authorities and that Government cannot predict the numbers of teachers that are required. However, in light of the fact that later in the meeting the committee will consider class sizes for one cohort in schools, is it not unsustainable for the Government to make commitments on the number of children that will be in classes without working out whether we will have sufficient teachers to teach them? The reality is that we can pass all the legislation that we like, but if we do not have a sufficient number of teachers to teach the children, it makes no difference.

Michael Russell: I did not say that we could not do anything—I pointed to the difficulty that we have in Scotland. If I may say so, you are taking the argument to rather illogical extremes. There will be a logic to the number of teachers required for the number of pupils. There will be a general area in which one would expect provision to take place. Our teacher numbers are broadly comparable with teacher numbers in a country of a similar size, such as Finland.

You can have Government policy objectives that you wish to meet, but nobody in the room would say anything other than that how you do that in Scotland is a key issue now, given the relationship between central Government and local government on the delivery of education. That is a key issue which will require discussion.

I have been able to negotiate continued progress on class-size reductions in primaries 1 to 3, and that is an example of how negotiation on

education objectives is probably the way in which we can achieve most. However, local authorities will also rightly wish to see some regulation where that assists them. There is a complex system of education delivery in Scotland, but whether that should be simplified is not for me to say to the committee today.

The Convener: I know that it would be very helpful to you to paint me as being illogical. However, I think that most parents and teachers in Scotland will think that it is perfectly logical to expect a Government—any Government—to know how many teachers it aspires to have in employment in Scotland. More important, if the Government wants a particular number of children in particular classes, it is logical to expect that Government to know how many teachers that would take. That is a basic mathematical configuration.

I think that parents and teachers also believe that it is perfectly logical to expect a Government that was elected on the basis that it would maintain teacher numbers at 53,000 and would reduce class sizes to 18 for children in primaries 1 to 3 to stick to those proposals and not to say, "In actual fact, this is all difficult." I accept that you were not the shadow cabinet secretary for education in 2007, but you have often claimed that you wrote the manifesto and that the class-size pledge—

Michael Russell: I have never claimed that I wrote any manifesto. I think that that is going well beyond your role as convener of the committee. I put on the record that I have never claimed to write anything of that nature and I regard your remark as inappropriate in the circumstances.

If you want me to respond to your question, I will try to do so by discussing education, which I think is what we are trying to do at the committee. I disagree with your comment: I am not trying to paint you as illogical, and I do not think that you should try to paint me as being inconsistent. I have tried to indicate that I think that the artificial figure of 53,000 was arbitrary. Of course I think that we require a substantial number of teachers in Scotland. I have reduced the number of people being trained to ensure that we do not have an oversupply, but the history of the supply of teachers in Scotland is one of boom and bust for as long as people can remember. That is one of the problems, and is why I said at the end of my opening remarks that the Donaldson review should be helpful, because we need to get to the bottom of the matter.

We have just gone through a boom-and-bust cycle, which is utterly wrong. I said in my opening remarks—I hope that you will give me credit for this, convener—that I worry considerably about the issue, because there are young people who I want to see employed as teachers, but we are unable to give the resource to local authorities for them, and local authorities have sometimes chosen not to use their resource to employ them. I am trying to ensure that we move forward on the issue and find a solution. It would be easier to do that if we recognised that this is not a ping-pong between you and me about who wrote which manifesto.

This is a serious debate about how we achieve the right number of teachers in Scotland and the right number of pupils in classes. We continue to make progress with the educational objectives in what is a highly distributed system of education delivery. It is not a system that the committee or I invented but one that we have inherited, in which there is distributed decision-making activity that we all play our part in. Parents want highly-effective outcomes, which is what we are doing with the curriculum for excellence.

09:30

The Convener: In the *Official Report* of the plenary debate on class sizes, you confirmed that you were the architect of the SNP's policy on class sizes. If you are distancing yourself from that today—

Michael Russell: I have never denied that. You said that I wrote a manifesto in 2007; I did not. I am pleased with the people who wrote it, but I did not write it. I have never claimed to be anything other than someone who supported and instituted a policy of lower class sizes. I believe such a policy to be necessary. It is difficult to achieve, but you do not find me shying away from things that are difficult.

The Convener: A key part of that manifesto was a commitment on class sizes.

Michael Russell: Not in 2007. I was talking about the 2003 manifesto. It is still inappropriate.

The Convener: It is exactly the same. Perhaps you will confirm whether you believe that class sizes will fall further in December this year.

Michael Russell: I believe that my agreement with the Convention of Scottish Local Authorities last year has for the most part been honoured. I hope that we will see progress when the figures are reported.

The Convener: Will teacher numbers remain the same?

Michael Russell: I have indicated that teacher numbers remain on a downward trend. I regret that. Local authorities need to discuss that with the committee. However, that is where we are.

Margaret Smith (Edinburgh West) (LD): I want to pick up on your point about the figure of 53,000.

We all went into the election saying that we wanted to sustain that figure. You are branding it as arbitrary. It is unfortunate that my colleague Euan Robson is not here. He was an education minister in the previous Administration and I have discussed the issue with him on a number of occasions. He was clear that 53,000 was not an arbitrary figure and that the thinking behind the figures for teacher numbers was effectively due to the tasks and projects that teachers were asked to be involved in. One of the key projects was the curriculum for excellence.

You have identified teacher numbers as being of particular relevance in the second session of Parliament. Part of the thinking related to the requirements of the curriculum for excellence. There were implications for class size policy as well. However, the idea that no thought was put into how many teachers we needed and what we needed them for is not borne out in my conversations with people who were ministers at the time. There were reasons why they felt that such teacher numbers were necessary. A falling school roll was an opportunity to free up some time for teachers to focus on what I think we would all agree is one of the big developments in Scottish education in the past few years. I do not wish to be difficult, but I am concerned that the branding of the figure of 53,000 as arbitrary is not a proper writing of the history of the department's view on the matter as it has been presented to me.

Michael Russell: I do not wish to be difficult either. I look forward to not being difficult as much as I can, but we must agree to differ. The figure was arbitrary. Also, there was a certain lack of subtlety in describing the figures. Not every teacher among the 53,000 is involved in classroom contact. One of the things that you may see in the declining figures is a combing out of teachers who are in other roles. The problem with the Government's statistics is that you do not necessarily get the detail or the information that would make things crystal clear. It may well be that the drop that we have seen is a combing out of non-contact teachers and teachers who are in administrative positions. Inevitably, when schools are merged and so on, some teachers who are not in classroom positions will be lost. Changes are taking place.

I stress that it is a local authority decision not to employ those teachers. Local authorities make such decisions for a variety of reasons. Some have made the decision to increase teacher numbers. The situation is not consistent.

Margaret Smith: Would it ever be possible for your Government—or any Government that might follow you—to be able to say, "Bearing in mind everything that we're asking of our teachers, all the policies that we as a Government are putting into place and all our aspirations, we believe that this is the number of teachers we require to deliver those policies and the education system that we want"? Is there a number that you can look at and say, "Frankly, we cannot drop below that"?

Michael Russell: Your final remark is probably closest to the mark. There is probably a minimum or floor that you would not want the number to fall below. However, you would need a mechanism that would allow you to say to local authorities, "This is the minimum number that you must employ". We do not have such a mechanism; in our current system, you have to divide things up.

Of course, given the obligation on local authorities to deliver education efficiently and effectively, I suppose that, if they were failing to do that, the issue of teacher supply could come in. However, another issue then arises. I am sorry if all of this sounds complicated but the fact is that it is complicated, because we also have to take into account the issue of school autonomy and how schools are organised. In Scotland, we have a very distributed and autonomous network of schools; indeed, some have argued that they should be even more autonomous. In those circumstances, we have to accept that a different decision might be taken in different schools about the number of teachers needed for different tasks, all of which makes the situation very complex indeed.

I am simply trying to indicate how complex and difficult the issue could become. If we were to get half a dozen headteachers together, they might all give us slightly different numbers for the teachers needed and the tasks that had to be undertaken. The issue is indeed that complicated.

Margaret Smith: You have said that you think that there is a floor or minimum number. What is it?

Michael Russell: It is possible that there is a floor. I do not know what it is, because it would have to relate to the issues that I have discussed with you. However, it is worth examining the issue closely.

That said, it is not a simplistic matter—

Margaret Smith: I am not suggesting that it is.

Michael Russell: I know, but I am simply saying that mistakes arise when it is seen as simplistic.

Elizabeth Smith (Mid Scotland and Fife) (Con): On the mismatch between demand and supply, which, as you have rightly pointed out, is perhaps the biggest difficulty in all of this, two local authorities in my region—Fife Council and Perth and Kinross Council—have put it to me that, given all the difficulties and the current economic situation, it might be necessary to re-examine teachers' conditions, the McCrone settlement and

so on. They have suggested that teachers' current working terms and conditions might not be the most appropriate way of dealing with both the flexibility that we are all trying to seek and the cost situation. What is the Government's position on that?

Michael Russell: That view is held not only in your region but in a variety of places. Indeed, the leader of Glasgow City Council thought it advisable to tell me the same thing on the front page of *The Herald* before he gave me the letter that he was allegedly sending me.

In Scotland, we have established a tripartite negotiating mechanism between local authorities, Government and the teaching unions, and I think that that is the right place to discuss this issue. I would be very surprised if it were not being discussed, given that the McCrone agreement is 10 years old and any 10-year-old agreement probably needs to be revisited. However, I am not going to start that negotiation process in public by committing myself to one position or another. Some local authority figures are certainly making their position very publicly known, but I think that the best course of action is to sit down with the teaching unions, discuss the issue in the tripartite structure and see what progress can be made.

One thing that is absolutely clear is that Scotland's local authorities are going to come under very substantial financial pressure. As I have indicated, education accounts for at least 40 per cent of local authorities' costs, and salaries account for 50 per cent of that. Given that the issue dominates so much of their expenditure, it is inconceivable that it will not figure as an area that will need close examination.

Elizabeth Smith: Without committing yourself to any view and bearing in mind your wish to pursue the negotiations within the tripartite structure, can you tell us what specific issues should be covered in negotiations on changing teacher conditions?

Michael Russell: As I have indicated, the whole package of terms and conditions of service would be discussed. However, I do not want to separate out that package. Some local authority leaders are doing that very publicly, but I do not think that that helps. Instead, we need to have those discussions and negotiations. I have not yet met a teachers' union leader who has been anything other than realistic about the real difficulties in the public sector. How could they not be, given what they see? The discussion needs to take place—and it needs to take place within the tripartite structure.

Elizabeth Smith: I am not asking you for a specific Government view on the matter. However, if you accept that the issue is demand and supply, which, of course, brings us back to the marketplace, prices and the fact that for many teachers' salary is an issue, you will also accept that a possible issue for discussion is teachers' conditions.

Michael Russell: I accept that the package of terms and conditions will be for discussion. However, an agreement exists and the partners in that agreement will be required to sit down and discuss in a mature fashion how to move forward in these difficult circumstances. That discussion needs to take place. I am neither including nor excluding any part of that package.

Claire Baker (Mid Scotland and Fife) (Lab): Has the Government taken responsibility for monitoring whether reductions in the number of secondary teachers in particular are having any impact on certain sectors or subjects, especially those that have been identified as being important to Scotland's economic growth, such as the sciences?

Michael Russell: The answer is yes. The science, technology, engineering and mathematics—or STEM—subjects are of great importance. Michael Kellet will give some detail about how we analyse delivery and then I will say something about the range of subjects.

Michael Kellet (Scottish Government Learning Directorate): There are two processes. First, as part of the annual teacher workforce planning round, we discuss with authorities and teacher education universities the subjects that are under pressure with regard to, for example, the ability of councils and universities to recruit teachers. Secondly, we monitor teacher vacancies, to pick up on which subjects councils are finding it difficult to recruit teachers to.

Over the years, the problem has decreased over the piece because of increasing levels of unemployment. However, as the cabinet secretary has said, councils have traditionally found it difficult to recruit in maths and science. The subject of home economics is also tricky and Gaelic teachers are an issue. We constantly review such matters. That said, the position in general over the past year or two has not been as severe as it was in previous years, even in relation to the subjects that I have mentioned.

Michael Russell: We need to be imaginative and inventive in ensuring that the widest choice of subjects is available, particularly where there are geographic pressures or difficulties in attracting teachers. Off the top of my head, I know of a school in Tiree that has found it difficult to recruit a chemistry teacher. Obviously, we want to ensure that chemistry is available to the pupils at that school and there are ways of addressing the problem. For example, you could get a retired teacher to come in for a period of time; you could look into how much can be taught on-line; and

there could be collaboration to allow sixth-year pupils, say, to move from school to school for different subjects—although I have to say that that approach is much easier in a city or town with at least two or three schools.

Michael Kellet's point about planning is really important. Recently, I was encouraging the headteacher of the Glasgow Gaelic school to work with Bòrd na Gàidhlig to anticipate what her school would need over a five-year period and to ensure that people had that knowledge at this stage. We can—and are trying to—do that with other subjects. We cannot micromanage the availability of every teacher in every school but, given Scotland's size, we can be sensitive to issues and encourage new means of delivery. After all, we are in the 21st century. It is possible to deliver some subjects in a collaborative way.

09:45

Claire Baker: That is helpful. Do you have any concerns about how the Government's process of identifying possible difficulties in certain subject areas sits alongside the reduction in teacher numbers? You gave the example earlier of a teacher who is retiring, and you said that local authorities should view that as an opportunity to recruit rather than as a money-saving exercise.

How does Government influence such behaviour by local authorities? Does it concern you that there could be a drive to use the fall in teacher numbers as a way to save money rather than authorities properly preparing to meet the demand in particular subject areas?

Michael Russell: Some local authorities seem to regard it as a money-saving opportunity more than others do. There have been strong falls—Glasgow is much quoted, but there has been a strong fall in teacher numbers in that area of almost 10 per cent between 2007 and 2009. There has been a fall of 9 per cent in Inverclyde, 7.5 per cent in North Ayrshire, 7.1 per cent in East Dunbartonshire and 6.1 per cent in Midlothian. Those administrations have made decisions about how they take that situation forward.

Other local authorities have decided to increase teacher numbers. There may be a demographic issue in some cases; I am not making the wholly partisan point that the councils I have just mentioned are all Labour controlled. If you look at increases in teacher numbers in 2008-09, the numbers in East Lothian went up by 3.4 per cent, but there is a demographic factor in that instance, because the population of East Lothian is rising and so the patterns are shifting.

I would encourage local authorities to see the benefits of having a good complement of teachers, and of employing some young teachers who have come from teacher training colleges and are full of commitment and enthusiasm. I am not being ageist; I know many older teachers who are extremely enthusiastic and energetic, but young teachers have been coming in and helping to energise schools, particularly in relation to the curriculum for excellence.

I had the wonderful experience of visiting Cardinal Newman school at the very beginning of term. I went on the first day that the curriculum for excellence was rolled out in the secondary sector, because I had heard two young teachers who worked at Cardinal Newman give a wonderful presentation at the Scottish teacher education committee conference about the curriculum for excellence and how things join together in a school.

The only way that one could go further would be to ring fence the moneys and insist that the local authorities spent them in that way. However, local authorities are very resistant to ring fencing: they regard it as unhelpful and wasteful in terms of what they are trying to deliver, and the Government and local authorities have concluded that that is true overall.

Ken Macintosh (Eastwood) (Lab): I have a number of questions, but first I will have a stab at the issue that the convener and Margaret Smith pursued to clarify the Government's policy on teacher numbers.

You stated in your evidence to us last time, minister, and you have confirmed again today, that it is no longer your policy to maintain teacher numbers to reduce class sizes. You seem to be suggesting this morning that it is in effect up to local authorities to decide how many teachers are employed in Scotland, and that your job is simply to provide that number. Is that true, or do you have a policy on teacher numbers?

Michael Russell: Local authorities decide how many teachers they employ. They are under a statutory obligation to deliver education efficiently and effectively, and they will be called to account if they do not do so. I do not have a policy on employing an arbitrary number of teachers; I would like to see as many teachers in Scotland as are required to do the jobs.

Ken Macintosh: Moving on to the subject I wanted to ask about, the problem is not simply unemployment but underemployment, and the huge number of teachers who are moving on to temporary contracts. The GTCS survey suggests that the percentage of teachers on permanent contracts decreased from 66 to 23.5 per cent between 2005 and 2009. It is a trend that is worsening. Do you approve of that situation? If not, what are you doing to address the number of temporary contracts?

Michael Russell: I want to ensure that the local authority has a stable workforce that is committed in the long term. In the circumstances, I encourage local authorities to offer permanent contracts to teachers when they are able to do so, but the local authority has the discretion to decide how it employs its employees and I have to accept that it is the employer.

Ken Macintosh: You encourage local authorities. It has been reported that some local authorities are not renewing some teachers' contracts beyond a year because they would qualify for more secure employment rights. Are you aware of that? If so, are you taking any action?

Michael Russell: I have no knowledge that that takes place.

Ken Macintosh: One of the teacher employment working group's recommendations was to reduce the number of retired teachers coming back on supply and increase the number of probationers used as supply teachers. How much progress has been made on that?

Michael Russell: I have been clear with local authorities, publicly and privately, that I endorse that recommendation completely and I expect local authorities not to employ retired teachers unless there is no other possibility. It is sometimes essential that they do so, otherwise children would not be taught a subject. I use the example of chemistry in Tiree. If a retired teacher did not do it, there would be no teaching of chemistry. Such circumstances arise from time to time, but the absolute preference is to ensure that when teachers retire they do not expect to come back regularly to supplement their income in retirement.

Ken Macintosh: I was asking what progress has been made, given that it was a recommendation.

Michael Russell: Very substantial progress has been made.

Ken Macintosh: Do you have any figures?

Michael Russell: Very substantial progress has been made.

Ken Macintosh: Can the committee expect to see some figures?

Michael Russell: If I am able to find statistics that back that up, I will issue them to the committee. Would Michael Kellet like to comment?

Michael Kellet: If it is helpful, convener, I can add that after publication of the teacher employment working group's report, ministers wrote to councils extolling a number of the recommendations and in particular pointing to this recommendation and asking them to take it into account. I know from my discussions with a number of authorities that they are doing that actively. I also know that some authorities have, because of their employment policy, been challenged by teachers who allege that it is discriminatory. The authorities have been quite robust in refuting such challenges. We know that the practice recommended by the group is one that authorities endorse, support and are trying their best to deliver.

The Convener: If you are advising the committee that very substantial progress has been made, which we are more than happy to accept, it would be very helpful if the committee could have sight of the evidence that leads you to reach that conclusion. I am sure that you must have that evidence, otherwise you would not have told the committee that substantial progress has been made.

Michael Russell: You are absolutely correct. I would not make statements to the committee that I did not believe to be true.

Very substantial progress has been made and I will endeavour to ensure that my officials obtain the statistics, with the caveat that at times of great difficulty I am keen that our officials, teachers and local authorities get on with their jobs, so I am quite keen—no doubt you will want to discuss this on another occasion—that we do not spend all our time taking watches to pieces to tell us the time.

The Convener: Does Mr Macintosh have any final questions?

Ken Macintosh: I do. If I may, I will read briefly from an e-mail that I received last night from a teacher in my constituency. She states:

"In all honesty the situation is far far worse in reality than what the GTCS, Education Departments etc will ever tell you. From my Primary Teachers course last year, after our probation year, I know 4 people with a full time permanent job".

She states that the first person is in Abu Dhabi, the second is in Kuwait, the third is in Spain and the fourth is

"In a Secondary school as a pupil support teacher.

Not one single person has a permanent full time job in a Primary school. The harsh truth is fully qualified teachers are trying to go back to their old jobs prior to doing their teaching qualification at university. ... I have fought tooth and nail (as you are aware)"—

I am aware—

"just to get onto supply lists—still can't even get on my own local authority supply list. I am now on a couple of lists hoping for a call. I am continuing to send my details EVERY AND ANYWHERE. I have some work with my school from last year and I continue to apply for the very few jobs that arise, with no luck so far.

The bottom line is something has to be done now, not next year or the year after but now as a matter of extreme urgency. As a bright, confident and enthusiastic teacher it

truthfully upsets me to have to paint such a negative gloomy picture, however, this is what I am going through along with a whole host of others."

The cabinet secretary introduced his remarks by suggesting that the lion's share of responsibility for the situation that we are in lies with the previous Administration. The upside of that is that if the lion's share lies elsewhere, the cabinet secretary at least accepts some responsibility. Will the cabinet secretary take this opportunity to apologise to my constituent for his share of the responsibility?

Michael Russell: I repeat what I said in my opening remarks: the issue causes me more heartache and more sleepless nights than any other issue in my job. I speak regularly to young teachers who have such difficulties. I speak regularly to parents of young teachers who have such difficulties. I recognise the real difficulty that the situation causes. Were I in a Government that was not constrained by the financial wreckage created by the previous Government, and were I in a Government that had unlimited resource to throw at problems—previous Governments had much greater resources—I would do everything that I could financially. I am extremely constrained financially in what I can do. Although that upsets me greatly, it is no consolation to the people who have the difficulty.

I have tried to make really difficult decisions on supply numbers so that I can bring the situation back into balance and so that there is the prospect of jobs emerging. As I said in my opening remarks, we are beginning to see that change taking place.

I have also tried to support young teachers in those circumstances with continuing professional development so that they continue to have opportunities in their careers. I indicated earlier that I am trying to find other solutions in the interim and short term, including help with voluntary activity. If I could wave a magic wand, this would be the first problem that I would wave that wand to solve. I cannot do so at present because of the financial constraints that we are under and because of decisions in local authorities to reduce teacher numbers. I do not have a resource to reverse that. I also do not have the power to tell local authorities that they must employ more teachers.

As I said earlier, if you have other solutions, I would be more than willing to listen to them. I am not trying to do anything other than to make a difference in this matter. If you give me that correspondence, I am happy to write directly to that young teacher to say so.

Ken Macintosh: And to apologise?

Michael Russell: I am happy to say that I am deeply sorry that this situation exists and has arisen, and, as the person responsible, to show that I am doing everything that I believe I can to help. I never shirk the opportunity to say that and to talk directly to those affected, and I am happy to do so in this circumstance.

Kenneth Gibson (Cunninghame North) (SNP): You touched on the issue of Tiree and the difficulty faced by some communities in attracting teachers. Arran high school, on the Isle of Arran in my constituency, is an excellent new school, but it took nine months to find a music teacher. Eventually, the school had to hire someone at a promoted teacher's salary, for a department of one teacher.

How many areas in Scotland fall into that category? Clearly, it is not just island communities. There must be other areas in Scotland in which there is a mismatch between the vacancies that are available and the number of teachers willing to apply for those vacancies.

Michael Russell: We try to address that in the probationary system by offering additional incentives to people to undertake probationary activity in places that are not their first choice. That sometimes leads to people deciding to continue their careers in those areas. I met two probationers and two young teachers in Barra recently, none of whom were from the island but all of whom had taken the opportunity to teach there. There are places in which that probationary opportunity is seen as a positive advantage. However, there are mismatches in various parts of Scotland. Even in the cities, it is sometimes hard to recruit in certain subjects.

It is probably not helpful to say so, but that has always been the case. There have always been one or two places in which it has been hard to recruit people. It takes time, and it is not necessarily a product of the situation in which we find ourselves.

Kenneth Gibson: We asked earlier about the fact that the number of people going into teacher training has fallen by 42 per cent. Have the falling numbers presented an opportunity to improve the entrance qualifications and standard of teachers entering training?

10:00

Michael Russell: I hesitate to say that that is a plus point, but there is of course an issue around the best-qualified young people competing to get into teacher training courses. There has been a great deal of debate about that. Every single party that is represented in this room has discussed the need to ensure that the highest-qualified people are going into teaching. Some people have cited the Finnish experience, where teaching requires a masters degree. Given the difference in university

systems, however, that is not exactly an accurate description. Those falling numbers are a slight plus point in this regard, therefore.

I look towards what Graham Donaldson is doing: he will tell us his view following an intensive period of research on how we continue to increase the standards of Scottish teaching. All the evidence shows that the standards of the people who have been coming out of teacher training colleges in Scotland, even before the research, is very high indeed.

Kenneth Gibson: Indeed.

Another point that came up earlier is covered by recommendation 4 of the teacher employment working group. It states:

"Local authority employers should wherever possible use post-probation teachers to fill supply vacancies rather than rely on recently retired teachers."

Among young teachers there is a lot of resentment when someone retires on a Friday—often on a very good pension—and they come back to the school on the Monday. The quid pro quo is that headteachers want somebody who they know has the ability to deliver in a classroom. You said yourself that the education of children should not be jeopardised. I am not saying for a single minute that it would be jeopardised by recruiting more of the younger teachers, but there is surely an issue to do with the headteacher having flexibility about who they employ, taking into account the circumstances of their school. How does the Scottish Government feel about where the balance lies?

Not every retired teacher comes back on supply. If a headteacher does not think that they are up to much they will not come back, but there are some people of a very high standard who it can be very helpful to have in a classroom.

Michael Russell: As ever, there is a balance to be struck. The preference is to ensure that post-probationers are given an opportunity. If it were a choice between a post-probationer who the headteacher knew was simply not able to teach and a retired person who was required for a particularly difficult class, that decision would have to be made by the school.

Your point illustrates the fact that hard cases make bad law, but the preference is to ensure that post-probationers are given the ultimate opportunity. As Mr Kellet has said, the evidence that we have shows that that is overwhelmingly the case.

Kenneth Gibson: We have spoken about numbers, which are important for the discussion. You have spoken about the 53,000 figure being arbitrary. Surely there must be a legal figure below which the number of teachers cannot fall, as there are maximum class sizes and, if we multiply the number of pupils in classes by the number of teachers, there must be a minimum figure. What is the minimum threshold at primary and secondary levels?

Michael Russell: The numbers of pupils vary, of course, as do the capacities of schools and the numbers of pupils in schools. It is a volatile situation. Theoretically you could do that calculation, but I am not sure that it would help very much. We need to ensure that there is a supply of good teachers coming through that matches the vacancies that are available. We have not got that right—we have gone through boom and bust over several generations. I hope that Graham Donaldson and others will help us to get it right.

Kenneth Gibson: The McCrone settlement was discussed earlier today. Some prominent local authority figures have publicly—some privately—called for an increase in the number of hours that teachers have at the chalk face. I have such discussions with my own leader.

The workload of individual teachers differs substantially. English and maths teachers might have to mark dozens of essays or papers every week, for example, and they might have a different workload from other teachers who get paid the same salary. Rather than discussing the pay and conditions of teachers as a cohort and increasing the workload of teachers who are already delivering a good job in the classroom, surely it could be a matter of perhaps replacing those teachers who are not delivering so well in the classroom with some new probationers. We have all been to school, and we all know that there are good, bad and indifferent teachers. Even in the best schools, there are teachers who are perhaps not delivering. Perhaps the Government should think about a mechanism to assist some of the teachers concerned to move on, in order that others can replace them.

I return to your comment about the education of children not being jeopardised. I know that, when I was at school, some people's education was jeopardised by the poor quality of teaching that they received, and I am sure that that continues in some schools to this day.

Michael Russell: From the evidence of my own eyes, Mr Gibson, you had nothing but the highest quality of teaching. I can tell that just by looking at you.

I do not think that we should exaggerate the issue. Undoubtedly there are poor teachers. I have spoken about the issue before, and we have taken action with the GTC to ensure that the process for dealing with them is better and that such teachers can be weeded out. There are people who should

not be teachers—there are people who should not be politicians. That happens, and in those circumstances we want to ensure that those people go and do something else more productively.

Your point about class contact is interesting, and we have touched on it twice before. Some local authority leaders use a shorthand in describing class contact. If we think about it, we realise that if we increased the class contact time for every teacher we would need fewer teachers. When a local authority leader goes on to the front page of a newspaper to say that we must increase class contact time, that local authority leader is saying that we want fewer teachers—we should not disguise that fact. People need to think carefully about that if there is a commitment to not having fewer teachers.

We also need to look at the figures. Surveys show that class contact time for Scottish teachers is at the higher end of the spectrum in international comparisons. Considering all those circumstances, we need to be realistic: while these matters should of course be discussed, they are best discussed within the established negotiating mechanisms rather than by megaphone.

Kenneth Gibson: The other factor is that headteachers know which teachers they have the most confidence in, and they already put those best teachers into the highest possible number of classes, subject to the McCrone agreement. There is not really any room for those teachers to take on additional classes, so I agree fully with that point.

I have one last point—I do not want to turn this into a dialogue, as I am sure that plenty of other members want to ask questions. You mentioned Glasgow City Council reducing its teacher numbers by 10 per cent. When Glasgow came to give evidence, it took the view that falling demographics in the city presented an opportunity to reduce not class sizes but teacher numbers, because it does not believe that smaller class sizes work. There is clearly an ideological issue in getting the message across. Glasgow may be a minority in believing that, but that is the point that it made to us.

Michael Russell: That is part of Scottish education: local authorities have the freedom to operate in the way that they wish.

I want to put something on the record, as I saw some strange stuff about this at the weekend. I am not against the Glasgow nurture group approach in any sense. I have visited nurture groups in Glasgow, and I think that they are very positive. I do not think that it is an either/or between early intervention and lower class sizes in primaries 1 to 3, and nurture groups have their place. However, you are right to say that Glasgow City Council, in evidence to the committee, made it clear that it took the decision to reduce teacher numbers. That is what the evidence shows, and we need to put that into the mix. A variety of decision-making processes are driving down teacher numbers, but the decision of employers is the most important.

The Convener: Margaret Smith has a brief supplementary question.

Margaret Smith: I want to come back on the subject of retired teachers being used for supply work, which I am very concerned about. We touched on the issue of figures, and I have some figures from some freedom of information work. That work showed that nearly 1,000 retired teachers were used for supply work in Scotland in the past year and that schools across Scotland had almost 2,500 retired teachers on their supply list.

I agree with the cabinet secretary that there needs to be a balance. There will always be occasions when the retired teacher fits the bill and is available, and headteachers and local authorities must have the right to get the right balance for them. However, I am concerned by those numbers, because the post-probation teachers coming out of our colleges and universities are well-trained and well-motivated people and we should have them in our classrooms wherever we possibly can.

One thing that we found when we did the freedom of information work is that a large number of councils say that they do not hold the information. The figures that I have given are based on the fact that 12 or 13 other councils could not give us the information. That is something that you might set your mind to, cabinet secretary, as it would be helpful if we had the figures for the whole of Scotland.

You say that substantial progress has been made but, on 1,000 occasions, retired teachers were used instead of the post-probationers whom we all want to have supply positions, to build up their continuing professional development and their classroom experience and to have the career in teaching that retired teachers have had. The fairness agenda is involved.

Michael Russell: I do not disagree in any regard. I believe that substantial progress has been made, but I am happy to ensure that figures are provided to you. We must recognise that the issue is complicated. The figure of 1,000 is lower than I might have expected, given—

Margaret Smith: Given that 13 councils will not give us the information.

Michael Russell: Given the amount of supply work that might require a day or half a day, an

enormous amount is taking place. That situation is normal—it is not a difficulty; it just happens.

The default position should be that post-probationers are given the opportunity and brought in as much as possible. In the ideal situation, the supply of post-probationers would dry up because most or all had jobs, so other people would have to be used. We must be aware of that, but I certainly want post-probationers to be given the best opportunities. I am committed to that, and that aspect is a way of trying to achieve that.

Christina McKelvie (Central Scotland) (SNP): In the next five years, the number of primary school pupils is projected to increase by 21,500, which is welcome. That would give us about 860 classes of—I hope—25 pupils. Have you done work on the impact of that on future planning and on teacher numbers?

Michael Russell: If I have made the correct decisions on training numbers, I expect the numbers to begin to come into balance some time after August 2011. I am discussing with my officials what we might be required to do in relation to the number of training places. Some time next year, we need to decide on training places thereafter. We are looking at that.

The figures are interesting. The number of primary school pupils is estimated to go up in 2013 from the present 364,000 to 375,600. The rise is not massive, but it is significant. The numbers are varied. Glasgow will have a small rise of 900, whereas other areas will experience small falls—nothing dramatic is happening. It is interesting that the figure of 285,800 in secondary schools this year will go down to 269,100. We have a bulge that is beginning to, and will, move through the system. We are aware that the figures will fluctuate.

As I keep saying, the key issue for me is Graham Donaldson's recommendations, which I anticipate almost as keenly as Christmas—they, too, are due in December. Those recommendations and views will influence what we do next.

Christina McKelvie: Do you have an early indication of those recommendations?

Michael Russell: I have had regular discussions with Graham Donaldson as he has undertaken his tasks and I am interested in how his thinking has developed. However, the full recommendations are up to him and I am unaware of them at the moment.

Alasdair Allan (Western Isles) (SNP): I will ask about teachers retiring. We have touched on peaks and troughs in teacher numbers. The age profile has peaks at two points—among teachers in their 20s and teachers in their 50s. How is that pattern likely to develop? Is it likely to stabilise?

Michael Russell: We have interesting figures on the age profile of teachers, which I am just about to find. I have a table that gives primary and secondary teachers by age. When teachers in primary and secondary schools are divided into age groups, the majority group is 55 or over—4,732 primary teachers and 5,133 secondary teachers are in that group. The next largest groups are those aged 50 to 54 and then those aged 25 to 29. The numbers undulate slightly.

We know broadly how many primary and secondary teachers we will need in the next five to 10 years. We are planning for those positions to be filled. That gives me the confidence that, in reducing training places, I am creating the right number of teachers to fill those vacancies.

10:15

Alasdair Allan: The view of Joe Di Paola from COSLA is that teachers who might have been anticipated to retire at 60 have been staying in post until 62 or 63. Is there any evidence of that nationally? If so, are you trying to plan around it?

Michael Russell: There are two conflicting sets of evidence on that. *The Times Educational Supplement Scotland* published a story some months ago, based on work that it had done, that suggested that that was not a major factor.

COSLA believes that it is a factor. I am not an expert on this, but there is evidence from the wider economic market that if they can, people defer their retirement in times of difficulty. It may be a factor. We know the number of teachers who are 55 or over, we are watching retirements as they take place and we are considering the matter carefully.

Alasdair Allan: I understand that extra borrowing powers have been awarded to local authorities to provide retirement packages for teachers. Can you say more about that? Has it made any impact?

Michael Russell: Mr Kellet will remark on that. We are disappointed with the take-up of that opportunity.

Michael Kellet: An offer to take borrowing powers to fund early retirement on a one in, one out basis was made to all councils. Only two councils—Falkirk and West Dunbartonshire—took that up. As the cabinet secretary said, a relatively limited number of teachers support the idea.

However, other councils are taking forward their own early retirement schemes and some have been quite successful in refreshing their workforce through such schemes.

Michael Russell: The difference is that our scheme would have been one in, one out; local authority schemes are not that. We were happy to offer that opportunity to manage the situation but local authorities are not that interested in it.

Margaret Smith: I was about to ask about that. In 2009, when you came up with the proposal, it was suggested that it might free up anything up to about 500 teaching posts. How many teaching posts did it free up?

Michael Kellet: I do not have the papers here, so I will check and confirm that, but my understanding is that the combined number of applications from Falkirk and West Dunbartonshire was around 66. As I said, other councils were using their own schemes to push early retirement but, as the cabinet secretary said, the numbers were relatively limited.

Michael Russell: Although it was disappointing that the offer was not really taken up, it indicates the desire on the part of local authorities to retain control of the issue and to manage it in their own way. The offer exists, but it has been difficult to persuade local authorities to take it up.

Margaret Smith: I have a question on a slightly different topic. There has been a concerning change over a period of years in teacher employment. Previously, newly trained and post-probationary teachers were more likely to get permanent contracts. Now, many more get temporary contracts. We have focused quite a lot on supply, but the big issue is the number of teachers who get temporary rather than permanent contracts. What are your thoughts on that? Do councils follow up people who have been employed on temporary contracts and move them on to permanent contracts? Are temporary contracts seen as a way of progressing into permanent contracts, or are teachers in effect just being kept on and used on a much more temporary, supply basis?

Michael Russell: There is some evidence that people on part-time, temporary contracts go on to get jobs with full-time contracts, and that is the intention.

In response to an earlier question from Mr Macintosh, I said that I encourage local authorities to offer full-time, permanent contracts. It is good for schools to have that continuity; that is what is expected of them. However, I keep going back to this important point: local authorities are the employers; they make those decisions. We could change that. If you want to debate whether that should be changed, we can have that debate, but the situation is as it is. Without passing a piece of legislation, I cannot go in there and say, "This is what will happen," and I do not think that that is the type of legislation that would assist with the development of relationships between elected bodies in Scotland.

Margaret Smith: In 2005, 66 per cent of probationer teachers were getting permanent contracts; in 2009, the figure went down to 23.4 per cent. There has been a significant turnaround, with increases in the number of supply and temporary teachers, and in the number of unemployed teachers. There has been a real change in the way in which the contracts are being dealt with. I understand that that is a matter for the employer, but some kind of permanence is of educational benefit to a school and a class.

Michael Russell: The interrelationships between all those figures have to be thought through. The number of full-time opportunities will have fallen because the number of teaching posts has fallen. In those circumstances, the number of people going into full-time posts that have been vacated will have fallen. Temporary contracts might well be used to substitute for people who are on maternity leave or things of that nature. There has been a change in the demographics and the conditions of the people going into the profession immediately post-probation. The question is how many of those people move from temporary jobs into full-time jobs. To go back to the very first point that I made this morning, we believe that, given the reduction in the number of training places and the changes that will take place over time, the situation will change again. However, the additional factor is the effect on this complex situation of the tremendous pressure that is being put on local authority finance.

Claire Baker: What impact will the decisions that have been made have on teacher training institutions? In December 2008, the cabinet secretary at that time said in evidence to the committee:

"I could make easy decisions now to ensure that we have as much employment as possible for probationers by cutting teacher training radically, but the danger would be that in four years' time we would have a teacher shortage".—[*Official Report, Education, Lifelong Learning and Culture Committee,* 17 December 2008; c 1823.]

The current cabinet secretary went on to cut teacher training places pretty radically, by 42 per cent, as he said in his introduction. He recognised that that has led to redundancies at teacher training institutions. He has also recognised this morning that pupil numbers will fluctuate and that retirals will increase. Does he have any concerns that, through the redundancy process and last year's drastic cut in the number of teacher training places, there has been a loss of expertise in the sector that could present challenges in the future if we wanted to increase the number of teacher training places, as he indicated might need to be considered after 2011?

Michael Russell: I felt that I had to make the difficult decision to reduce places. Of course that will have led to a reduction in capacity in the teacher training colleges—that was inevitable. I gave £3 million to support those departments through difficult times, part of which was for a competitive bidding process on work to support the curriculum for excellence, and that has helped. I do not think that anyone wanted to reduce the number of places in the way that we did, but it was simply the right thing to do. I did not want another generation of young people who want to be teachers finding themselves without jobs in the long term. I believe that what I did was the right thing to do.

I think that sensitive management of the change to the teacher training institutions has taken place by and large and those institutions remain of world quality. I had a discussion in China last week about the fact that our teacher training institutions are highly respected because of what they are able to do, which is of great benefit. I do not see—and did not see—any alternative but to ensure that we were not producing too many students who would inevitably be disappointed.

Kenneth Gibson: There has been a significant reduction in the number of probationers in permanent employment. In fact, the figures also show that the number of those in temporary employment has declined from 2005-06, which shows that local authorities are not sneakily trying to keep folk on temporary contracts in order to avoid giving them the appropriate terms and conditions. Nine months after qualifying, about 27 per cent of teachers are still unemployed. Are there specific issues with certain subjects and the balance between primary school and secondary school teachers in that cohort? In other words, do we still have a shortage of teachers in some subject areas and a glut in others, or is there a spread across subject areas?

Michael Kellet: The GTCS survey last autumn showed that 27.5 per cent of probationer teachers were not in employment as teachers, but that figure reduced to 13.5 per cent by the time of the survey in April last year. There are subjects to which it has traditionally been difficult to recruit: maths, Gaelic, music and home economics. There still tend to be pinchpoints with those subjects, but the general pattern across the board appears to be that there are not as many difficulties as there were before.

Kenneth Gibson: In what areas are there a significant number of unemployed teachers? Are there too many English teachers, maths teachers, physical education teachers or primary school teachers? Where are the majority of unemployed teachers concentrated? Is the number spread across the spectrum?

Michael Kellet: Obviously, a significant number are teachers with a primary teaching qualification. The number tends to be fairly balanced across the subjects, with the exception of the few subjects to which we have traditionally found it more difficult to recruit.

Kenneth Gibson: The number of nursery teachers has increased from about 2,100 to almost 3,000. Is that correct?

Michael Russell: Yes—fully qualified nursery teachers. We have tried to increase the contact between fully qualified nursery teachers and nursery pupils. That remains our aim and ambition.

Des McNulty (Clydebank and Milngavie) (Lab): The issue that the minister has said is most pressing is the position of newly qualified teachers and probationer teachers. The minister has the advantage of having access to information and data, as well as an understanding of the expected impact of his policies. How many newly qualified teachers will remain unemployed by Christmas? What are the employment prospects next year for current probationers?

Michael Russell: I cannot tell you the exact number, because that will depend on a whole host of variables, which include such things as whether there are more pregnancies among Scottish school teachers than we anticipate over the next few months. I stand by what I said in my opening statement: in September we saw the first year-on-year reduction in jobseekers allowance claimants in the workforce since May 2008. That indicates that the change in training numbers that my predecessor made in 2009 was the right approach. I think that the further changes that I have made will improve the situation. There will still be young unemployed would-be teachers for a period of time, but I hope that the actions that I am taking will help. I am nothing other than sorry that that is the case. There was an overexpectation and I am trying to resolve a very difficult situation with very limited and reduced resources. I am not the employer of teachers. The final decision about how many teachers are employed is a matter for local authorities, not for me—alas.

Des McNulty: I understand the complexities of the situation and the architecture of the current arrangements. Like Mr Macintosh and, I am sure, like the minister, I have been speaking to current probationers and newly qualified teachers. Most recently, I spoke to some at the demonstration in Edinburgh last Saturday. The straightforward question that they want answered—you will have estimates for this—is how many newly qualified teachers will remain unemployed by Christmas.

10:30

Michael Russell: I cannot answer that question. With the greatest respect, I think that it is important that all of us make clear that an absolute number cannot be provided. The trend, as indicated by the claimant count over time, is going in the right direction. The actions that we are taking have meant that the situation in Scotland is better than that in the other parts of the United Kingdom. We are doing everything that we can.

I have said that I am open to new suggestions and am looking at the possibilities of assisting in different ways. However, given the financial circumstances in which we find ourselves, I do not have the resource to be able to devote additional millions of pounds to employing more teachers. Even if I had that money, there is no indication that local authorities would employ those teachers. In those circumstances, the actions that I have taken and am taking are focused on changing this deeply regrettable situation, which has arisen for a variety of reasons, one of which was overadmission to training colleges.

Des McNulty: Your manifesto at the previous election—which, I accept, you did not write—contained two promises about numbers. One related to the maintenance of teacher numbers; the other related to police numbers. You have made clear that you regard the number of teachers as arbitrary and that, therefore, the promise is not to be taken forward. Your colleague Mr MacAskill has managed a more robust defence of police numbers. Whether he has delivered them is a different issue, but he has certainly defended the idea that they should be delivered. What is the difference between education and police?

Michael Russell: There are substantial differences in where we are. There is a clear correlation between falling crime and police numbers. The requirement to improve on the previous Administration's record on falling crime was manifest, so it was right for us to deliver on police numbers.

The Scottish Government and Fiona Hyslop inherited what I regard as an arbitrary figure, which was spun effectively by your predecessor, Peter Peacock, when he held office. It turned out to be impossible to sustain that figure, for two reasons. One was the changed circumstances. The other was the decision of local authorities not to employ the teachers. I would be happy to read you the list of authorities that made that decision most dramatically. It is headed by a number of Labour authorities. I suggest that you ask them why they made that decision. I have made clear to you why I believe that we are now in this position and that I am doing everything in my power to assist those who are the victims of the situation.

Des McNulty: I make the same rejoinder to you that I made to the First Minister—the highest percentage reduction is by Renfrewshire Council, which is an SNP-administered authority. I return to the main point. All of us accept that teachers are the vital wellspring of education. Why are education and teacher numbers not a priority for the Government in the way in which, apparently, police numbers are? Is education less important, less valuable and less significant? Is it the SNP's view that significant benefits are to be derived from other areas of spending that are not to be derived from education?

Michael Russell: Absolutely not. Both the facts that you have just given and your other figures are wrong; I will change them in a moment. We have spent record amounts on education and have increased education spending. As you know, education is delivered through local authorities; at the end of the day, they decide what they will do. Some do that supremely well and really try hard, but some seem to have a cavalier attitude towards teacher numbers.

In 2008-09, Glasgow City Council reduced teacher numbers by 6.9 per cent; Renfrewshire Council reduced them by 6.1 per cent. However, Renfrewshire is delivering smaller class sizes, whereas Glasgow has refused to do so. Glasgow is entitled to make that decision—we have a distributed system—but I will never accept, because it is simply not true, that the SNP does not regard education as a priority. We have put more spending and effort into education than into anything with which I have been involved at any time in my political career. The regrettable fact is that some of your colleagues' mistakes have taken an awfully long time to sort out and are still being sorted out. That will continue to be my job through and, hopefully, beyond the next election.

The Convener: That concludes the committee's questions to the cabinet secretary. Because the next two items on our agenda also relate to matters that fall within the cabinet secretary's portfolio, I suggest that we have a short comfort break. The meeting will resume at 10.40.

10:35

Meeting suspended.

10:40

On resuming—

Subordinate Legislation

Education (Lower Primary Class Sizes) (Scotland) Amendment Regulations 2010 (SSI 2010/326)

The Convener: The fifth item on our agenda is to take evidence from the Cabinet Secretary for Education and Lifelong Learning on the Scottish Government's class size policy and the Education (Lower Primary Class Sizes) (Scotland) Amendment Regulations 2010. The cabinet secretary will again be supported by Michael Kellet. I assume that the cabinet secretary wishes to make an opening statement.

Michael Russell: I would never want to disappoint you, convener.

I see the regulations as a significant interim milestone on the way to achieving the ambitious longer-term class size objectives. When I spoke to the committee on 10 March, I went over some of the research evidence that supports our class size reduction policies. I will not go over that again, but I confirm that we are committed to class size reduction as whole-heartedly now as we have ever been. As has been mentioned on a number of occasions this morning, financial circumstances are not in our favour, but there is no reason to abandon the policy, even if we must accept that progress will inevitably be slower than it might otherwise have been.

On their own, smaller class sizes are not a panacea. We need to ensure that curriculum and teacher quality are right. Since March, we have made huge progress with the curriculum for excellence and are getting ever closer to the end of the year, when, as the committee knows, we will receive Graham Donaldson's review of teacher education. I look forward to hearing his findings and considering how best to move forward on his recommendations.

I remind members that the regulations have been introduced by popular demand. Since 2007, local authorities have been attempting to implement a primary 1 class size limit of 25 to comply with the previous Administration's policy, which it saw fit not to back up with legislation. The absence of regulations has caused frustration across the country in recent years, as sheriffs have upheld appeals against placing requests that councils had rejected in an effort to keep class sizes down.

I will give the committee a couple of facts and figures to reinforce that sense of frustration. In 2008, only 2,898 primary 1 pupils were in classes of more than 25. That is too many, but it is a relatively small percentage of the 52,000-plus P1 pupils in Scotland. By 2009, the figure had risen from 2,898 to 4,525—an increase of 56 per cent in one year. If the figure were to continue to rise by 56 per cent each year, half of our primary 1 pupils would be in classes of more than 25 in just four years. On that basis, the committee will agree that the need for regulation is self-evident.

I mentioned that I introduced the regulations by popular demand. I was alluding to the overwhelming support from local authorities. The responses to the consultation exercise included 23 from local authorities, which were unanimously supportive of the regulations. I was pleased by that but not surprised, given the numerous requests that I have received for such measures to be introduced.

I know that some have concerns about the financial implications of the regulations. The Executive note that accompanies them explains that the financial consequences are small, given the history of ring-fenced funding that is associated with the issue. If that is not persuasive, the local authority responses to our consultation exercise confirm the point. The references to costs in those responses were almost exclusively related to the possibility of rolling out the limit of 25 to P2 and P3, rather than to the new statutory limit for P1.

Agreeing to the motion to annul the regulations would be a retrograde step. The regulations will be well received across Scotland and will afford local authorities a higher degree of certainty as they determine budgets and, I emphasise, staffing levels for the coming year. I will be happy to respond to specific points later.

10:45

Finally, I will say a word or two about the longer-term objectives. When I was here in March, I spoke about the deal that I was on the point of securing with COSLA to have 20 per cent of P1 pupils in classes of 18 or fewer by August this year. The deal was struck, and the framework agreement has been put in place. We will not know the outcome for certain until the census data are published at the beginning of December, but from what officials have been able to gather, things are looking promising. It looks as though local authorities are collectively likely to meet the 20 per cent target. We should not pretend that it has been easy, but that demonstrates a significant commitment to a P1 target of 18 by local authorities, particularly given the difficult financial circumstances in which they find themselves.

Of course, the raw class size data that the census will give us will not tell the whole story

about what local authorities and schools are doing to enhance the quality and quantity of pupil-teacher interaction. When we struck the deal with COSLA in the spring, a number of authorities made strong representations about the merits of alternative approaches—such as team teaching and nurture groups—to supporting the education of children in the early years. I am happy to acknowledge that class size reduction is not the only way to measure success in this area. For that reason, we are currently conducting a survey to better understand the full range of approaches that are being adopted to support pupils in the early years, and I will publish the results in parallel with the publication of the schools census on 1 December.

I point out that, as the framework agreement makes clear, and in recognition of the physical constraints in some schools that necessitate team teaching, we will this year treat pupils in two-teacher classes of fewer than 36 pupils as being in classes of fewer than 18.

I thank David Cameron for his work on the review of class size control mechanisms that he conducted for the Government earlier this year. Top of the list of recommendations was that all class size maxima should be specified in statute. I am considering that carefully, and we are moving today in an interesting direction on that.

Perhaps the most interesting aspect of David Cameron's report is the discussion about the nature of learning. The report draws attention to the changing nature of learning as technology, pedagogy, the curriculum and the design of school buildings continue to evolve. We must all reflect on that as we move forward.

I hope that that has been helpful and I look forward to debating the issue with the committee.

The Convener: Thank you for those comments, cabinet secretary.

As a procedural reminder to the committee, I note that although the cabinet secretary referred to the motion to annul, I would be grateful if committee members restricted their questions to the substance and policy intent of the regulations. There will be an opportunity to discuss and debate the merits or otherwise of the motion to annul when we move to agenda item 6.

Would members like to ask the cabinet secretary any questions?

Margaret Smith: Cabinet secretary, you touched on the fact that local authorities are very much in favour of the measure, and that a number of councils have had to defend decisions in the courts. Do you have any indication of the costs for councils in taking such action?

Michael Russell: I do not, but it must be substantial in terms of legal costs and charges. I think that individual local authorities would be able to give you that information.

I am aware of local authorities' real reluctance to continue with such situations; a fact that was borne in upon me very strongly—you will not be surprised that I use that word—by the education convener of the City of Edinburgh Council, who is a party colleague of yours and has made the point forcibly to me.

Margaret Smith: And to me.

Michael Russell: Indeed. I am sure that we both bear the scars.

Christina McKelvie: I was recently contacted by some parents and a number of teachers in South Lanarkshire about the situation there. There have been a number of challenges in court for places, and as a result some class sizes of 30 have gone up to 33, yet the additional places that sheriffs grant do not count in the numbers. How will the regulations sort out some of the challenges that South Lanarkshire has been facing with regard to placing requests and their impact on larger class sizes? I am interested in how the regulations will remedy that and stop South Lanarkshire from spending a huge amount of money on defending such cases, so that the money can be spent on teachers, jotters and pencils instead.

Michael Russell: Michael Kellet might want to say a word or two about how such placing requests will affect the issue of the 30:1 ratio and the reduction to a 25:1 ratio, because the matter was consulted on. I will then say a word or two about the effect.

Michael Kellet: I know from discussions with South Lanarkshire Council that such cases have been a particular problem for it. As you say, it has contested a number of cases before the courts.

The position is that the regulation imposing a statutory maximum of 25 should help councils to defend cases that they were not previously able to defend, because although the previous Administration had a policy of 25, the statutory maximum was 30.

The issue of excepted places is complex. The regulations preserve excepted places. In the scenario where a child is allowed in through the decision of a sheriff, for one year they will not be counted for the purposes of the regulations, but in future years that excepted nature will fall away. We propose the continuation of that arrangement because it allows councils to cope with the fact of children moving into catchments halfway through the year. Councils said that that flexibility is important, and we agree. It also allows for children

with additional support needs by ensuring that, if it is appropriate for their education, they can become a member of a class, even temporarily, and not fall foul of class size regulations.

Michael Russell: It is important to consider the views of local authorities, which have the experience of dealing with these matters daily. We consulted on the issue of excepted pupils and local authorities were clear that the mechanism was necessary for them to retain some flexibility. The situation has not caused major problems, but if a local authority were forced to make a significant change during the year, the effects on it, and perhaps on pupils, could have been profound. We therefore accepted that the excepted pupils regulation should remain in place.

The excepted pupils mechanism can currently lead to there being 33 pupils in a class, so by extension under the new statutory maximum you are not likely to have much more than 28 pupils in a class, even in the most exceptional and highly unusual circumstances. The view on the excepted pupils issue is that it is very unusual, but it arises from time to time as part of the necessary flexibility.

Kenneth Gibson: How many additional teachers do you expect local authorities will have to recruit to be able to implement the policy?

Michael Russell: Michael, do we have an expectation of that?

Michael Kellet: Authorities will need to devote extra teachers to cope with the new statutory maximum of 25. The cabinet secretary gave the figure that last year, just over 4,500 pupils in P1 were in classes of more than 25. The schools concerned will need to recruit a number of teachers to remedy the situation, but we do not have a figure, because it depends upon the boundaries of individual schools and intakes in particular years.

The important point to bear in mind is that authorities unanimously supported the regulations, and I know from speaking to them that they are planning on the basis of being able to deliver on the new statutory maximum and do not see it as a significant financial burden.

Michael Russell: I believe that I am entitled to say, Mr Gibson, that COSLA wholly supports the change. Given that complex discussions are always taking place about the financing of individual elements of the deal, the fact that COSLA recognises that this is not a major new financial burden but will improve the ability of councils to operate means that it is not a major issue for councils.

Kenneth Gibson: Yes, but my point is that we have just had a long discussion about teacher numbers and this change will ensure that there are more teachers in our schools than would otherwise be the case.

Michael Russell: There will certainly be a few more teachers, which is greatly to be welcomed.

The Convener: Why did the Government choose to limit the regulations to cover only children in P1 and not class sizes in P2 and P3, especially since you highlighted in your opening comments the work of the review group that you appointed, which said that there was considerable merit in having statutory limits for class sizes throughout primary school? How did you weigh up those policy intentions with the financial implications of the statutory limits that were to be introduced?

Michael Russell: There would be additional costs for primaries 2 and 3, but I remain in favour of it. Most of the responses that we received saw it as a positive step as part of a rolling programme.

I have to look carefully at the reality of what local authorities can deliver as well as all the things that I regard as desirable. I see this as part of a rolling programme and I hope to return to the issue, but to impose a class size limit of 25 on primaries 2 and 3 at this stage would add significant financial burdens to councils, which I would find difficult to do. Local authorities agreed with me on that—they thought that it was the right time to move to classes of 25. They wanted to move to classes of 25 in primary 1 but thought that we should consider a rolling programme for primaries 2 and 3. As you know, I regard primaries 1, 2 and 3 as the key areas for the policy—the early primary years, which are the key ones for interaction. Therefore, I want to roll out the programme over a period of time.

Ken Macintosh: Why are you introducing legislation to confirm the class size limit in primary 1 as 25 rather than 18, which was your election promise?

Michael Russell: Because you did not do it, frankly. When you were in government, you set the target at 25, but you did not achieve it. It is the next step to take it down, and that is what we are going to do. It is the right place to be on it. We do not yet have 100 per cent of classes in primary 1 at 18 or below, and to have imposed a limit of 18 at this stage would have conferred a considerable burden. I am a natural negotiator, Mr Macintosh, and I try to move things forward by agreement and consensus. In the circumstances, I believe that the work that I have done in moving the policy forward this year—which I hope will bear fruit when the figures are published—is the next step. We are taking it a step at a time, and this is a useful next step. I hope that all of us—with perhaps one

exception, as there is to be a motion to annul the regulations—agree that it is a good thing to do.

Ken Macintosh: I agree that it is Labour's policy to which you are now giving legal backing. However, your promise was not for a class size of 25; it was for a class size of 18. The Executive note on the regulations states that the commitment to class sizes of 25 was fully funded by the previous Administration. Why exactly have you not agreed to introduce legislation to fulfil your own promise of class sizes of 18?

Michael Russell: Mr Macintosh, the glass is either half full or half empty. You and I can argue for as long as we like about whether the target should be 18 or 25. I want a class size of 18 in primaries 1, 2 and 3. I believe that the difficulties in achieving that have been legion, but I keep trying and I hope that, later this year, I will be able to show what progress we have made. I will continue to make progress for as long as I am Cabinet Secretary for Education and Lifelong Learning, and I look forward to a long tenure. I will keep moving on that.

Today, I am moving the issue of class sizes a step forward with the agreement of Scotland's local authorities. We are putting in place a commitment that, I acknowledge, Labour made but that Labour somehow forgot, in the excitement of the moment, to legislate on, which is what we are now doing. I hoped to have your backing. I am asking for that backing now so that we can take that forward together as a positive step for Scottish education. Can I have that backing?

Ken Macintosh: This is Labour's policy, so I am absolutely delighted that, finally, after three years, the SNP Government—

Michael Russell: It is difficult to associate you with the concept of delight, Mr Macintosh, but I will do my best.

The Convener: I suppose the point is that under the previous Administration, as you said, cabinet secretary, only just over 800 children were not in classes of 25. Perhaps that was because the previous Administration funded the policy. The current Government has chosen not to fund it, so far, which is why we have so many children in classes of 25 or more.

Michael Russell: Absolutely not. Convener, I am familiar with your role as Mr Macintosh's helper, but on this occasion I am afraid that you have got it wrong. We have funded education better than our predecessors. However, such arguments are churlish in the context of what we are trying to do together today. Let me keep trying to establish the spirit of our doing something together for the benefit of Scottish education. That is what I am keen to do and I am sure that it is what people want us to do, so let us try to do it.

The Convener: For the record, can you remind me of how many children are currently in classes of more than 18?

Michael Russell: I do not have that information, as the school census will not be published until December. The moment that the school census is published, I will hot foot it to you with the figures.

The Convener: The figure might be slightly more than 800. Margaret Smith has a question.

Michael Russell: Oh dear. [*Laughter*.]

Margaret Smith: People usually wait until I have opened my mouth before expressing their disappointment.

Michael Russell: My punctuation and timing were slightly awry—my remark was a comment on what had just passed rather than the pleasure that lies ahead.

11:00

Margaret Smith: I think that I should swerve that comment.

I have completely forgotten what I was going to say. Oh yes—as you said, the previous Administration had a policy of a maximum class size of 25. That was a Liberal Democrat policy, so I am happy to support the way forward that the regulations present today.

One of the issues that you mentioned was team teaching. In my constituency, where there has been a fairly tentative approach to the use of team teaching, a number of parents have concerns about it. I am interested in the fact that you said that the presence of two teachers in a class with fewer than 36 pupils would be seen as being equivalent to two classes of fewer than 18 pupils. It might cause some parents—certainly some of those whom I represent—concern that that is to be the position. Do we have figures for the number of children across Scotland who are being taught in that way? I appreciate that the issue is quite complicated, given that there is now a much more mixed approach to teaching in schools, but as team teaching is something that more and more local authorities, not just in Edinburgh but elsewhere, will be using, can you give assurances to parents about its effectiveness?

Michael Russell: Yes. I think that team teaching tends to come about as a result of a physical constraint rather than as a result of a decision by authorities to do things differently. There is no reason why team teaching should not be fully effective if one believes that the success of the policy of delivering smaller class sizes is in the largest part dependent on the provision of greater interaction between teacher and pupil at that early stage. After all, that is what the belief that the

policy works is founded on. In those circumstances, when there are two teachers for a class of 36, the interaction should be the same as in a class of 18.

I thought long and hard about the issue and was persuaded that the local authorities that are using team teaching are doing so largely because of physical constraints. In such circumstances, its use is acceptable. I accept that team teaching should not be the norm, because there is probably a small benefit in having an individual teacher-pupil relationship and an individual space—although some classrooms are divided into separate spaces for team teaching. I would not worry too much about it, and I certainly reassure parents that I do not think that it is in any way educationally detrimental.

Margaret Smith: What work will your department be doing with regard to the census? You say that team teaching should not become the norm. If there were evidence to suggest that it was becoming the norm, what could you do about it?

Michael Russell: The physical spaces are such that I do not think that it could ever become the norm. Michael Kellet might have some figures.

Michael Kellet: The pupils in Scotland census for 2009 contains some figures on that. Table 2.13 is the relevant one. It shows that in 2008, around 1,100 children in P1 were in classes of more than 25 that had two teachers. That number was around 900 in 2009. That gives you a measure of the scale of the issue. As we said, that is out of a total cohort of around 52,000 pupils, so it is a relatively small component.

Michael Russell: It is about 2 per cent of P1 pupils. I suspect that if we drilled down into that, we would find that in the member's constituency, for example, team teaching was being used in large-ish schools that were popular and where there was a demand on space. I suspect that that is the issue.

Ken Macintosh: I am sorry to come back to this, following our interesting conversation earlier, but I would like to clarify the Government's class size policy. There is a need for legislation in that area, because the circular that used to carry quite a lot of weight has been challenged in the courts. There are other circulars that provide guidance on class sizes, one of which recommends class sizes of 20 in secondary 1 for English and maths. Is that still Scottish Government policy? The minister suggested that he is looking towards giving legislative backing for class size maxima.

Michael Russell: I have to say that I remain more convinced of the argument for smaller class sizes in the early years of primary. I am not against smaller class sizes in other areas, but I remain more convinced of the argument for the early years. At a time when resources are under pressure, we have to prioritise, and my priority at present is the continuing progress, step by step, bit by bit, towards reducing class sizes in primaries 1 to 3.

Ken Macintosh: I am not against the regulations—far from it. I am just trying to clarify the position. The Government has made a specific decision, and a necessary one, because it is class sizes of 25 in P1 that have been challenged. There is no legal challenge against class sizes in S1—that is an internal secondary school issue. However, I am trying to work out the status of or the weight that is carried by various pieces of Government policy or advice. We have legislation, we have terms and conditions and so on, and we have Government circulars. Having class sizes of 20 for English and Maths in S1 is promoted through a Government circular. I just want to check that that is still the SNP Government's position.

Michael Russell: The circular continues in existence. My political priority in delivering education, in terms of class sizes, lies in primaries 1 to 3.

Ken Macintosh: I am sorry, but I just want to see it in black and white. Is a class size of 20 for English and Maths in S1 SNP Government policy?

Michael Russell: The circular continues in existence and therefore there continues to be advice on that matter.

Ken Macintosh: Sorry, minister. I do not understand—

Michael Russell: I am not here to discuss class sizes in the secondary sector in the abstract or even in the specific. I am here to look at primary 1, in particular, and the regulations. If you would like to engage in a debate about the virtue of class size maxima in S1 and S2, I would be happy to come back and do that at some stage, but there are very different issues, which is illustrated by the fact that the only advice on class sizes in secondary exists in two particular subjects. We are happy to debate the issues, but the circular continues in existence, so the advice remains in place.

Ken Macintosh: Minister, the reason it matters is this. I agree that there are policy issues, and we can have an interesting discussion about the relative importance of class sizes of 20 for English and Maths in secondary school versus reducing class sizes in the early years, but that is not what I am asking. What I am trying to get at is this: what is the Scottish Government's policy? If the Government is going to produce legislation to back up its policy in S1—

Michael Russell: I have no intention to legislate on class sizes in the secondary sector.

Ken Macintosh: Therefore there is a bit of a vacuum, and I think that local authorities will want to know what the SNP's policy is.

Michael Russell: I have to say that I have been education secretary for 11 months now and no local authority has asked me that question. Now, maybe they have just forgotten, but no local authority has asked me that question. However, I have been engaged in intensive discussions about primary class sizes, and that is the issue that we are discussing today.

Ken Macintosh: If I may say so, the minister is being deliberately obtuse. Of course local authorities are not going to ask questions about a policy that they do not necessarily wish to observe at a difficult time of financial restraint. Local authorities have always wanted some flexibility on the matter. We know that in certain areas some local authorities have abandoned the policy of class sizes of 20 for English and maths in S1. I do not think that it is a difficult question. Either the SNP has a position on the matter or it does not. It seems that it does not. It is important to know—

Michael Russell: No, the circular continues in existence, and I am happy to debate the separate issue of class size maxima in specific secondary subjects at a time and place of your choosing, Mr Macintosh, but that is not the issue today. The issue today is the very different one of class sizes in the early primary years.

Ken Macintosh: Fine.

The Convener: That concludes our questions to the minister under agenda item 5. We move on to item 6, which is consideration of Elizabeth Smith's motion S3M-7177. I invite her to speak to and move her motion.

Elizabeth Smith: I have lodged the motion because the Scottish Conservatives wish the legislation that sets the cap on class sizes at 30 to remain in place. Our view is based on strong educational and social grounds. First of all, we firmly believe that increasing parental choice in the selection of school is one of the key planks in raising standards. In recent years, more parents have exercised their right to choose the school that their children will attend, which says quite a lot about many parents' desire to become more involved in their children's education. Reduction of the cap from 30 to 25 is likely to fly in the face of the principle of extending parental choice and will, as Eileen Prior of the Scottish Parent Teacher Council pointed out, in some cases hinder parents' ability to find primary 1 places in the best schools.

With current demographic trends, there has already been a reduction in primary 1 class sizes—which, incidentally, raises the question why new legislation is needed at all. Given that the numbers in the lower years of primary school pupils are projected to rise quite considerably by 2020, the logical deduction is that capping class sizes at 25 will create the need for more P1 classes, which will have a cost implication. I want to push the cabinet secretary a little further and ask him to provide evidence to the committee on predictions for the required number of teachers to be employed and to tell us whether there are any predictions for the number of classrooms that would have to be built. I believe that I am correct in saying that my Labour and Liberal colleagues have asked the same question in recent months; in fact, one of them actually asked the question this morning.

I need hardly remind the cabinet secretary of the warnings of a potential £630 million funding gap that local authorities might face in 2011-12, and I wonder how the policy will be afforded in the future, given that primary school rolls are set to rise by 7.5 per cent. I also point out that 180 primary schools across Scotland have been unable to operate P1 classes of 25, so I have to wonder about the cost implications of forcing such schools to change their P1 structures.

The Scottish Conservatives are also concerned about the potential knock-on effects of the changes on later year groups—P2 and P3, in particular. If the cabinet secretary is so convinced of the educational wisdom of his policy with regard to P1, what is the logic behind limiting the legislation to that year alone? I do not really follow that, and I share many parents' concerns—some of which Margaret Smith flagged up earlier—that the number of composite classes could rise in order to get round the various cost implications, which could have a detrimental effect on some children's educational experience.

Most important, I do not think that there is any convincing evidence that forcing class sizes to be capped at a lower level necessarily improves attainment levels. There is a wealth of documentation on the subject, but there is also a very wide difference of opinion about the importance of class sizes. As I have said both at committee and in Parliament, I have absolutely no problem with smaller class sizes. However, although the move will benefit many children, it would have absolutely no effect on others. When pupils leave school, they are much more likely to remember an inspirational teacher than they are a class size. Again, as the SPTC made clear, the issue resonates very strongly with parents, who would prefer their child to be taught by a good teacher in a class of 26 or 27.

My final point, which I know my Labour and Liberal colleagues agree with, is that the SNP

made an unequivocal manifesto promise to deliver class sizes of 18 or fewer in P1 to P3. In my opinion, that policy was unworkable from day 1 and was unquestionably the wrong priority at a time when there were other much more important education matters to resolve, such as improving literacy and numeracy. Since the heady days of 2007 when the pledge was made, the class size policy has disintegrated. Indeed, it has been watered down to something that bears very little resemblance to its starting point and is, as the Scottish Government legislation shows, full of inconsistencies and devoid of any real or convincing educational arguments. That is why so many parents across the country have challenged the policy.

The real reason for the change—and probably the reason for the unanimous support that it has received from many councils—is that, as those councils have very bluntly told the Scottish Government, they cannot afford to lose the court cases at which parents' democratic rights to choose a school have been upheld.

The long and the short of it is that the Scottish Government should abandon its failed class size policy, leave the cap at 30 and allow maximum flexibility, within what is a perfectly reasonable legal limit, for parents to have maximum choice and for headteachers to have the maximum say in deciding on what is best for their schools.

The Scottish Conservatives have chosen to side with many parents on this issue, and I urge other committee members to do so, too.

I move,

That the Education, Lifelong Learning and Culture Committee recommends that nothing further be done under the Education (Lower Primary Class Sizes) (Scotland) Amendment Regulations 2010 (SSI 2010/326).

The Convener: As motions to annul subordinate legislation are relatively unusual, it might be helpful to explain the procedure. There is now an opportunity for any or all members of the committee to engage in a debate. However, you will each be allowed to make only one contribution. At the conclusion of all committee members' contributions, there will be an opportunity for the cabinet secretary to respond to the points that have been made by Liz Smith and anyone else who has participated, before we move to a vote.

Ken Macintosh: I thank Elizabeth Smith for bringing this important issue before the committee to discuss, although I say from the outset that I do not agree that we should support the motion to annul the SSI.

When he was speaking about the regulations earlier, the cabinet secretary suggested that he is as committed as ever to smaller class sizes. I find the cabinet secretary's comments and so-called promises in that regard to be so tarnished now as to be almost worthless.

The previous Administration introduced a class size of 25 in P1, and that was an important policy. I agree with the cabinet secretary that smaller class sizes are an important policy, among a number of policies, and that they have educational benefits for our pupils. The policy has been shown to work, and the previous Administration—both the Liberals and Labour—were committed to it.

It is important to have the legislation in place, because the circular and guidance on which the previous commitment was delivered—with full funding, I might add—have now been challenged in the courts. That is unsatisfactory for a number of reasons, apart from the experience that Liz Smith mentioned. We do not wish parents and councils to be set against one other and to have to battle things out in the courts. In all such situations, we need as much clarity and legal certainty as possible. Over the past few years, court cases that have been successfully brought by parents have meant that the class size of 25 is now virtually unenforceable.

I totally disagree with Liz Smith's suggestion that it would be a good idea to abandon a class size of 25 in authorities such as East Renfrewshire. In all the primary schools in East Renfrewshire that have made significant investment in P1 to the advantage of parents and pupils, that advantage would be entirely lost.

The previous Administration invested significantly in the school estate in East Renfrewshire and in teacher numbers, particularly in primary schools. A number of primary schools were expanded. Each time a primary school was expanded to provide more capacity and more room in which the pupils could learn, that capacity was filled up through placing requests, with places going to children from outside the authority area, usually. I do not think that that is a desirable situation. Local authorities should be able to plan and to take what are political decisions to prioritise education and investment in that area, so that they can reassure parents that that is the policy that will be implemented.

In this case, legal backing is required. It should not be a case of abandoning the policy, as it is not true to suggest that parents do not mind whether their children are educated in classes of 25 or 30. Parents do mind. Local authorities mind. It is important for the Government to be supported in getting the regulations through today.

Margaret Smith: I will pick up on some of the things that Ken Macintosh has just said.

The question of what parents want is complicated. A parent who successfully manages

to get their child into the school of their choice—whether they have had to go to court to do that or whatever—is obviously highly delighted as they are trying to make the best choice that they can make for their child. Like many colleagues, I represent an area where there is a great strain on a number of popular and good local schools, and many of my local schools are dealing with the consequences of that success: for example, a school being at capacity and where general space, dining facilities and other things are fit to burst. The parents of the children who get in but who might otherwise not have are clearly delighted, but many of the other parents want smaller class sizes for educational reasons and to improve the general working and living space and the other facilities that are available to the children at the school. Therefore, I do not think that parents can be seen as a block, because their views are very much down to their individual circumstances.

Those comments are not meant to diminish the fact that when parents exercise their choice and put children into a school that is not necessarily the catchment one, it can often be positive, not only for the parent and child but for the school concerned. The picture is complicated.

I agree that the most important aspect is the quality of our teachers, which we touched on earlier. There is nothing to say that a class size of 30 means that we magically get quality teachers. The bottom line is the question whether one would prefer to have the average teacher teaching a class of 30 or a class of 25? At P1, the class of 25 is likely to deliver more pupil-teacher contact and educational benefit than a class of 30.

Clearly, the most exceptional teacher in the school may be able to cope with a class of 30, but we have to look across the board and work on the basis of the generality. Having had to investigate the issue not only as a party spokesperson but in relation to school closures in my constituency, I look very carefully at a lot of the evidence on whether small class sizes are effective. It remains my view that it is beneficial for class sizes to be smaller, particularly in the early years of primary school and in certain sociodemographic areas. That is my opinion, my long-held position and my party policy, which we pursued in government. The cabinet secretary may say that our pursuit was flawed, but I think nevertheless that we were following the same direction of travel, and the convener is right that we were successful in terms of the numbers of children in P1 who ended up in class sizes of fewer than 25.

I have raised some concerns about team teaching. Physical constraints often mean that it will happen, and some of the constraints can be exacerbated by local school closures, which lead to other schools having to deal with an input through team teaching and so on. Relatively small numbers of children are involved, but it seems to me that there may, for a number of reasons, be an increase in the next few years, so it is right for the cabinet secretary to do further work on the issue. I am happy to put on record again the fact that I know that a number of parents are concerned about it.

The fundamental question for me is: do I believe that a smaller P1 class size of 25 or under is preferable to a class size of 30? Everything that I have looked at over the years makes me unequivocal on the matter. I believe that smaller class sizes are more beneficial, and I will be happy to support the cabinet secretary's regulations today. Unfortunately, on this occasion I cannot support my colleague Liz Smith.

Christina McKelvie: I support most of what Margaret Smith said. This is also one of the rare occasions on which I agree with quite a lot of what Ken Macintosh said. I welcome the regulations. The challenges that South Lanarkshire Council has told me it has faced have made the situation very real for me. Money should be spent on teachers, jotters and pencils and not on court challenges. That is important. South Lanarkshire has spent a substantial amount on court challenges—money that should have gone into front-line teaching.

I declare an interest as the mother of a pupil who has just started his first year in secondary school—he is in the first cohort of curriculum for excellence. He faced the challenge of a bigger class size in primary school, as well as his own challenges. He was lost for a while, until we realised what was happening and addressed it, using the parental choice that is offered by additional support for learning legislation. For the past couple of years he has benefited from being taught in smaller classes. I have seen the challenges that he faced and the benefits that he has had. As a parent, that is the most powerful evidence that I have seen. Like everyone else, we have looked at all the statistics, information and research on the benefits, in terms of early intervention and the challenges that primary 1 pupils face when they start school. In such circumstances, lower class sizes benefit children.

The other issue is teacher quality. If a teacher has 25 pupils to deal with every day, and not 30—or, as in some cases in South Lanarkshire, 33—as well as lots of bits of paper to fill in and other such challenges, they will have more time to spend with the kids, and those kids will get better input and better quality education. I support that.

Although our aim is to reduce class sizes even further, I welcome the regulations as a necessary first step. I will support the regulations today. I am

sorry, but I will not be supporting my colleague Liz Smith on the matter.

The Convener: No other members have indicated that they wish to contribute. I invite the cabinet secretary to respond to the points that have been made in the debate.

Michael Russell: I appreciate the points that have been made in support of the regulations. I will comment on one or two of them in a moment.

The Government has achieved the lowest-ever primary class sizes. They are not low enough for me, but they are moving in the right direction, and I am determined to keep them moving in the right direction. The regulations are one of the tools that we will use to do that.

Liz Smith said that it would be good if more pupils had the chance to spend time with an inspirational teacher. I want pupils not just to glimpse inspirational teachers from afar. I want to intensify the experience of inspirational teachers with individual children. We will do that by reducing the number of children in classes. It is a simple equation. They get a greater share of those inspirational teachers. We do not do that by having class sizes of 30.

Margaret Smith's point is also correct. There are average teachers. For an average teacher—or any teacher—a smaller number of pupils can improve the quality of the teaching experience. It is interesting that there is virtual unanimity among the parties about the virtue of smaller class sizes. As ever in Scottish politics, we are arguing about the detail. The thrust of the policy is approved throughout Scotland. It is regrettable that the Tories are once again isolated by ideology. Perhaps they will want to consider that as time goes on. Liz Smith shakes her head, so I think that she is determined to continue to be isolated by ideology. It might be slightly unkind of me to point out that the Tories were the last remaining party that wished to send children up chimneys. They are also the last party that wishes children to be taught in large classes—but I suppose that that is better than going down mines.

The cost issue that Liz Smith raises reminds me of the remark by Oscar Wilde about knowing

> "the price of everything and the value of nothing."

There is a simple equation here. Councils have to spend substantial amounts of money on legal costs, and they should spend it in classrooms. The question of increased costs does not come into it. Indeed, every one of the 32 local authorities wanted this to happen.

I hope that Liz Smith, of whom I am fond—

11:30

Elizabeth Smith: God help me.

Michael Russell: —will accept that point of view. I know that that sounds like a threat, but it is not really. I hope that she will accept that local authorities are not blate—if I may use a good Scots word—about complaining about costs, and if they have not raised the issue of the cost of implementing the regulations, then it means that they do not regard cost as a barrier to success.

I want to see all our schools as the best schools. It was regrettable that when push came to shove Liz Smith's argument boiled down to a scramble to get into the best schools. I want every school in Scotland to perform well, and I spend a great deal of my time on that. It would not help if we took the counsel of despair and accepted those scrambles as not only inevitable, but desirable, and refused to move to improve class sizes and the quality of education for all children in Scotland.

I am not going to be on the side of ideology, but on the side of education. There is no benefit in larger class sizes in the early years of primary school. We need to continue with the process to reduce those class sizes. I believe that the ultimate goal is around 18 pupils per class, Ken Macintosh does not agree, and Margaret Smith is somewhere between the two in the good Liberal position of being at neither extreme.

In Scotland, we are making progress towards smaller class sizes, and internationally, many countries now realise that that is of great importance. We are doing the right thing, and I commend the regulations to the committee.

The Convener: The question is, that motion S3M-7177, in the name of Elizabeth Smith, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

Allan, Alasdair (Western Isles) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Gibson, Kenneth (Cunninghame North) (SNP)
Macintosh, Ken (Eastwood) (Lab)
McKelvie, Christina (Central Scotland) (SNP)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

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

Motion disagreed to.

The Convener: The committee is required to publish a report on its consideration of the motion. Are members content to delegate authority to me to agree the text of that report with the clerks, as

proposed in paragraph 12 of the paper that the clerks circulated in advance of today's meeting?

Members *indicated agreement.*

The Convener: That concludes the committee's consideration of subordinate legislation for today. The committee will suspend to allow the cabinet secretary to leave. We thank you for your attendance today. The short suspension will also allow the Minister for Children and Early Years to join us.

11:33

Meeting suspended.

11:39

On resuming—

Children's Hearings (Scotland) Bill: Stage 2

The Convener: We move on to agenda item 7. We have been joined by the Minister for Children and Early Years, Adam Ingram, and his officials. I am grateful to them for scurrying down here straight after diligently watching our earlier proceedings, although I am sure that a few committee members would have been grateful if you had taken a little bit longer, minister, since it has been rather a long meeting this morning.

We move straight to consideration of amendments.

Section 123—Specifying when compulsory supervision order to be reviewed

The Convener: Amendment 339, in the name of the minister, is in a group on its own.

The Minister for Children and Early Years (Adam Ingram): Thank you, convener. I know that you have had an interesting morning, so let us hope that we can keep that going.

Amendment 339 replaces the current section 123. It does two things. First, it extends the general power of the hearing to set a review date for compulsory supervision orders so that that can be done when the order is varied or continued rather than just when it is initially made. Secondly, it requires the hearing to set a mandatory review when making or varying a compulsory supervision order with a movement restriction condition, or MRC. The purpose is to ensure that a review is carried out within the lifespan of the MRC, as it is intended that regulations will prescribe that MRCs may be for a duration of no longer than six months, as I will discuss later in relation to amendment 354.

At present, there is no mandatory requirement for the hearing to set a review of the MRC, although there are a number of routes whereby a review may be instigated. It is therefore possible for an MRC to expire without having been reviewed. Given the nature of an MRC in restricting the liberty of a young person and the conditions that may be imposed, the amendment will ensure that we have robust review procedures. The change will have a low procedural impact as, historically, only a small number of compulsory supervision orders with an MRC have been issued annually.

I move amendment 339.

Amendment 339 agreed to.

Section 123, as amended, agreed to.

Section 124—Excusal from attendance

Amendment 160 moved—[Adam Ingram]—and agreed to.

After section 124

The Convener: Amendment 340, in the name of the minister, is grouped with amendments 384, 399, 367 and 368.

Adam Ingram: The amendments in the group make provisions for accommodating the rights of those who have a right of contact with the child through a contact or permanence order but who do not qualify as the child's relevant person or deemed relevant person. That is an important issue and one that must be addressed in the bill. I hope that the committee will forgive me for taking some time to fully explain the detail.

Defining a relevant person can be a complicated issue, as we debated at the committee's previous meeting. The amendments in the group respond to a judgment on issues surrounding relevant person status. I understand that the committee is aware of the Knox and Lawrie case, which concerns parents with contact orders and their involvement in the children's hearings system. The case revolved around the rights of unmarried fathers with contact orders and their lack of involvement in the hearings that made rulings that affected their contact rights. In short, the court ruled that those contact rights are civil rights and are protected by the European convention on human rights. The fathers in the case could not participate in proceedings so they had no means of defending their contact rights. We therefore have a duty to ensure that those civil rights are protected in the processes of the children's hearings system. The amendments are intended to do just that, but in a way that has a minimal impact on the system.

Given the diverse range of circumstances in which contact orders can be made, I consider it inappropriate that those with contact orders should automatically be classed as relevant persons. We know that relevant person status brings with it a range of specific rights and duties, and taking that approach could lead to a situation in which multiple adults, each with a contact order, receive relevant person status. That could lead to an imbalance. For example, the biological parents of an adopted child could be granted a contact order allowing annual access to the child. The child's adoptive parents have full parental responsibilities and rights and would be relevant persons. It would be unfair to put the person with annual contact on the same footing as persons with full parental rights and responsibilities. We cannot put a child in a situation in which two sets of parents have a right to accept or deny grounds, take along representatives and access state-funded legal representation. That could lead to a room full of adults each of whom has conflicting views on what is in the best interests of the child.

11:45

However, it is expected that many parents who have contact with their child may be significantly involved in the child's life and could, therefore, meet the test for assuming deemed relevant person status. That is why the bill introduces that test, as it identifies those who are most closely involved with the child and who should take on the rights and responsibilities of a relevant person. I intend, therefore, that procedural rules will place a duty on the reporter to advise those with contact or permanence orders of their right to seek deemed relevant person status in a pre-hearing. If that test is met, that person can participate in hearings with the rights and responsibilities of a relevant person.

There is still the need to ensure that persons holding contact rights will have those rights adequately protected if they are not relevant persons or deemed relevant persons. Careful consideration has been given to how best to ensure that such persons can be afforded procedural safeguards when a hearing makes a contact direction. Amendment 340 allows for such a safeguard. It applies when a hearing makes a contact direction within a compulsory supervision order, an interim compulsory supervision order or a medical examination order that lasts longer than five days. In such a circumstance, the principal reporter will be under a duty to arrange a hearing to review that contact direction. The sole purpose of that hearing is to review the contact direction, and it must take place no more than five working days after the hearing that made the disposal. That is sufficient time to allow persons to prepare for the hearing but ensures that the review is heard speedily. At that contact direction review, the individual who holds contact rights will have full rights of participation. The hearing can then either confirm the decision of the original hearing or vary the contact direction. No other element of the underlying order can be considered or varied at that hearing.

It is clear to me that the amendments support a fair, transparent and simple process for accommodating the rights of those with contact orders or permanence orders, with minimal impact on children. We do not expect there to be many occasions on which the situation will arise, but it is essential that the rights of those with contact are protected when the situation requires it. The process has been discussed with Professor Norrie and the Scottish Children's Reporter Administration, and I am grateful to them for sharing their knowledge and experience.

Amendments 367 and 368 provide the necessary definitions of "contact order" and "permanence order" that will apply to the new provisions. Amendments 384 and 399 provide for an appeal right to the sheriff and sheriff principal. I hope that the committee can support the amendments.

I move amendment 340.

Amendment 340 agreed to.

The Convener: Amendment 341, in the name of the minister, is grouped with amendments 365 and 464.

Adam Ingram: Section 75B of the Children (Scotland) Act 1995 concerns the powers of the children's hearing when a child who has been referred to the hearing has been excluded from school. If it appears that the education authority is not complying with its duties to provide education or make arrangements for an excluded pupil, the matter may be referred to the Scottish ministers. Amendment 341 carries that provision across to the bill. It also requires the national convener, rather than the principal reporter, to make the referral, to reflect the role of the national convener. It is essential that alternative provision is put in place during a school exclusion to ensure that the child has the opportunity to continue to learn; therefore, it is important that the effect of section 75B of the 1995 act is carried over to the new legislation.

Amendment 365 is consequential on amendment 341 and provides for such referrals to be "formal communications" under section 179, which means that they must be in writing. That also covers writing in electronic form such as e-mails.

Amendment 464 makes consequential repeals of two sections of the 1995 act.

I move amendment 341.

Amendment 341 agreed to.

Section 125 agreed to.

Section 126—Requirement under Antisocial Behaviour etc (Scotland) Act 2004: review of compulsory supervision order

Amendments 161 and 162 moved—[Adam Ingram]—and agreed to.

Section 126, as amended, agreed to.

After section 126

Amendment 163 moved—[Adam Ingram]—and agreed to.

Sections 127 to 129 agreed to.

Section 130—Duty to initiate a review if child to be taken out of Scotland

Amendment 342 moved—[Adam Ingram]—and agreed to.

Section 130, as amended, agreed to.

Section 131—Duty to initiate review: secure accommodation authorisation

Amendment 343 moved—[Adam Ingram]—and agreed to.

Section 131, as amended, agreed to.

Section 132 agreed to.

Section 133—Duty to arrange children's hearing

Amendments 315 and 344 to 348 moved—[Adam Ingram]—and agreed to.

Section 133, as amended, agreed to.

Section 134—Duties on children's hearing where review required under section 127

Amendments 349 to 352 moved—[Adam Ingram]—and agreed to.

Section 134, as amended, agreed to.

Amendment 353 moved—[Adam Ingram]—and agreed to.

Section 135—Powers of children's hearing on review

Amendments 316 and 317 moved—[Adam Ingram]—and agreed to.

The Convener: Those must be some of the fastest-moving deliberations that the committee has had on this bill at stage 2. However, we now come to some amendments by committee members as well as amendments by the minister.

Amendment 370, in the name of Ken Macintosh, is grouped with amendments 371, 376, 377, 375, 378 and 379.

Ken Macintosh: I was delighted to support, in a speedy fashion, the amendments that we have just considered. I hope that the committee will forgive me for taking time over this group of amendments, because section 135 is one of the most important sections for us to amend. It addresses the key issue of a child appearing before the children's hearings system gaining a criminal record and carrying it into adult life. It is a subject on which we took evidence at stage 1 and about which the minister and the committee have a shared concern. It is a question of agreeing the steps that we might take to remedy what we all recognise is an unfair or unsatisfactory situation.

I will start with amendment 375, in my name. Currently, children who are brought to hearings on offence grounds are automatically deemed to be offenders for the purpose of the Rehabilitation of Offenders Act 1974. Amendment 375 would result in only those children who are considered to be a risk to others being treated as offenders for the purpose of the act. In other words, the current automatic system of listing would be replaced by a decision based on the nature of the offence or the risk to others of reoffending.

Amendments 370 and 371, also in my name, would introduce a process of review at the point at which a child or young person leaves the children's hearings system. At present, all offences committed by a child who is dealt with through the children's hearings system will appear on a child's criminal record and therefore on a disclosure certificate, regardless of whether the child presents an on-going risk or whether that is proportionate to the offence. The effect of the amendments would be to allow an offence to appear in the "any other relevant information" section but only if a children's hearing refers the offence or offences to the chief officer of the relevant police force for consideration for inclusion on a disclosure certificate. As currently, the chief officer would then have to exercise their discretion under part V of the Police Act 1997.

We heard evidence on that issue at stage 1 and members will have received further correspondence on it. I have received support for the amendments from a number of sources, which I will read into the record, because it is important.

First, Scotland's Commissioner for Children and Young People has supported my amendments. He points out that, although we have a welfare-based children's hearings system of which we are very proud, that same system

"criminalises many hundred children as young as 8 each year. In doing so, it makes no distinction based on the gravity or frequency of a child or young person's offending, or any assessment of whether the child or young person poses a continuing risk of significant harm to others."

He goes on to say:

"There is evidence that criminalisation has a negative impact on children and that those with more and deeper system contact are less likely to desist from offending."

12:00

Professor Lesley McAra, who is professor at the centre for law and society in the school of law at the University of Edinburgh, points out that the Parliament has just passed the Criminal Justice and Licensing (Scotland) Act 2010, which bans the prosecution of children under the age of 12 in the criminal courts. Professor McAra describes the current situation under the children's hearings system:

"Children referred to the Reporter on offence grounds between age 8-11 (as well as those aged 12 or over) and who accept the grounds for referral will be recorded as having convictions for the purposes of both the Rehabilitation of Offenders Act and the provisions for enhanced disclosure: and yet of course the evidence may not have been tested in court; the youngsters may have had no access to independent advice; and they may not understand the consequences of admitting offences. Where youngsters dispute the grounds then these will be sent to the courts for a proof hearing",

which is in reality similar, if not identical, to a prosecution.

Professor McAra says:

"Changes to the disclosure process mean that a youngster's ... record may stay on the Criminal History System well into adulthood".

Currently, the 40/20 rule operates, which means that information is routinely kept for 20 years or until someone is aged 40—whichever is later. She continues:

"In some cases the information that is retained and passed on is of referral details and background information, where there has been no opportunity for the child or parent to accept or dispute the facts.

The extended period of disclosure undermines a key tenet of the Kilbrandon philosophy on which the ... System is based: namely that the system should avoid the stigmatisation and criminalisation of children. Instead it seems that children are being burdened (potentially) with a longer period of stigmatisation than adults for much lower level offences",

sometimes

"merely on suspicion.

Importantly there is very strong evidence from the Edinburgh Study of Youth Transitions and Crime that the overwhelming majority of youngsters who have contact with the Hearings System (triggered by their offending) do not pose a risk to others in adulthood. The Edinburgh Study is a longitudinal programme of research tracking the lives of"

almost 4,500

"young people who started secondary school in the City of Edinburgh in 1998."

I will comment briefly on the amendments in the name of the minister. The Government has lodged amendments to address the issue that I have raised, for which I am grateful. I know that Mr Ingram shares the committee's concerns. However, I understand that, although the Government's amendments are an improvement, they will limit the offences that could form the basis of a criminal record, so they will still use automatic listing rather than a decision-making process by the panel, in which the risk or proportionate danger of reoffending would be taken into account. That is important, because the evidence from Professor McAra and others is that

it is difficult to tell simply from the nature of an offence whether a child poses a risk to others.

The amendments in my name would end the unfairness of the system discriminating against those who admit offences and are brought before hearings, unlike those who do not go before the hearings system but who pose a far greater risk of offending. Amendments 370, 371 and 375 would introduce a review process when a child left the children's hearings system and entered adulthood. The review would decide whether that child should carry into adulthood a criminal record or a warning on the disclosure system about the risk that they pose to others or their risk of reoffending. The process would allow the hearings system to take a decision that was based on evidence and assessments, in contrast to the current blanket provision.

I move amendment 370.

Adam Ingram: As Ken Macintosh said, the group contains two sets of amendments on the impact of children accepting or having established offence grounds in the children's hearings system. I will speak first to amendments 376 to 379, in my name, before speaking to the amendments in the name of Mr Macintosh.

At stage 1, I undertook to lodge amendments to tackle the unequal and in some cases disproportionate disclosure of offences that emanate from children's hearings. I thank committee members for their sensitive discussion and consideration of the issues. The stage 1 report summed up the considerations at play here rather elegantly. It stated:

"On the one hand, the Committee acknowledges that it is important that, where a child has committed a serious offence and may potentially offend again and be a danger to others, it is essential that that information be disclosed to those who need to be aware of it, at the appropriate time. On the other hand, children who have committed less serious offences should have the opportunity to turn their lives around and should not necessarily have to carry a criminal record, with the potentially damaging impact on their employment prospects that it brings, into adult life."

I believe that the amendments that I have lodged will achieve the outcomes that the committee seeks. They will ensure that the vast majority of disposals by a children's hearing are not subject to disclosure in later life.

Importantly, the amendments change the definition of all those disposals from a conviction to an alternative to prosecution. That is right for children who are dealt with in our welfare-based children's hearings system. For those who have already been dealt with in that way, the amendments provide a mechanism for treating their cases fairly and consistently. If you like, we are decriminalising the system—we are taking away the notion of conviction and allowing people who have been through the system to have their convictions, as it were, wiped from the record.

I agree with the committee's position that in the interests of public safety it is right that some offences ought to appear on disclosure certificates. The problem with the current system is that it does not provide sufficient discrimination between those offences for which disclosure is a sensible measure to protect the public, and those for which it is, in the eyes of many, disproportionate. If we want to provide our young people with the best opportunities to succeed, we must end the situation whereby low-level offending follows them into adulthood.

Some children are more vulnerable than others and have differing needs that can impact on the outcome at a hearing. We want to ensure that disclosure arrangements are decided on the seriousness of the offence when it has been accepted or established, not on the outcome of the referral. We believe that that can best be achieved by prescribing a list of serious and violent offences by order that would be automatically accessible to Disclosure Scotland. We will consult with stakeholders to ensure that the agreed list of offences is proportionate to the consequences of disclosure.

We envisage that those serious offences will continue to be disclosed on standard and enhanced disclosures and in records held under the protecting vulnerable groups scheme. That will occur only when an individual is seeking employment that involves being in a position of trust or working with vulnerable groups. An amendment will also have to be made to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 to fully deliver that policy intention. That will be done as part of the implementation of the new system.

It is important to explain the potential future employment consequences of accepting serious and violent offence grounds. By making changes to the procedural rules, that will become the responsibility of the reporter, who will inform the child of the consequences in advance of a grounds hearing. The hearing will also have a responsibility to ensure that the child has been informed before proceeding with the hearing; it is best placed to do that in a child-friendly way. Providing an explanation in that manner ensures that the child and relevant persons will understand what they are agreeing to.

The amendments strike the correct balance between the rehabilitation of individuals who may have offended as children, and the protection and safety of children and vulnerable adults. By ending the criminalisation of children through disposals from the children's hearings system, and making proportionate the circumstances in which

behaviour that is displayed in childhood impacts on an individual's later life, I am confident that the amendments will mark a real step forward.

Although, of course, I support the intentions behind on the impact of children accepting or having established offence grounds in the children's hearings system, I suggest that there are two key issues to be addressed in any changes to the bill: the criminalising of children and ensuring public safety. In addressing the first issue, we cannot compromise the second. It is possible to address both issues in a measured, consistent and proportionate way, but I am of the view that the amendments in the name of Ken Macintosh do not achieve that balance. I will explain my reasons for that view.

On the decriminalisation of children in the hearings system, Ken Macintosh was very keen to see changes that would remove any hint of criminalisation when a child accepted, or had established, offence grounds for referral in the system. Concerns centred on the current provisions in the Rehabilitation of Offenders Act 1974, which states that all offence grounds that lead to a compulsory supervision order should be classed as a conviction. In most cases, as Ken Macintosh has indicated, that conviction leads to the retention of the information on disclosure certificates until the child is 40 years old. Quite clearly, that is unacceptable and most often entirely disproportionate to the offence.

Under Ken Macintosh's amendments, a hearing would have the duty to consider whether an offence ground should be classed as a conviction. It would seem that, if a hearing were to consider it appropriate, an offence ground would continue to be classed as a conviction under the 1974 act, retaining the real option of offence grounds in the children's hearings system continuing to be classed as convictions. Is Ken Macintosh clear that his amendments go far enough in addressing the issue of criminalisation of children in the children's hearings system? I am not clear that they do, particularly when compared with my suggested approach, and I ask him to confirm his view in that respect.

The amendments in my name seek to remove any possibility of an accepted or established offence ground ever being classed as a conviction, because they include the repeal of section 3 of the 1974 act. As the entire provision would be removed, children whose offending behaviour is dealt with through the children's hearings system would not be criminalised. My proposals also centre on the disclosure arrangements that will be applied when a child commits an offence that could suggest a risk to public safety and put in place proportionate arrangements for that without the need to class the offence as a conviction.

That brings us to the second consideration, which is the need to maintain public safety. The amendments in the name of Ken Macintosh seek to place additional duties on the hearing to consider whether the child or young person should be treated as a rehabilitated person. However, they do not provide any criteria or list of factors by which the children's hearing would make that assessment; as a result, it would be left to its own devices without any assistance from the legislation. I have a number of concerns about the proposal, not least the expectations that would be placed on panel members and what seems to be the introduction of a punitive element to the hearing's decisions. That is entirely contrary to the ethos of the children's hearings system and to the key principle of the hearing, which is to operate in the best interests of the child.

As great store has been set by stakeholder consultation and engagement during the development and scrutiny of this bill, I have to wonder whether the views of stakeholders, most pertinently panel members and panel chairs, were sought before these proposals were brought forward. I ask the question, because I know that panel members are very conscious of their fundamental purpose, which is to consider the child's best interests. Asking them to make a decision on whether a child represents such a risk to public safety that their offence should be classed as a conviction, with the disclosure implications that follow, is to ask them to consider wider issues of public safety—and not only public safety at the time of the hearing, but the risk that the child might continue to pose well into adulthood. On what criteria should the hearing base such a decision? The amendments from Ken Macintosh do not provide any guidance. I would be very surprised if panel members were comfortable with or happy to implement such a change in their role. Perhaps Ken Macintosh could provide reassurance that panel members have been consulted on the proposals and have agreed to take on such a duty. I wonder also whether public safety can truly be consistently protected under such a scheme.

12:15

The purpose of the amendments in the name of Ken Macintosh appears to be for the hearing to make a decision about disclosure arrangements in each and every case, including where a serious sexual or violent offence has been committed. Is it appropriate for a child who has committed a serious sexual offence, for example, to go on to be employed—perhaps just a couple of years later—working with vulnerable groups without the employer being aware of that offence?

I am also surprised to see that the trigger for the new decision-making power of the hearing would remain the point at which a hearing makes a compulsory supervision order. That is despite many views being expressed about the unfairness of that trigger, particularly when we consider the circumstances of two children being involved in the same offence but only one of them being made subject to a compulsory supervision order. That has not been addressed by Ken Macintosh's amendments, and I wonder whether that issue was considered when they were being developed.

I have a further point about the amendments from Ken Macintosh and the process that would be put in place were they to be accepted by the committee. A child could accept offence grounds in a hearing without knowing whether that would result in the hearing then making a decision on whether it would be classed as a conviction. Ken Macintosh has been very interested in children being properly supported and advised prior to and during a hearing, and he has taken great interest in how children are currently advised of the implications of accepting offence grounds in respect of the Rehabilitation of Offenders Act 1974. He was concerned that they truly understood those implications. Indeed, the committee has raised cases where a lack of understanding of the implications has led to children being disturbed to find, later in their lives, what information was contained in their disclosure certificates.

The amendments that have been lodged by Ken Macintosh seem to be introducing a confused system that is subject to a number of variables regarding whether the child's offence will be classed as a conviction and regarding the disclosure implications of such a decision. Furthermore, Ken Macintosh's system would depend on the decisions made by a hearing at different points of the process, and it would all hinge on whether a hearing makes a compulsory supervision order, rather than on the acceptance or establishment of grounds. Can we really expect a child to understand the consequences when there are so many variables attached to them?

I am keen to hear whether Ken Macintosh is satisfied, first, that his amendments remove the criminalisation of children in the children's hearings system, and that they address issues to do with public safety; secondly, that panel members have been consulted and have agreed to undertake the significant new duties that his amendments would entail; and thirdly, that children's rights can be upheld if they are expected to accept offence grounds without sufficient understanding of the implications.

On the basis of the points that I have made, I urge Ken Macintosh to withdraw amendment 370 and not to move amendments 371 and 375. I will move amendments 376 to 379.

Elizabeth Smith: I seek a point of clarification from the minister on something that he said in relation to the amendments in his name. He mentioned the list of more serious offences. Would the provisions be applicable only where the child went on to work in a situation in which they were in close contact with members of other vulnerable groups? Is that what you said, minister? I would like that to be clarified.

Adam Ingram: When young people apply for employment in regulated work, they clearly require a disclosure certificate from their employers. In those circumstances, this type of information would be relevant.

Elizabeth Smith: Right, but by definition it would not be relevant in other cases when they were not applying for employment in regulated work.

Margaret Smith: What are your thoughts on the list of offences and how it will be compiled?

Adam Ingram: Clearly, that will be a matter for consultation. My thoughts are that the list would comprise only very serious violent or sexual offences and that it would be subject to affirmative procedure in Parliament, so it would come back to us for debate.

The Convener: I invite Mr Macintosh to wind-up the discussion on the group and indicate whether he wishes to press or withdraw amendment 137.

Ken Macintosh: I will go in reverse order and start by commenting on the two points raised by Elizabeth Smith and Margaret Smith. The list that Margaret Smith has asked the minister about covers violent and all serious sexual offences. The list has not yet been drawn up, but my understanding is that a list has been drawn up for the retention of DNA, for example. I do not think that I am giving the game away by saying that I believe that that list may be the model on which any other list is developed.

The key point for me—I will give an example later—is that the list will include not only serious sexual offences but a number of sexual offences whose seriousness may be a matter for debate. They are obviously serious at the time, but they are of a nature that means that we should consider whether such an offence committed by a 14-year-old boy rather than an adult should be seen in the same light and regarded as a serious offence when that child is an adult. The key point is that the list will be automatic and that, although the minister has used the word "serious", it will cover all sexual offences. You might say that all sexual offences are serious, but I would say that there are degrees within that.

Elizabeth Smith asked who would see the disclosure. It is a full disclosure, so it will be seen by anybody who would see someone's full disclosure. It is required for regulated work, but the point is that it is on your disclosure record, so anybody who is given the full information will see it. It is not a question of having to ask for the information; it is available to those who have access to all the information on the disclosure record.

I welcome the amendments in the name of the minister. I do not believe that they go far enough, but I whole-heartedly welcome the fact that the Government has brought them forward and I also whole-heartedly agree with the minister's analysis of the balance that we have to strike between criminalisation and public safety. It is important that we assess the situation and rebalance it so that a distinction is drawn between those who are at risk of committing further offences and those who are currently disproportionately stigmatised well into adulthood, although they pose no danger to others—they have benefited from the hearings system and should be given a proper start in life.

The Government's amendments are interesting as they take a different approach. The minister suggests that getting rid of all convictions and changing them all to alternatives to prosecutions is an improvement. That is one way of looking at the issue. As worded, my amendments neither seek to suggest that young people do not commit very serious offences nor seek to ignore the possibility that they might pose a risk to themselves and others as they get older. Their aim is to get rid of automatic blanket discrimination in the current system, which does not discriminate between the whole host of low-level offences that young people commit and those young people who are very serious offenders and are perhaps going off the rails—and will continue to go off the rails, no matter how much we try to assist them.

Although we need to discriminate between those groups, I do not think that it helps to treat all young people as if they do not have any convictions. What we need is an assessment or some form of discriminatory process that applies certain criteria to allow someone to make a judgment on each individual case. I can think of no better body to do that than the children's panel, which considers the child's welfare, reviews each case when the supervision orders come back to it, and is in a position to assess whether the compulsory supervision requirement has worked or whether the case needs to be flagged up as the child progresses to adulthood. As a result, I think that the minister is almost going from one extreme to another. Although he is seeking to narrow the criteria, which I welcome, the process is still automatic and does not apply any judgment or assess any risk. In many cases, before adults are sentenced, their risk of reoffending is assessed by social work. I find it odd that we do not do the same for children, and the introduction of such criteria forms the key aspect of my amendments.

The minister suggested that, for some reason, my amendments would introduce a punitive element into the children's hearings system. Far from it; in fact, that element already exists if you regard a criminal record as something punitive. I am simply seeking to introduce the option of removing the punitive element, which, in any case, is not how I would regard a criminal record. In my view, it is simply a rather heavy-handed and unfair way of passing on information which, in covering everyone, does not target those young people about whom we need to maintain information.

I accept that my amendments do not refer to guidance, which would undoubtedly have to be drawn up and issued. I point out, though, that guidance exists elsewhere in the criminal justice system, never mind in the children's hearings system. Children's panels exist to take decisions on a child's future welfare and to treat children according to their needs, not their deeds. That is their very essence, and asking them to judge whether children should be labelled and given a criminal record that will be carried into adulthood is not asking much more than is already asked of them. In fact, I am fairly confident that most panel members would prefer to be given the option of assessing whether a child needs to have an offence on their record and have the matter left to their discretion.

In response to the minister's question whether I had consulted panel members on these amendments, I have to say that I have not. Has he consulted panel members on his amendments? I doubt that he has consulted anyone on any of his stage 2 amendments. As it happens, Professor McAra and others have held a number of sessions, including one at which members of the minister's team, the SCRA and others were present and made contributions. The decision is for the committee to make, but this concept is not one that our society is used to discussing in the papers, the media and elsewhere.

On the minister's question whether it is acceptable for a child convicted of a serious sexual offence to work in a protected position, I am reminded of a particular case that illuminated the whole issue for me. I will not go into all the details, but it involved a young man who, at the age of 14, was brought before a children's hearing because he had been guilty of slapping some adult women on the behind. I mention the case not to approve of or in any way condone that activity. I suggest that such behaviour by a 14-year-old boy should be picked up on, and that is what the children's hearings system did. The boy had been

adopted into a good family and was well brought up. He admitted the offence because his parents had taught him to own up when he had done something wrong. He went to a children's hearing and admitted the offence but did not discover until he was 23 or 24 that it was on his record. He admitted the offence, so it is on his disclosure record as a sexual assault. He did not even know that it was on his disclosure record until he applied for a job. That raises lots of issues. He should have known about that—the information should have been made available to him.

The boy went through the children's hearings system and was dealt with successfully by a children's hearing. He was placed under a supervision order, which was lifted because the incident in question was seen to be something that had happened at a particular point in his teenage years and his subsequent behaviour showed no signs of such a tendency. The minister's amendments would not address that situation. I am not saying that we should frame legislation around one case. Because the boy admitted what was classed as a sexual assault, that is on his record. In future, anyone in such a situation will have that on their record for the rest of their life.

However, I suspect that there are some children and young people who never get picked up for any serious offences but who will pose a risk to others throughout their adult lives. In other words, all that they will have against their name is a series of mild infractions of the law, because they never commit a serious offence when they are young. They will go into adulthood with nothing against their name, even though they might have committed hundreds of offences. I think that a system that allows those children to be treated as entirely innocent, if I may use that term, in adulthood but which treats someone who makes a one-off mistake as guilty is wrong. I believe that my amendments would address that. The whole point is that they would allow discretion and judgment to be brought to bear on the issue of risk. They are truly proportionate and would end automatic treatment in an automatic system that does not allow for judgment.

I urge members to support my amendments and, if they do not, to support the minister's.

The Convener: We should move straight to the question on amendment 370, but I am conscious of what a sensitive issue we are dealing with. There is no obligation on the minister to say anything further, but I do not want him not to have the opportunity to do so before the committee comes to a vote.

Adam Ingram: I will briefly summarise what I hope is an elegant solution to a question that the committee posed in an elegant way.

Children's hearings disposals will no longer be defined as convictions. Essentially, they will become alternatives to prosecution. In that way, we will decriminalise the system. That will apply retrospectively, so people who have been affected by the issue in the past will have the problems that Ken Macintosh and others have described addressed.

In addition, we are not placing the burden of responsibility for public safety on children's panel members. They should make decisions that are for the benefit of the child who is in front of them. I suggest that they are not best placed to make decisions about public safety. Prescribing the list of offences that will continue to be disclosed is an important judgment.

At the end of the day, the reporter is the person within the system who brings forward the grounds for consideration by the children's panel. The other important aspect of amendments 376 to 379 is to ensure that the child is aware of the consequences of accepting grounds.

That is my position, and I hope that the committee will support it.

Ken Macintosh: I will press amendment 370.

The Convener: The question is, that amendment 370 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Macintosh, Ken (Eastwood) (Lab)

Against

Allan, Alasdair (Western Isles) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

Amendment 370 disagreed to.

Amendments 318 and 164 moved—[Adam Ingram]—and agreed to.

Section 135, as amended, agreed to.

Section 136—Powers of children's hearing on deferral under section 135

Amendments 165 and 166 moved—[Adam Ingram]—and agreed to.

Section 136, as amended, agreed to.

After section 136

Amendment 319 moved—[Adam Ingram]—and agreed to.

Amendment 371 not moved.

Sections 137 to 139 agreed to.

Section 140—Breach of duties imposed by sections 138 and 139

Amendment 320 moved—[Adam Ingram]—and agreed to.

Section 140, as amended, agreed to.

Sections 141 to 143 agreed to.

Section 144—Movement restriction conditions: regulations etc

The Convener: Amendment 354, in the name of the minister, is grouped with amendment 355.

Adam Ingram: These amendments are about movement restriction conditions—MRCs.

Section 144 provides for a regulation-making power for MRCs. The Intensive Support and Monitoring (Scotland) Regulations 2008 currently specify the conditions for an MRC, which include the period and duration of the restrictions. The regulations prescribe that an MRC should endure for no longer than six months.

The intention is to replicate those conditions, as they are a fundamental part of an MRC. To that end, we wish to strengthen the bill to ensure that regulations are clear on the matter. Therefore, amendment 354 makes it explicit that the regulations can limit the duration of each measure within the MRC.

Amendment 355 meets a commitment that I made to the Subordinate Legislation Committee to change the regulation-making power in section 144 from the negative to the affirmative procedure.

I move amendment 354.

Amendment 354 agreed to.

Amendment 355 moved—[Adam Ingram]—and agreed to.

Section 144, as amended, agreed to.

Section 145—Implementation of secure accommodation authorisations

The Convener: Amendment 356, in the name of the minister, is grouped with amendments 357 to 360, 372 to 374 and 366. I invite the minister to move amendment 356 and to speak to all the amendments in the group.

Adam Ingram: The most significant amendment in the group is amendment 366, which seeks to amend the general definition of "chief social work officer" to incorporate reference to both implementation authorities and relevant authorities. That is because a secure accommodation authorisation can be included in things other than compulsory supervision orders and interim orders, meaning that an implementation authority will not always be specified.

Amendments 356 to 360 and 372 to 374 are consequential to amendment 366. This series of amendments will ensure that the powers and duties provided by the affected sections are conferred on the chief social work officer for the local authority that is responsible for implementation in each case.

I move amendment 356.

Amendment 356 agreed to.

Amendments 357 to 360 moved—[Adam Ingram]—and agreed to.

Section 145, as amended, agreed to.

Section 146—Secure accommodation: placement in other circumstances

Amendment 361 moved—[Adam Ingram]—and agreed to.

Section 146, as amended, agreed to.

Section 147—Secure accommodation: regulations

Amendments 362 to 364 moved—[Adam Ingram]—and agreed to.

Section 147, as amended, agreed to.

Sections 148 and 149 agreed to.

Section 150—Procedure

Amendment 372 moved—[Adam Ingram]—and agreed to.

Section 150, as amended, agreed to.

Section 151—Determination of appeal

The Convener: Amendment 380, in the name of the minister, is grouped with amendments 381, 202 and 382. I invite the minister to move amendment 380 and to speak to all the amendments in the group.

12:45

Adam Ingram: This group of amendments relates to the sheriff's powers in the event of an appeal against the hearing's decision. Amendment 380 relates to section 151(3)(a), which allows the sheriff to refer the matter back to the hearing for consideration of whether a compulsory supervision order is necessary. On reflection, that power might have the effect of narrowing the issues that the hearing could consider, and it does not allow for a

hearing to be arranged. Amendment 380 therefore replaces subsection (3)(a) with a power to

"require the Principal Reporter to arrange a children's hearing for any purpose for which a hearing can be arranged under this Act".

That reflects the fact that such cases may be at different stages in the process, such as a grounds hearing, a subsequent hearing or a review hearing.

Amendment 381 makes provision for a power that is available under the 1995 act but which has been omitted from the bill. It allows the sheriff to discharge the child from any further hearings or proceedings in relation to the grounds of referral that stimulated the referral to the children's hearing. Amendment 382 is consequential to amendment 381. It ensures that, when a child is discharged under that power, all existing orders and warrants that are in effect in relation to the child also terminate at that point.

I turn to Ken Macintosh's amendment 202, which I understand was driven by the Law Society. The amendment seeks to extend the sheriff's powers under section 151(3). That provision sets out the sheriff's powers at the conclusion of his appeal decision and allows him to take one of four steps, including to

"make an order (other than a medical examination order) or grant a warrant which a children's hearing may make in relation to the child in the circumstances."

Essentially, the sheriff has the power to put in place a compulsory supervision order of the kind that is set out in section 97. I suggest that Ken Macintosh's amendment is intended to achieve the same aim and is therefore unnecessary. I therefore ask him not to move amendment 202.

I move amendment 380.

Ken Macintosh: As the minister said, I lodged amendment 202 for the Law Society. It is a probing amendment to ensure that the issue was aired at committee. Unless any member indicates otherwise, I will certainly not move it. In fact, I do not agree with it myself, but sometimes it is important to have issues raised.

Just to explain, the amendment adds to the steps that the sheriff would take if an appeal under section 148 is successful. It provides that the sheriff may

"substitute for the disposal by the children's hearing any requirements that could have been imposed by the hearing."

We discussed the issue at stage 1. There was a system in place before the 1995 act, which amended it, that allowed the sheriff to replace the decisions of the children's hearing with disposals of his own. The committee expressed concern that section 151 could undermine the powers of the children's hearing. We asked the minister to come back to the committee before stage 2 to explain his position on section 151.

As I said, I raised the issue on behalf of the Law Society, but unless anyone indicates otherwise, I will not move it.

Adam Ingram: Perhaps it would be helpful if I refer members to section 12 of my response to the committee's stage 1 report, which contains our response to the committee's concerns on appeals to the sheriff.

I do not think that I need to add anything further to the debate, convener.

Amendment 380 agreed to.

Amendment 381 moved—[Adam Ingram]—and agreed to.

Amendment 202 not moved.

Amendment 382 moved—[Adam Ingram]—and agreed to.

Section 151, as amended, agreed to.

Section 152 agreed to.

Section 153—Compulsory supervision order: suspension pending appeal

The Convener: Amendment 383, in the name of the minister, is in a group on its own.

Adam Ingram: Section 153 is based on elements of section 51 of the 1995 act. Under section 153, the child or relevant person who appeals against a decision of the children's hearing imposing a compulsory supervision order may request that the principal reporter arranges a hearing to consider whether that decision should be suspended, pending the determination of the appeal.

Currently, section 153 applies only to the making of a compulsory supervision order. However, decisions to vary, continue or terminate the order, as well as decisions to make the order, may be appealed under section 148. Amendment 383 ensures that section 153 replicates all the relevant decisions of the hearing under section 148. That means that those appealing any decision that the children's hearing makes in relation to a compulsory supervision order may request that a hearing is arranged to consider suspension of the decision, pending determination of the appeal. The amendment carries over to the bill the existing provision in the 1995 act.

I move amendment 383.

Amendment 383 agreed to.

Section 153, as amended, agreed to.

Section 154 agreed to.

Section 155—Appeal to sheriff against determination under section 80

Amendment 203 not moved.

Amendments 321 to 323 moved—[Adam Ingram]—and agreed to.

The Convener: If amendment 324 is agreed to, I will not be able to call amendment 204, because it will have been pre-empted.

Amendment 324 moved—[Adam Ingram]—and agreed to.

Amendments 205 and 206 not moved.

Amendment 325 moved—[Adam Ingram]—and agreed to.

Section 155, as amended, agreed to.

After section 155

Amendment 384 moved—[Adam Ingram]—and agreed to.

Section 156—Appeal to sheriff against decision to implement secure accommodation authorisation

Amendment 373 moved—[Adam Ingram]—and agreed to.

Section 156, as amended, agreed to.

Section 157—Appeals to the sheriff principal and Court of Session: children's hearings etc

The Convener: Amendment 385, in the name of the minister, is grouped with amendments 386 to 398. I will make this the last grouping that we consider today.

Adam Ingram: These 14 amendments are mainly technical, drafting or consequential amendments that apply to appeals to the sheriff principal or Court of Session under sections 157 and 158.

Amendment 385 makes clear that appeal rights under section 157 do not apply in circumstances in which a child has pled guilty to or been convicted of a criminal offence. The appropriate course for appeal is through criminal proceedings.

Amendment 386 makes clear that appeal rights under section 157 for a review of a finding that a ground is established—that is to say, that there is proof of the ground—relate to the original finding of proof under section 114.

Amendment 387 is consequential to amendment 284, which introduces a new section to make clear that a sheriff may extend interim compulsory supervision orders as many times as they consider appropriate. Amendment 387 ensures that all extended interim orders carry the relevant appeal rights.

The bill as drafted sometimes makes reference to the determination of an appeal rather than the decision in an appeal. Amendments 388, 390, 391, 393, 394 and 396 to 398 make minor drafting changes that seek to ensure consistent use of language in the appeals process.

Amendment 389 seeks to clarify the right of appeal for a safeguarder who is appointed by a children's hearing by providing that they may not appeal against a decision of the sheriff in relation to a grounds determination or the review of a grounds determination. It does so because the safeguarder was appointed by the children's hearing and not by the sheriff and may not, therefore, have taken part in those court proceedings.

Amendment 392 clarifies that appeal rights under section 157 cover a review of a finding that a ground is established where that is a new ground that was originally established by the sheriff under section 119.

The bill currently provides for joint appeals by specific individuals, but no provision has been made for an individual who wishes to be deemed a relevant person to appeal jointly with any other party. Amendment 395 resolves the issue by substituting a more general power that allows any of the parties to make a joint appeal.

I move amendment 385.

Amendment 385 agreed to.

Amendments 386 to 392 moved—[Adam Ingram]—and agreed to.

Section 157, as amended, agreed to.

Section 158—Appeals to the sheriff principal and Court of Session: relevant persons

Amendments 393 to 398 moved—[Adam Ingram]—and agreed to.

Section 158, as amended, agreed to.

After section 158

Amendment 399 moved—[Adam Ingram]—and agreed to.

The Convener: Since it is 1 o'clock, this is an appropriate place for us to conclude our stage 2 deliberations on the Children's Hearings (Scotland) Bill. I remind committee members that we will return to the issue next week. The meeting will start at 9 o'clock. If we do not conclude stage 2 of the bill during our meeting on Wednesday morning, we will reconvene on Wednesday evening—I hope that that will concentrate minds. Thank you for your attendance.

Meeting closed at 13:00.

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