



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 3 November 2010

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
27th Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

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*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)

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Ted Brocklebank (Mid Scotland and Fife) (Con)
Hugh O'Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)
Dave Thompson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Tony Axon (University and College Union Scotland)
Liam Burns (National Union of Students Scotland)
Adam Ingram (Minister for Children and Early Years)
Linda McTavish (Scotland's Colleges)
Andrew Mott (Scottish Government Children, Young People and Social Care Directorate)
Michael Proctor (Scottish Government Children, Young People and Social Care Directorate)
Alastair Sim (Universities Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 5

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 3 November 2010

[The Convener opened the meeting at 09:02]

Further and Higher Education

The Convener (Karen Whitefield): Good morning. I open the 27th meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones, BlackBerrys and any other electronic devices should be switched off for the duration of the meeting.

The first item on the agenda is to take evidence on issues relating to further and higher education. I am pleased to welcome Liam Burns, president of the National Union of Students Scotland; Linda McTavish, who is principal of Anniesland College in Glasgow and convener of the principals' convention of Scotland's Colleges; and Tony Axon, research officer at the University and College Union. Members might have been expecting Helen Martin of the Scottish Trades Union Congress, but she is unwell and unable to attend. I am grateful to Mr Axon for stepping in at short notice. We are also joined by Alastair Sim, director of Universities Scotland. Thank you all for your attendance at committee this morning, and thanks also to those of you who submitted written evidence in advance of this morning's meeting.

I will start with a general question that sets the scene for where we are right now. I am sure that you are reasonably confident about how much money you have to spend right now. However, there is a degree of uncertainty about future budgets. I am keen to know what effect that uncertainty is having in relation to resource planning and capital investment projects in the future. What level of certainty would you like there to be for those purposes, particularly as it would appear from the First Minister's response during First Minister's questions last week that we are unlikely to have anything more than a one-year budget, which will give you only some financial certainty, after 18 November, for a further year?

Alastair Sim (Universities Scotland): In the paper that we circulated last week, "Towards a Scottish solution", we were pretty frank from the university perspective. Although we have managed to sustain our internationally competitive position and to offer a wide range of opportunities to learners from all backgrounds on the basis of what the Scottish Government has done until now,

we can see what is coming out of the United Kingdom Government's comprehensive spending review and, thinking through its potential consequences for Scotland, we might get really worried about what could come in the forthcoming budget bill. We are working hard to persuade ministers and parliamentarians that universities are an extremely good investment, and that we are central to Scotland's economic future and to its social cohesion and integrity, given the wide range of opportunities that we offer learners from all sorts of backgrounds.

Our paper was pretty frank. It said that if we do not have as good an outcome as possible in what will be an extremely tight budget bill, that will bring serious risks of a loss of provision, a potential loss of quality of the student experience and a drop in our standing as an internationally competitive research and development hub. We are not being unrealistic. Every university is planning for savings—we achieved more than £40 million of savings last year and we are planning for a similar level of achievement this year. We have a strong track record across the university sector of overachieving against Government targets, and we hope to continue that.

Our paper includes proposals for how universities can weather the tough times, for instance by considering how to make the learner journey as flexible and efficient as possible while also looking to the future, taking into account the funding gap that is opening up as a result of the UK Government's CSR. We have set down principles that we think should guide the development of a graduate contribution model.

Returning to your core question, we are concerned, looking ahead to the next financial year. We have been stressing the point strongly to Government and parliamentarians that, whatever solutions are deliverable in the medium term, there is no alternative to getting as good a funding settlement as we conceivably can for 2011-12 to sustain Scotland's ability to maintain internationally competitive universities that serve as a ladder of opportunity for as many people from as diverse a range of backgrounds as possible.

Linda McTavish (Scotland's Colleges): There is huge anxiety about funding in the college sector. It is a question of who we reach out to. The committee is considering both further and higher education, and we bridge both. We are considering the role that colleges play in local communities, especially those that have suffered through recession in the past and that never recovered.

Commentators have been focusing on particular parts of Scotland, such as North Ayrshire and West Dunbartonshire. A variety of areas are now being identified as areas that will be especially hit.

We have colleges in those areas that can reach in and help. We have a track record in access and inclusion, and in reaching out to parts of Scotland that no one ever wished to reach out to before; that is part of our mission.

We have modelled how different percentage cuts would affect us. Cuts of certain percentages would be a big disaster, in that they would affect the number of school leavers we can bring into further education. The budget will be for just a year, but a year is quite a long time in a young person's life and we need to continue their vocational training and education in that period. I will make no comment about loss of international competitiveness, but when it comes to an individual's life, a year can make a huge difference.

There will be an impact on our provision. We are looking at how, within our budget settlement, we can stretch provision as far as possible. At this precise moment, the budget settlement is unknown, although we know that it will be for a year. The capital settlement will affect us deeply, because we wanted to bring forward a capital programme. Our buildings were poor, but under the Scottish Parliament we have enjoyed sustained investment in further education buildings, for which we are grateful. We are particularly pleased to speak on behalf of students in that regard. Anniesland College had very poor conditions; if the buildings in which it operated had had housing classifications, you might have closed some of them, but we felt that the education and training that we provided was important.

There will also be an impact on employment opportunities for both support and teaching staff. There are implications for both individuals' lives and for local business. We work well with small and medium-sized enterprises throughout Scotland. Given its lack of capital, the construction sector will be under pressure, which has implications for employment throughout Scotland. Colleges have tried to intervene in that area and have worked through all the programmes that have been used up to this point to alleviate aspects of the recession. I refer to initiatives that Skills Development Scotland and the Government have operated with colleges, such as partnership action for continuing employment. In some of the areas that members represent, there have been PACE programmes that took on board big redundancies. We are concerned about not only the generation that wants to come to college but those who see college as a route out of the difficulties that they face as a result of constraints on public expenditure. As we know, in different parts of Scotland there is a high level of dependence on public sector jobs.

We argue that investment in our sector will help long-term investment in Scotland's vocational base. It will support the industrial base, especially in relation to SMEs, and some of the industries that we hope will take us out of the recession. We have new qualifications in those areas and we hope that it will start people on the road to higher education, through access and articulation routes. We can add value to the education system in this time of major constraints.

I am sorry that I have not provided you with a happy answer, but I hope that you will see that it is realistic.

Liam Burns (National Union of Students Scotland): The prospect of a one-year budget is problematic for a number of reasons. The Cabinet Secretary for Education and Lifelong Learning was right to say that the debate that is happening down south in relation to the CSR is all about substitution and in no way about addition, so there is at least one constant. We know that no extra money is going into HE down south—quite the opposite. The tripartite advisory group was set up to determine whether there is a gap in funding between Scottish and English institutions, but it never answered that question. We are by no means sure that we know what that gap is, if it exists at all, which means that everything depends on the budget.

Because the education sector deals with academic years, not financial years, the overhang at the start and end of the year is incredibly problematic, as it means that the funding council will not be able to tell institutions how much money they have. A four-year budget would have given that security, but a one-year budget will not.

There are a couple of ways in which that causes problems for us. For a number of years, there has been a crisis in student support, not just because of the recession or cuts but because, fundamentally, we do not give our learners enough money to support them as they study. Because of the recession, a range of different types of learners have come into colleges and universities. That has led to a crisis in bursary payments, with lots of different demands on a discretionary pot of money in the FE sector.

University hardship funds have also been stretched to breaking point. Given that we know that a very different type of learner will enter further and higher education during the next five years, there will be problems if we cannot budget past one year.

A second area that causes problems is to do with the debate about who pays for higher education—no doubt the issue will come up today. When we do not know what the problem will be in the first place, it is hard to swallow the idea of

entering the debate about making individuals pay. It is hard to answer the question about how the state, individuals and business should contribute, when we do not know whether we are facing a funding crisis in the first place. For all those reasons, a one-year budget would be incredibly problematic for the sector.

09:15

Tony Axon (University and College Union Scotland): The convener said that funding is currently okay, but during the past 18 months there have been about 1,000 redundancies in higher education. Universities are already planning for the cuts. Although we disagree with some of the changes, they are not all about using the cuts to restructure, get rid of people and try and secure more research money; part of the issue is that the research assessment exercise did not provide certain universities with the extra moneys that they expected, so institutions are trying to reposition themselves. Some jobs have therefore been replaced, and people have come in. However, there are plans afoot in many institutions to cut jobs. Edinburgh Napier University and the University of Dundee have announced job losses. Even now, the funding situation is problematic.

I am a little less concerned about the funding gap between Scottish and English institutions. If there are to be cuts in higher education, there will be job losses, fewer people will go to university and student experience will be worse. The fact that we might be getting less or more than English universities get is irrelevant in such a situation. Because of the huge budget cuts in England, and because the fees issue will take a long time to work through, we might not see a gap at this stage.

At a time when there are few jobs around, people look for other things to do, including chances to retrain, so universities are pretty well full and colleges are receiving lots of applications. We will be cutting back at a time when people want to go to college or university. A decision must be made in future about whether to cut resources or numbers. If numbers are cut, many people who are trying to get into college or university will not be able to go; if resources are cut, the experience that people have when they get to college or university will be diminished. Big decisions must be made about how we deal with the cuts.

There have been more and more announcements about areas that will not get cut too badly—although they will not necessarily be ring fenced. An area that is never mentioned in that regard is further and higher education, so we anticipate a large cut.

In the independent review of higher education funding and student finance, there was talk of a 10 per cent cut. That would represent about 4,000 jobs in higher education. The direct impact of those jobs being lost would be about £100 million in spending power being lost to the economy. Because that would lead to more job losses, and because universities and colleges would spend less, we reckon that there would be almost a 1:1 knock-on effect, so we are talking about the system losing £200 million if there is a 10 per cent cut.

The Convener: Those last comments bring me to my next question. Obviously you are all speculating on how much you are likely to get—indeed, Linda McTavish said that you have worked out what certain percentage cuts would mean. Has each of you an idea of the sort of reduction in your overall budget that would be catastrophic for your institutions and organisations and the sort of reduction that you would be able to cope with? After all, you must have been planning for different scenarios and it would be good if you could give the committee a feel for the level of cuts that you would be able to reasonably sustain. You are, of course, sustaining budget reductions right now, but what kind of cut would be so severe as to have a detrimental if not devastating effect on your long-term future?

Liam Burns: Any at all, to be blunt. For a number of years now, we have been arguing that we are already at breaking point with regard to the amount of money that students have in their pockets while they are studying. A recent survey of students on student support showed that one in three had thought about dropping out because they do not have enough money and 40 per cent will have at least four years' commercial debt after leaving university. Moreover, we already know that the college sector has suffered two years of bursary funds being stretched. Some colleges have made the right decision to close the funding gap by dipping into reserves. Others, however, have decided instead to cut the amount of money available to students on courses, which has led to huge problems, especially in the further education sector, which has many mature students and students with dependants. We are arguing that in real terms the budget should at least be protected, if not increased, and any further cut—or indeed any sort of freeze—would be catastrophic for learners, especially those from the poorest backgrounds.

Alastair Sim: The paper that we have circulated takes a serious look at how to live in an environment of tightened resources and where in the system efficiencies might be found. For the past couple of years, we have been able to find 2 to 3 per cent efficiency savings annually and, although a lot of the low-hanging fruit has gone,

we continue to be ambitious about achieving efficiency savings where possible.

Our paper also takes a constructive approach to realising savings in 2012-13 and beyond by making the learner journey more flexible and efficient and getting universities to work both together and individually to ensure that provision is being targeted at where it adds most value. We are not being unrealistic but I have to say that we were very concerned when Mark Batho stood up at last week's *Holyrood* higher education conference and said that, according to the current arithmetic, we might be looking at a 16 per cent academic-year-on-academic-year cut. That would lead straight to the significant loss of jobs, provision and quality that we highlight in our paper and that Tony Axon just referred to and give rise to the bizarre prospect of Scotland—and, potentially, England—retreating from investment in higher education at a time when other economies are realising that such investment is a core part of economic recovery and resilience. The United States of America, for example, is investing more than £25 billion of its stimulus package in education, with a particular focus on colleges and universities, and is putting an additional £11 billion into scholarships to allow undergraduate students to get into university. Canada is investing £2.5 billion over two years; France's stimulus package contains a £9 billion investment programme, with another £7 billion or so going into particular research institutes; and Germany is investing £14 billion of its stimulus package in universities, with a particular focus on estates.

It seems to us odd, when you look at the way that the rest of the world is valuing investment in universities as a motor of economic resilience and growth, that the dialogue in the United Kingdom is now focused on cuts and retrenchment rather than on the opportunity for progress that enables us to be strong competitors in what Lord Sainsbury called the race to the top—the recognition that if you are going to be a competitive international economy, you have to be one that trades on its high skill level, and its ability to generate ideas and be a hub of research and development.

Linda McTavish: I cannot give you a percentage across the whole sector, because colleges have been doing sensitivity analyses at their own level. We will share information at a joint meeting of chairs and principals on Monday.

If there are cuts of 16 per cent, there will be colleges across Scotland that will fail. Given their budgets, that is too big a cut, but that is the figure that has been in the public domain. We, too, have been involved in efficiencies and in investigating shared services. The VAT position with shared services is problematic: it seems that shared services will require us to pay VAT. Colleges are

looking at other ways to try to do things together. We have worked closely with Advanced Procurement for Universities and Colleges as a purchasing consortium to ensure that whenever a pound is put into us, we spend it wisely. Colleges are fully signed up—as are universities—to APUC.

I hear talk of international solutions, but we are looking for a Scottish solution that deals with the make-up of higher and further education in Scotland. The access jewels in our crown are the higher national certificate and the higher national diploma, but we are very disappointed when those with HNCs and HNDs take longer to finish their degree than they would under any other circumstances, as that increases students' individual debt and it is too much of a cost to the economy. We therefore hope that, as part of a Scottish solution, the student with an HNC or HND who goes on to university would go in at the right level of access. I hope that the committee will speak to Professor Jim Gallacher, who has done research that shows that advanced standing can be successful in the long term.

Colleges are, along with universities, trying to maximise their overseas income. That is complex, because it involves the UK Border Agency and regulations about people coming into the UK.

We are trying to diversify and to share resources, but members will have seen Sue Pinder quoted in the papers at the weekend commenting on the impact of the level of cuts that we expect. I can send the detail to the committee, but there is not a cut that will not harm us, because of the size of individual colleges. We have been told that HE and FE are not ring fenced and that cuts are coming to us, so we have to prepare for them. We are saying, "Do not tell us in April." If that happens, we could not deal with people and with students in a responsible manner, because they are applying to us from January, so we need to know what our budget is early doors. Otherwise, it would be catastrophic for good long-term manpower planning, human resources and industrial relations. We have been saying to the Government and to the Scottish Further and Higher Education Funding Council that we need early information.

We are saying to you that, in this repositioning of the UK economy and the Scottish economy, you have to look very carefully at the decisions that you make about the budget. We might argue for a long time about what amount of money would not make such a big difference that we would never be able to recover. However, colleges, like universities, will endeavour to make more efficiencies. A small group of colleges is trying to think outside the box about how we do things, and the sector is trying to consider the issue.

09:30

I agree with Liam Burns that a one-year budget would make things very difficult for us. It would be difficult to know what was coming next. Everything that we do has implications in relation to student funding. The impact of the cuts will be felt throughout further education in all communities in Scotland, whether they are rural, urban, mainland or island—I cannot stress that too much. Things will depend on each college's reserves, but we hold far less in reserves than the university sector holds, which is a difficulty. We might see fewer colleges, and we might lose colleges in areas where we would not wish to lose them.

Tony Axon: I cannot give the committee a percentage either, but I point out that further and higher education is very much a people-based industry. Universities spend about 60 per cent of their budgets on staff, so cuts mean job losses quite quickly.

Can we afford not to invest in our universities and colleges at the moment? We need graduates and skilled people to drag us out of the current economic situation. We also need the research bases that are in universities. If we start cutting, research will be cut. Universities pull in money from other areas, so if we start cutting core grants, it will become more difficult for universities and colleges to bring money in from elsewhere in the UK, particularly the research councils.

Elizabeth Smith (Mid Scotland and Fife) (Con): We all agree that we must find an additional source of income and not just the replacement value. As witnesses rightly pointed out, we must ensure not only that we maintain our international competitive edge but that we provide for everyone who wants to be in further and higher education. Let us take it as a given that we need an additional source of income. There are two ways of approaching the matter. We can ask the state or the individual to pay more—I am sure that we will argue about what the balance should be—or we can find other sources of income.

Mr Sim talked about lessons that might be learned from international systems about securing extra sources of income. Some university and college systems around the world have made greater economies of scale in research and have opened up their campuses in vacations, for example. How might colleges and universities find a better way of working and greater scope for economies of scale, particularly in the context of research? How might we find the extra money that we might need?

Alastair Sim: I would not want to suggest that examples such as you gave are found only internationally.

I speak to officers at Scottish universities who are pursuing philanthropic giving. Although philanthropic giving is not a huge part of the funding cake—I am not sure that it ever will be—it can be significant. Much progress is being made in ensuring that that source of support is levered in as far as it can be.

During the past 10 years, Scotland's universities have been even more successful than universities in the rest of the UK have been in attracting people from overseas to study—we cannot fault Scotland's universities on that. The approach has been of enormous cultural and financial benefit.

Back in 2007, when our track record on collaboration and shared services was studied, universities were found to be engaged in more than 100 enterprising shared services initiatives, which we continue to push further.

You asked about research. One of Scotland's really distinctive strengths has been research pooling. The top researchers across the universities are coming together on joint projects and creating joint graduate schools. People are no longer working in isolation; as a small country, we are generating the critical mass that enables us to be a force that punches above its weight research-wise.

A lot is being done to sweat university assets during the summer, through conferences and entrepreneurial initiatives.

We are not off the pace internationally when it comes to leveraging resource into universities. We say in our submission that we will be energetic in pursuing that further. However, we also say that, given the figures in the CSR, we need to look at the balance between private and public contribution. There is very substantial public benefit from university education. Over the past month or six weeks, the Organisation for Economic Co-operation and Development has demonstrated strongly that the return to the public purse from investment in creating graduates is very significant, but there is also a private benefit. That is one reason why we have set out principles that we think could guide the development of a graduate contribution model that levers in some income from a private source, especially given the funding situation that we face. However, I still stress the very substantial public benefit of investment in higher education. We need to see a blend that keeps public investment at the core.

Linda McTavish: Colleges have a strong tradition of part-time students, who are often fee paying and may be at work. Employers provide support for students at college.

As a sector, we bid competitively. Institutions such as Motherwell College run a lot of education in the Scottish Prison Service. We have tendered

competitively for all kinds of big contracts. Sometimes we tender across the sector, to get an economy of scale for Scotland that will enable us to bid in such areas. We hire out our facilities to local communities and participate in the overseas dimension. Some colleges have contracts with industries; Reid Kerr College has links with specific industries in Libya, but I could provide many other examples.

We make bids to the European social fund. That money is getting stretched, so the funding council now bids for colleges collectively. Colleges are also looking to access other sources of European and other public funding.

We have tried to secure philanthropic giving, but in Glasgow it is difficult for Anniesland College to compete against the University of Glasgow for such funding. We do not have that heritage, but we do our best. Perth College has channelled some money from philanthropic giving into its activities.

We get some money from running apprenticeship schemes on behalf of Skills Development Scotland. Perhaps more of those schemes should be delivered by colleges rather than by other parties, which often send their apprentices to colleges anyway.

Colleges know the value of a pound—it is a hard-earned pound. Colleges spend around 70 per cent of income on staffing, which is a big percentage.

Alasdair Allan (Western Isles) (SNP): Everyone round the table probably acknowledges the pressure on university funding, which applies to the money that is available to us in the public sector as a whole. Mr Sim touched on the issue of efficiency savings. What scope still exists in that regard?

Alastair Sim: As I said, a lot of the low-hanging fruit has already gone. Obviously, however, we continue to pursue that approach in tough times with as much energy and innovation as possible. In my speech to the *Holyrood* conference last week, I said that, if we were in a flat-cash situation, we could consider the use of efficiency to keep the system ticking over, although that would not allow us to realise the sort of ambitions that others are realising for their higher education systems.

For the longer term, we are considering more structural ways of realising efficiency. How can we realise efficiency, as well as flexibility, from ways of making the learner journey shorter for some people, where that is academically suitable? How do we realise efficiency, as resources tighten, from universities' own work, both individual and collaborative, as they reshape their provision in as tightly focused a way as possible and in a way that

makes best sense in an environment with limited resources?

Those are not quick fixes. Those questions will involve serious hard work to realise benefits in the latter years of the UK spending review period, rather than instant quick fixes now.

Alasdair Allan: In the longer term, could such efficiency savings encompass senior administrative salaries, for example, as well as the teaching and research side?

Alastair Sim: I cannot remember whether we were explicit about that in our paper, but I think that we were. The norm in the university sector now is to have a senior pay freeze. As resources tighten, people are looking very closely at where they are putting their money.

Alasdair Allan: I will come back to Mr Axon, but I invite Linda McTavish to comment on the college side of things. You have said that you have smaller resources available to you compared with the university sector. Is that an issue when it comes to efficiency savings?

Linda McTavish: We are nearer to the student. If we are to look for efficiencies in our organisation, I would cite flexibility for our staff—working with staff with regard to the contract. Our contract is a teaching contract of 24 hours a week, which involves a higher level of class contact compared with other parts of FE and HE. As far as staff flexibility is concerned, a number of colleges did not have pay increases last year. Some colleges have no pay increases for this year.

09:45

On the question whether the financial conditions are biting, you should remember that there is individual bargaining in our sector, at college level—we do not have national scales. That means that individual colleges, by working with their staff, can come up with joint solutions. That is what will be required, with the involvement of professional associations and trade unions. Some colleges have been looking at having shorter weeks, as the private sector is doing. Others have been looking at having no pay rises but a wee bit more job security, or at the number of classes in the week. There is a range of arrangements that are not imposed nationally but negotiated locally. Local bargaining depends on a variety of circumstances.

We were involved with the universities on the reports on efficiencies that went to the Parliament. We made big efficiencies in the construction of our programmes and courses. We have a national programme and national qualifications, so we can share resources across colleges. Materials that we

develop can be used in other colleges. Those are the kind of things that we are considering.

Alasdair Allan: I hasten to add that I am very friendly towards the higher education sector—I ask this question in that context. You mentioned the pressure on costs this year, particularly staff costs. I presume that you have taken into account the fact that staff costs in higher education institutions in Scotland went up by 8.6 per cent between 2007-08 and 2008-09. Is that factored in when you talk about the pressures ahead? Do you foresee a change? I presume that you do not dispute that the costs—

Linda McTavish: Are you talking about the college sector or HE?

Alasdair Allan: I am talking about HEIs.

Alastair Sim: The pay settlement last year and the offer this year are extraordinarily tough. The settlement last year was 0.5 per cent and the pay offer for the coming year is 0.4 per cent. Pay restraint is being enacted. There is also action to control the costs of the universities superannuation scheme.

Staff costs are partly driven by the fact that people are on UK-wide incremental scales, so there is progression up the scale during the period of a person's appointment at a particular level, even if the headline figure for pay increase is quite low. That puts pressure on universities. Unlike colleges, universities cannot individually manage the issue, because we are part of UK-level negotiations and there are UK pay spines. However, where we have discretion we have been as tough on pay as is consistent with being fair.

Tony Axon: Pay freezes for top staff were mentioned. In universities there has been a huge increase in the bureaucracy that is required, which has led to a huge increase in administration, so lots more people have been brought in at senior management level. People have moved up the scales and had large increases, and I am not sure that pay freezes have been implemented across the board. We might want to consider management structures in the context of efficiencies. Universities are supposed to be—and to have the governance in place to enable them to be—fairly democratic structures. Do they need such heavy-handed and large senior management teams?

University projects are quite often initiated by senior management, so we might consider whether we should cut back on such areas. Projects are also initiated by the funding council, in particular. It is time to concentrate on the core work that universities do and to cut back on the extraneous projects that have been going on.

Elizabeth Smith: If, as seems highly likely, variable fees are introduced south of the border, certain university courses will have the ability to pull in more money than others. What might that do to the cross-border flow of students to Scotland? I am not asking you to comment on whether that is right or wrong.

Alastair Sim: One of the things on the agenda for today's discussion is the issues that arise from "New Horizons: responding to the challenges of the 21st century", one of the most valuable elements of which was the specific commitment that it contained to the resourcing of Scottish universities at a level that would retain our competitiveness internationally and UK-wide. We hope that that 2008 pledge will guide the Government's decision making.

Where will we end up in Scotland? We have set out some core principles, which need quite a lot of further expert work. We would press the Government to get on with the process of translating the articulation of principles into a scheme. I do not want to delve into detail beyond the principles that we have articulated, but whatever it is decided that the balance between the public and the private contribution to higher education should be—we maintain that the public contribution is still core—we need to maintain that competitiveness. In doing so, we need to test it closely against our strongly articulated principle that every course at every institution must be accessible to students, regardless of their or their families' financial circumstances.

Liam Burns: There is the idea that we will be in a different situation once the new scheme—whatever it is—comes in down south, but I want to make it clear that universities already have variable fees. The amount of money that they receive varies, depending on the subject. The difference is that it does not come from the individual. I challenge the idea that there will be a difference between the sectors, because universities already cross-subsidise. It is not the case that the exact amount of money that is provided per subject is given to that area. Cross-subsidy is a huge part of what universities do.

There is a significant range in what an institution will receive. Alastair Sim will correct me if I am wrong, but I think that it goes from about £8,000 to £17,000. Institutions have variable fees at the moment. It is just that the money does not come from the individual.

Elizabeth Smith: But it is possible that, after the Browne report, the amount that is paid per course could differ in different institutions, although it sounds as if there will be a £9,000 cap. That could be to do with different courses being valued at different rates. That is not quite what is happening just now. By charging students different rates for

different courses, some universities down south could bring in more money. I am not asking about the rights and wrongs of that; I want to know what effect that potential additional source of income down south could have on universities in Scotland.

Liam Burns: We must be careful. In its crudest sense, you are alluding to the fact that, down south, a student could pay up to £9,000 in tuition fees, whereas in Scotland, at the moment, a student pays £1,800. The last time that we faced such a scenario, when top-up fees came in, there was a rush to say that there would be a huge flow of students across the border to Scotland, but that did not happen. We have been left in a situation in which we have variable fees for medicine degrees, which we have always firmly disagreed with.

It would be naive for me to say that there will not be an impact, but I suggest that there should not be a knee-jerk reaction until we know what the outcome of that difference in fees is.

Linda McTavish: Our students need to be domiciled in Scotland to receive Scottish further education funding. Colleges deal with much more local students. We have major research—I will be happy to supply it to the committee—that shows that because of the areas that they come from, those local students are debt averse. We know of people who you would think would be better going full time, but they do not want to go full time, because they would need to take out a loan. Instead, they hold things together with benefits.

There is an implication that no one has asked me about. The benefits review will have a huge impact on students in further education. The social security system changes, including changes to housing benefit and family credits, will have a huge impact on those students. We have argued about the 16-hour rule, and that students should not be disadvantaged. If people are not doing anything, it would seem sensible for them to go to college without loss. Many things are happening that relate to the decisions that students will make vis-à-vis the funding regime.

Tony Axon: On cross-border flows, Liam Burns is right that there has been a lot of worry about people coming to Scotland from the rest of the United Kingdom because of the lower fees, but I think that he missed out mentioning the Scottish Parliament's move to set a fee for other UK students at a level that would not put them off coming here, but which would mean that they would not necessarily gain a great advantage by doing so. That was when we were talking about a fee of around £3,000. We worked out an average on that.

Now, when the fee could be anything up to £9,000, the trouble is that the level must be set not so that people are prevented from coming here—

we still want people to come here—but so that a massive flow of students is prevented from coming here. Institutions such as the University of St Andrews, the University of Glasgow, the University of Edinburgh—the more Russell Group-type of ancient universities—which might attract people who would have to pay £9,000 or other big fees down south in Oxford or Cambridge, are possibly a particular concern. Those people might prefer to come to Scotland. How the instrument is worked out and trying to set things at the right level will be awkward for the Scottish Parliament.

Christina McKelvie (Central Scotland) (SNP): Good morning. We have spoken quite a lot about different ways in which we can consider matters. We have spoken a bit about efficiencies, rethinking the learner journey, sector-led change, further shared services, and other sources of income. Will you expand on those a wee bit in the context of potential Scottish solutions? What potential Scottish solutions exist to address the growing concern about a potential gap in funding? What is your involvement in the green paper that has been suggested?

Alastair Sim: I will unpackage that a little bit further.

We have already talked a fair bit about the efficiency side. Possibly the most interesting issue that we can talk about but which we have not discussed much yet is what we should do about rethinking the learner journey. There are two starting points. First, whatever universities provide, that provision is very diverse. We are dealing with an extremely diverse constituency. Many people in universities come from the most deprived neighbourhoods, 40 per cent of them are mature students, 37 per cent are part time, and 8 per cent have declared a disability. Nine per cent of undergraduate entrants enter with advanced standing from college. Therefore, we must start from the premise that we have a very diverse system, and that diversity is part of its strength.

The second starting point for us is that four-year degrees are important not just because of their value and the recognition that they have, but because four-year degree courses are an extremely flexible spine. People can go into and leave such courses at different points with different qualification levels. We argue that, in the interests of learners and efficiency, there are things that we can do to streamline the learner journey along that spine. For instance, it used to be a strong Scottish tradition that people would leave secondary 5—I think that it is still called that—with their highers and go straight to university. Around 9 per cent of Scotland-domiciled undergraduate entrants still do that, and we think that there is scope for growth in that number. That can be a good learner journey

for people who have the right qualifications and aptitudes. It takes a year out.

10:00

Likewise, a significant percentage of students already enter into year 2 of a four-year degree programme because they have good advanced highers or, if they are from England, good A levels. In future, people will come in with strong Scottish baccalaureate qualifications. We think that there is further scope to build on that flexibility by having more people come straight into year 2 if they have achieved the right qualification levels at school.

To pick up something that Linda McTavish said, the progression from college to advanced standing is important. It is careful, detailed, technical work, because you have to ensure that the curricular fit is right, college by college, but there are important initiatives through which further progress is being made on that; we are keen to see more progress on that front. Interesting, detailed work needs to be done with colleges, schools and the Government to plan how we achieve the full flexibility of the learner journey in a way that is good for learners and contributes to efficiency.

You asked whether there is a funding gap, and the answer became self-evident as soon as the UK Government published its comprehensive spending review figures. Even if you accept the baseline in the Treasury's published documents, you are looking at a real-terms cut of around 7 per cent in the overall resource available to the Scottish Government over the spending review period. When you add in the fact that there are services to which various commitments have been given, you can see that it is a very tough funding situation. We understand that. We are arguing the strongest possible case for maintaining investment, particularly in 2011-12. That will be essential, because the sort of things that we are talking about to realise benefit in the future will not deliver instant results. At least we are showing creativity and flexibility about how, over the spending review period, we can do things that will enable universities to be at the heart of Scotland's success.

Linda McTavish: The age participation index shows the number of 17-year-olds participating in HE for the first time. The Scottish figure is good, but underneath that figure is the contribution that colleges make, which is slightly less well known. We contribute 27.4 per cent of the age cohort moving on from schools into an HE route through further education.

On the average cost of a full-time student undertaking higher education in further education, our college courses cost £3,117 for full-time higher education, but an HE student costs £5,708. The

fact is that we are just paid differently. HNCs and HNDs are rewarded on a different basis from degrees, yet both sets of students are higher education students. The expansion of HNCs and HNDs with a route to higher education beyond that—a two plus two model—is one way of bringing in more people. We should look at the number of people with HNCs and HNDs in the workforce who might also wish to go into higher education. We have a lot of rich talent in people in work with those qualifications. The two plus two model, or the equivalent for those in work going into higher education, would help us to upskill.

On where Scotland is in the provision of higher education, we argue that, at the very top level, we are high up on any index in a world context. However, industry often criticises colleges and universities for not supplying enough people at the intermediate technician or technology level. The UK Commission for Employment and Skills has something to say on that. We perhaps do not have the powerhouse for the economy in the number of people coming through at the technology HNC and HND level.

If the green paper is thinking about how to refocus higher education, colleges will suggest ideas for the Scottish way. You should remember that HNCs and HNDs are not celebrated to the same extent in England as they are here. They were a Scottish tradition and invention, based on our engineering background and strong support from employers. That is why we continue to provide them.

We will be looking at strengthening and simplifying people's routes through education. There should be a route, not a maze, of articulation. I would like the Parliament to make a declaration of articulation in relation to the core areas that build the way through for people. We need to bear in mind that there are different ways in which to support learning journeys. In the present world, with the consequences of the economic situation, learning journeys might be more complex. Because of funding issues, people might go from college to work and work to university—there could be a mixture of routes. I hope that we might be able to come up with a system that recognises that.

We have strong links with the workplace. Our courses tend to be vocational. Extending programmes of college-based and work-based learning to a greater level of certification for individuals is important. I think that there are—

The Convener: Sorry, Ms McTavish, but I am conscious that we do not have an awful lot of time.

Linda McTavish: We will submit information in relation to the green paper. It is just that, when I

was asked about the green paper, that gave me a slight opportunity—

The Convener: We gave you scope.

Linda McTavish: I am sorry about that.

The Convener: You are very enthusiastic, but I am just conscious of the time.

Linda McTavish: I apologise.

The Convener: Not at all. Any written submissions would be gratefully received by the committee.

Linda McTavish: I think that there are new ways of doing it.

The Convener: Excellent.

Does Christina McKelvie want to follow up on anything?

Christina McKelvie: I wonder whether Liam Burns or Tony Axon has a different perspective.

Liam Burns: I back up everything that Linda McTavish said about articulation, but I have a specific point on whether HNCs and HNDs are being allowed to articulate people into the appropriate years at university, which are the second and third years respectively. For far too long, that issue has been the elephant in the room. We have dodged the question, and we should just deal with it.

Linda McTavish: Absolutely.

Liam Burns: If the answer is that, with some HNCs and HNDs, that approach is not appropriate, we need to be honest about that, because far too many learners are being tricked into thinking that there is a route, only to be told, on application to a university, “No, not for our institution. Why don’t you apply for the one down the road?” We should deal with that issue.

One idea that has been flying about and which we are interested in, although we have not done particularly sophisticated thinking on it, is that of modern apprenticeships in universities. The idea is that, as Linda McTavish explained happens in the college sector, businesses could make a structured contribution by supporting the student in different ways within a university setting.

Another point—again, I must put up my hand and say that we have not done particularly sophisticated thinking on this, although that is starting to feel like a platitude because we keep saying it—is that we genuinely think that business has a role in how we fund the sector and support students, perhaps through the tax regime, for example. I know that the UCU has had ideas at the national level about corporation tax but, in a Scottish context, it might be about tax breaks and incentivising businesses to support students better

or to pay for some of their education as they go through.

I would be lying if I said that our membership does not have some deep concerns about that approach—such as whether we would be opening the door to people from poor backgrounds having to go through that route because they could not go through a different one—but I think it is an area that we have left unexplored.

My final comment is that the wording that you used when you mentioned the “potential gap” that could exist was incredibly good, and we need to start using it. It will take a number of months for the gap to become clear. It is actually down to parliamentarians, so as much as we should be answering questions about how Scotland should respond to the cuts, there is also a ball in your court, because the cut will not be apparent until you make the decision come 19 November.

Tony Axon: On the flexibility in the system, we need to recognise that Scotland is doing well in that respect. There are problems, and Liam Burns pointed some of them out, but Scotland was one of the first countries in Europe to develop its qualifications framework, and in doing that, it is well ahead in the Bologna process. There is still lots to be done at a technical level in considering how we move the articulation forward, but we have the framework to help with that. There are certainly issues, but at least the tools are there to deal with them.

I agree with the point that was made about the amount of HE that is done in FE. Again, we are well ahead of many other countries in that regard, and the qualifications have been recognised. England, in particular, is struggling to have its HNDs and HNCs recognised as valid qualifications for the purposes of both industry and articulation.

Also, our four-year honours degree allows for a lot of flexibility. That point often seems to be lost. If someone goes to university and discovers that the course that they are doing is not the right one, there are other courses that they can do, because they are not doing only that course in their first year. The degree gives people a broad and deep education and it also allows for changes if people decide when they go to university that the course is not for them.

On the green paper and the Scottish solution, we have had considerable input with the minister and civil servants. We had a convention with the minister to discuss what we thought should be in the green paper, and that was useful. We have to go for a Scottish solution. I was disappointed that the unions were not invited to the *Holyrood* conference and allowed to give their views. I find it disappointing that people are calling for a Scottish

solution but are missing out major stakeholders in the sector.

I back up what Liam Burns and Alastair Sim said earlier. Society gains from higher education and so does the individual. What Alastair missed out is that business also gains considerably from higher education, and we believe that we need to find some way for business to contribute. UK-wide, we are looking at increasing corporation tax. That idea obviously does not work in Scotland, but we would like to build some sort of system that ensures that business contributes from the gains that it gets from higher education.

Christina McKelvie: I will not ask another question; I just want to back up what has been said about HNCs and HNDs being the elephant in the room. In your deliberations for the green paper and any other debate that you take part in, you should be aware of the Scottish baccalaureate. Alastair Sim mentioned it, and I am pleased that some of the universities are now picking it up. It will become important, because the learning journey should start in the third year at high school and continue from there. It should be a continuous process and not a stop-start one. I just wanted to feed in that comment. Thank you.

Claire Baker (Mid Scotland and Fife) (Lab): I have a question in relation to the green paper, convener.

The Convener: It has to be brief, because I am conscious of the time.

Claire Baker: Okay. I just wanted to ask about the timescale for the green paper and how hopeful the witnesses are that it will deliver a solution. In the past few years, the committee has consistently talked about the future funding challenge for higher education as well as the situation that we have with student support and student hardship. There are real issues that need to be addressed. We expect the green paper in December, and I understand that there is talk of legislation towards the end of next year. Does that timescale respond to the challenges that we are facing?

Alastair Sim: To pick up a point that the others have made, it rather depends on how the public funding works out. Our view is that these are issues of real urgency. The expert work to move from principles to a workable scheme needs to be got on with now. We cannot simply do it on our own, because there is substantial Government involvement and stakeholder interest. That work needs to be got on with as urgently as possible.

Whoever comes into power after the next Holyrood elections is going to find that one of the issues at the top of their in-tray is how to make sure that we maintain a higher education system in Scotland that meets learners' needs and protects our international competitiveness and our

economic resilience and wellbeing. Early legislation will need to be introduced to achieve that. I do not wish to understress the urgency of the situation.

10:15

Liam Burns: Alastair Sim is absolutely right. Everything hinges on what will be in the Scottish Government's budget bill. For us, the most immediate area is the recurring crisis in college bursaries, which we think we will see again. We argue strongly for an increase in student support and an improvement in how that is delivered. It makes no financial sense to have people dropping out, because that costs the tax-payer thousands of pounds and does not benefit the economy. That part of the budget must be protected in real terms; if not, around February next year, we will see an even bigger crisis in relation to the confidence of colleges to dip into their reserves and what will be available to them to give to a discretionary pot.

From our point of view, the most immediate issue that must be dealt with—before we even get to a green paper—is the amount of money that colleges have to support students through bursaries.

Tony Axon: We called for an independent review almost four years ago. If we had gone down that road, we might have been in a better position now. We are struggling to get anything out for the green paper or in time for what is going to happen down in England, partly because the election will stall the process.

Linda McTavish: It is important that we look at the issues in the green paper. At the beginning of the meeting, the convener asked me a question about a one-year budget and not knowing what will happen beyond that. A green paper is no good if we do not know where the money will come from or go to in future; we need both pieces of information.

Margaret Smith (Edinburgh West) (LD): I was pleased to hear what the witnesses have said about the value of higher and further education to society as a whole, and not just to the individual. However, some of the witnesses have talked about or published documentation in the past wee while on the potential for a graduate contribution—for example, there is a Universities Scotland paper on the potential for such a contribution over and above the extra income tax that graduates pay because they tend to earn more money. Can you give us, in a nutshell, an idea of your organisations' views on a graduate contribution, graduate tax or graduate fee—whatever you want to call it—as a further option to bring in more income?

Alastair Sim: Our view is explicit in the paper that we have submitted. Given the funding challenges that we face and the balance of public and private benefit that comes from a university education, we think that urgent work needs to be done on what we hope are generally agreed principles for a definition of a workable scheme for Scotland.

Margaret Smith: Your submission says:

"The contribution ... must relate, in a fair way, to their personal circumstances."

What does that mean?

Alastair Sim: I can unpack a couple of things from that. It is important that a person should not have to pay a graduate contribution until they reach an income level that reflects the fact that they have benefited from a university degree. It would be fair for them not to have to pay back anything into the system until they can afford to.

It would also be fair for an element to be built into the scheme to ensure that the people who get the highest return from their higher education make a higher level of contribution. That seems fair. However, I want that to be worked through at expert level with the Government and stakeholders, so that we come up with a workable scheme.

Margaret Smith: Should there be a formula that says that those people should pay a higher level of contribution once they have gone over a certain amount, or should there be a sliding-scale approach? You say that there should be a minimum income threshold for payment of the contribution and a relatively higher level of contribution from graduates on high incomes. There is a clear correlation between some degrees, the graduate's income and the fact that they could not do their job unless they had that degree—doctors spring to mind. However, I have always been concerned that at the other end of the spectrum is the person who earns just over the minimum income threshold in a job that they could be doing even if they were not a graduate, but because they are taxed as a graduate they earn less than the person sitting next to them, who got the same job without a degree.

Alastair Sim: You can look at specific cases, but you can also—

Margaret Smith: But what do you mean by a "higher level of contribution"? Are you saying that certain people at a certain income level would pay an extra contribution on top of the minimum?

Alastair Sim: I will pick up on your point about the wide variety of experience post-graduation. According to figures from work in progress with the Scottish Government, in aggregate, people with graduate-level qualifications can expect to earn 33

per cent more over their lifetime than people who do not have a university qualification. Overall, there is a substantial benefit from having a university degree; it has been quantified in various studies at anything from £200,000 to £400,000 at current prices over the course of a graduate's career.

Margaret Smith: But those people pay higher income taxes to the state because they earn 33 per cent more. You said in your submission that there should be a higher level of contribution from graduates on higher incomes. Is that based on a scale or do you differentiate between different graduates? What does it actually mean?

Alastair Sim: The scheme has to be transparent and formulaic in some sense, but we have consciously chosen not to delve into every detail, because that is careful work that will need to be done with the Government, stakeholders and experts. We have simply set out a starting point and a set of principles that most people would find reasonably common sense.

Linda McTavish: We wish to discuss the proposals because we have some concerns. A lot of the older students who come to us have been taxpayers all their lives, perhaps since they left school at 16. We do not see any variations in the proposals for some of the people to whom we reach out. They are valuable and should be able to come through education having already made contributions. Not all students have just left school; some are people in their 30s and 40s. We would like to engage as one of the stakeholders.

Margaret Smith: I am concerned that there is a potential disincentive, particularly to mature students. We looked at teachers last week. What about someone who wants to train to be a teacher? Another example might be someone who has been a nurse all their working life and who now needs a top-up degree to be a health visitor or whatever. Do you agree that unless we get education funding right, there is a potential disincentive to mature students going into higher education or topping up their skills in a way that would benefit the country?

Linda McTavish: There could be such disincentives, which could affect disproportionately the widening access population in different sectors with whom we have been working. We have still to engage with Universities Scotland and the proposals.

Liam Burns: I want to paint the scenario that we are dealing with at the moment. First, universities are not universal. They are not the national health service. People do not get into university for all sorts of reasons. We have been talking about mature students, who cannot get the same level of grants as young students; part-time

students, who have to pay fees and cannot access any sort of loan system; and people from the poorest backgrounds, who cannot get in in the first place. Furthermore, some—but by no means all—graduates earn a substantial amount of money because of their degree. More than a year ago, our membership started a debate, beginning with that premise. We are putting to our conference this Saturday the question whether we want to pursue that as a policy position. Regardless of cuts and the recession, students do not get enough money in their pocket while they are studying. As much as articulation works in terms of access to university, compared with the rest of the UK we do not have a rosy picture.

Our membership has been talking about what people have thrown at us, which is whether we are compromising on fees. We are not. I guess that what we are compromising on is progressive taxation. Our current position is that we should simply fund education to the levels needed through taxation. We should protect the number of places; students should receive the money that they need; and universities and colleges should be funded to the level that they need to be able to deliver education. If politicians are brave enough to stump up the public money to do that, there is no need for us to have that discussion. However, it would be incredibly irresponsible of us not to consider the context. I do not believe that the Scottish Parliament will come forward with the amount of public money that is needed to protect places, to provide quality and to provide access through student support.

Margaret Smith asked about the principles of that debate, which are really quite important. The language—whether we call it a contribution, a tax or a fee—is difficult, has caused all sorts of problems and has been somewhat conflated, which has held back the debate. To see whether students agree, we are asking our council whether we should be talking about a graduate contribution that is ring fenced for student support. It is all about improving access and helping students to have more money in their pocket. There can never be a price tag associated with that. That is an important point—it is what differentiates the graduate contribution from tuition fees. If I am thumbing through a prospectus, I do not want to see a price tag for however many years of education. We know that that puts people off, especially those from the poorest backgrounds.

We think that the contribution should kick in only if and when there is a genuine financial benefit. I have had this debate at about 10 universities and I am always asked what a “genuine financial benefit” is—perhaps that is what Margaret Smith is touching on. It would not be hard to find out what the average wage is in Scotland, and it would not

be hard to say that there should be some buffer for people in the situation that she described.

However, it is not difficult for me to come to a point at which I would consider that a person was well off, and if I could make them pay through taxation, I would. I do not think that we will have that mechanism, which is why we are discussing the idea of a graduate contribution.

We believe that the contribution should be progressive. That is what Alastair Sim was discussing in the Universities Scotland paper. Someone who earns more should pay more, over and above the threshold. That is what we are putting forward as the principles.

The one idea that I would throw back at Margaret Smith is that of a graduate and a non-graduate sitting next to each other on the same wage, one paying a contribution and one not. First, I would like to know who all these people are, especially given the level at which any threshold will be set. Secondly, I do not believe for a minute that Margaret Smith got to the position that she is in without the networks, the social capital and the aspiration that comes from accessing university. People gain a huge amount of social capital from university. We only need to look at the make-up of the Parliament, at senior civil servants or at access to the professions—although it depends on the university that people go to. That issue has to be taken into consideration.

There would be an argument if the threshold was too low, but if the threshold was high enough, I would not buy the idea that there would be swathes of people who got into a job off their own back alongside swathes of people who had to contribute because they have a degree.

As I said, that is the debate that is coming to our council on Saturday, after which, we will have a clearer position.

10:30

Margaret Smith: Given that you represent NUS Scotland, do you acknowledge that those of us who, a couple of years ago, listened to your arguments about scrapping the graduate endowment are now concerned about the organisation’s current suggestion that graduates should make a contribution? That is not what you told the Parliament a couple of years ago.

In your briefing paper, which we saw a few weeks ago, you say that the contribution should be about

“establishing a compact between graduates who see a genuine financial benefit and the next generation of students who would not have been able to access, progress and graduate at all”.

I certainly dispute the suggestion that the picture for students in Scotland is not rosy compared with the rest of the United Kingdom, particularly given that we have not had tuition fees for the period of this Parliament. Having been a member of the Parliament for a number of years now and recalling that the very basis of the graduate endowment was to use the money that had come from students who had benefited to fund those who might not have been able to get into university at all, I am not quite sure why you are arguing that graduates should make a contribution. Indeed, the argument seems diametrically different from the one that was made two years ago, when the Parliament was told to scrap the graduate endowment, which is, of course, what the Scottish National Party and Liberal Democrats did.

Liam Burns: Let me clarify the argument, because it is not what that you are saying it is. The original graduate contribution that was proposed by Andrew Cubie had very different thresholds and principles. For a start, it was never meant to kick in until someone was earning more than £21,000, which, in real terms, would be up to £28,000 now; it was meant to give substantial money to the sector; and it was meant to be ring fenced for widening access. The measure that was introduced by the Labour and Liberal Democrat coalition generated about £17 million, which is nothing compared to the student support budget; it was a poll tax; it was a flat tax; and, because it kicked in at £15,000, it did not reflect genuine financial benefit. I am sorry, but I do not think that anyone can argue that such a threshold reflects benefit from the degree that someone has received.

Although the money was supposed to be ring fenced for widening access, no one has shown me any evidence that that happened—to be fair, I have to say that many civil servants have been unable to do so—and I have yet to see how the money contributed directly to that purpose. As a result, we need to revisit the principles that Andrew Cubie established. The problem is that the word “endowment”, although correct, is now politically so toxic that I cannot use it any more, but we need some mechanism that delivers on those principles. The graduate endowment did not do that.

At the time, we did not argue for the scrapping of the endowment on access grounds. The fact is that many students entered university without knowing that they had to pay it; indeed, a civil servant once told me that someone wrote to the Government, saying, “I’ve graduated. Can I have my £2,000 please?” Instead, we argued that it was a wholly inefficient tax that did not benefit the student body or generate the funds needed to deliver on its purpose.

Margaret Smith: If however, as you have argued, the £17 million that was generated as a result of a graduate endowment of £2,000 per student was insufficient, do we take it that NUS Scotland’s position is that the graduate contribution will have to cost the average graduate more than the graduate endowment ever did?

Liam Burns: We have not carried out that kind of financial modelling because our membership has not yet agreed to these principles. The issue of the threshold is important, because we are talking not about the average graduate but about the average graduate who is earning over a certain amount of money.

We are having this debate, but the point is that none of this will kick in until we know what the Scottish Parliament is willing to do. If the solution is not some form of protecting the poorest, increasing student support and protecting places of the kind that we are talking about, I want politicians to give a cast-iron promise that they will protect the number of places in our colleges and universities, support students to a level that will allow the poorest to access such education and ensure that they receive a quality education with a degree that is recognised worldwide. Politicians do not seem willing to give such a promise and I find it frustrating that, when we try to come up with a solution, we should be challenged so much on the detail and that we seem unable to get past having a debate in which the issue in question is conflated with a lot of different language and political history. I am not interested in political baggage—I am interested in winning for students.

Tony Axon: As I have said before, we believe that people gain from higher education, although I demur a little from Liam Burns on the universal nature of these things. Even if you do not go to university, you still gain from university education in your everyday life. You need so many of the people who have graduated to be able to get on with your life. Even the bin man whom people talk about needs people around him with a university education. If we do not have university education, there will no jobs in Scotland, and no one will employ the bin man, because there will be no rubbish to pick up.

Society and business gain from higher education. The individual also gains, but education is not free at the moment, so they have to take out and pay back a huge loan. We need to look at the balance between those areas; we believe that business is currently not paying enough for what it gains from higher education.

Margaret Smith: I will press you on that. Does that mean that your position at present is that, philosophically, you do not have a problem with a graduate contribution?

Tony Axon: Philosophically, we have a problem with a graduate contribution, but we will have to see what comes out in a Scottish solution. We agreed with the Cubie solution when it came out because of how it would work in principle. However, as Liam Burns said, when the graduate endowment came in, the threshold was not based on average graduate earnings. When it first came in, the threshold was £11,000, which was definitely too low.

Margaret Smith: It was linked to the amount at which loans were paid back, so that we did not introduce another level of bureaucracy. That was why it was pegged at that level.

Tony Axon: Absolutely, but that is probably still true now; the level that is decided in England is probably the level at which students here will continue to pay the money back.

Margaret Smith: That would be a rise.

Tony Axon: Yes—it will probably rise now.

Margaret Smith: But, philosophically, you would be uneasy with a graduate contribution. You would not end up at that point very lightly, if I can put it in that way. Would that be a fair reflection of your position?

Tony Axon: That would be a fair reflection.

Claire Baker: I want to move on to the issue of widening access to higher education. It is often viewed as a fringe element of university activity, but this morning's debate has touched on a number of issues that are relevant to the matter. We have talked about articulation routes and student support levels, and I do not want to go over those issues again.

The Scottish figures on widening access show that there has been a certain level of improvement in recent years. The top-line figure for Scotland shows that progress is being made, although it is very slow. However, if we look below, at the figures for individual institutions, we see huge variations in the type of activity that those institutions are undertaking on access. There is also a relationship with retention figures. We often see an inverse relationship in that regard: those institutions that do well at widening access also have fairly high retention figures. I am sure that you can point to examples that do not fit that trend, but it seems to be the overall trend in Scotland.

We have talked about the financial pressures that the sector faces over the next few years. Do you have any concerns that that might impact on the progress that has been made on widening access? It would be easy for universities to fill all their places with well-qualified students and produce good graduates; they are spoiled for choice when it comes to selecting students. Is it the responsibility of universities to progress the

widening access agenda? Do we view that as important? If so, how do we protect it in the current climate?

Sorry—that is quite a long question. It is more of an introduction to a discussion, so I would like to hear your views on the issues.

Alastair Sim: I will do my best to start on that. We circulated a paper yesterday that set out additional evidence from our side on the issues to do with widening participation. One of the problems in the area is the lack of agreed UK-level comparisons. We have talked about a lot of figures—Liam Burns and I often talk about those figures—but we get into a degree of difficulty because there is no good basis for comparison. There are various reasons for that, including the fact that Linda McTavish's colleges are doing a lot of higher education but colleges in England are not, so the English and Scottish figures in effect deal with different populations. When you dig beneath the Scottish figures, you find that, of Scotland-domiciled entrants to Scottish universities, 31 per cent come from social classes 4 to 7, which is within a cigarette paper of the UK average. The contention that we are doing worse than the rest of the UK is less borne out as you drill down into the data.

On what is happening to widen participation at different universities, there is not a clear relationship between whether universities are highly selective and research intensive, and their social diversity. I am looking at figures that show that Glasgow School of Art is enormously selective; Strathclyde is enormously selective and its recruitment of students from the most disadvantaged backgrounds is better than the Scottish average; Dundee is highly selective and research intensive and it is bang on the average; and Stirling is doing better than average in drawing people from the broad lower socioeconomic classes. It is not as clear a picture as you might think.

Work is being done into what happens to people when they get to university. Edinburgh is an example. Having drawn people from diverse backgrounds into education for the professions through the pathways to the professions programme, Edinburgh is extremely good at keeping those people. The 2.5 per cent non-progression rate from first to second year is a lot better than the typical non-progression rate. We can also look at people's standards of achievement depending on the diversity of their background. Various studies have been done throughout the UK by Oxford, the Higher Education Funding Council for England, the Sutton Trust, the London School of Economics and others that all point to the significant result that, given a like-for-like starting point of qualifications, people

from state schools and, in some studies, people from state schools without a strong tradition of sending people to university tend to have the better record of achieving firsts and 2:1s as their final qualification. It is an interesting and diverse picture.

Your other question was about where responsibility lies. Obviously, it lies partly with universities. Through outreach activities such as pathways to the professions or the Caledonian academy at Glasgow Caledonian University, they get into schools and encourage aspiration among students who might come from backgrounds where going to university has not been a family expectation. That is enormously important work. Mike Russell often makes the point, which has some value, that it is not simply the universities' problem and that, by the time people have reached secondary school, a lot of their life chances might have been determined already. It is getting it right throughout the education system that makes sure that when people approach school-leaving age, they have still open to them the life chances that are likely to enable them to succeed on a higher education journey.

Linda McTavish: I am worried that, with the pressure on funding, we will lose our pace on widening access. The funding council has reviewed its framework on equality, access and inclusion. We have had years and years of people saying yes to access, yet there have been blockages in the system and the people lower down could not get through to admissions tutors and so on. The funding council has brought together its framework rather than having it in disparate pots. It is now talking about output rather than input funding to see whether change can happen in that way.

Last year, we had upset in our system because people wanted to articulate to universities but the universities did not take them, even where articulation arrangements were in place. We raised that with the funding council. We had blockages, because people could come in from other areas and the funding council allowed those institutions to have extra places because there was pressure. People who had started up and been successful in their qualifications could not get through.

10:45

In this period of constraint in public funding, which could continue for many years, I would not like us to go back in time to a period when certain groups were not represented in higher education. When I went to higher education, a different cohort was there from the cohort that is there now. For the communities that we represent in Scotland and the groups that we champion through further

education, and for our economy and all of society, it would be a backwards step if we lost ground on widening access.

Some of the people whom we represent in taking an access route come to us from a variety of backgrounds. They start in our national certificate programmes. That starts before they come out of school. We reach into schools and bring people in through initiatives that are trying to keep them in school. I have concerns for some young guys who do not aspire to go to university. The new agenda on equality, access and inclusion sometimes relates to groups of young men in Scotland. We have fought the battle on getting women in and we have done really well on that, but I could take members to communities where there are groups of young guys who do not have aspirations. At Anniesland College, we say to them that, for their future responsibilities, it is important that they get good jobs and that some of those good jobs come through a university or college education.

We look to the Scottish Parliament, as guardians of the system, to provide sense in the budgets in relation to access and inclusion. We do not want to return to where we were before we had a Scottish Parliament. That would be a step too far back in time.

Tony Axon: We are starting to see improvement in the figures and that is because we have been trying to address the issues for a number of years. I have seen a stark graph that was produced by Gillian Raab for the funding council, which shows where the most deprived students go. The ancient universities are at the bottom, then the old ones, then the other ones and then the modern universities. Finally, at the very top, doing well on widening access, are the further education colleges. We are concerned that people from deprived backgrounds do not go to universities. That is why we are concerned that the funding council has decided that it will fund only those universities that do well at widening access. We are not sure that that is the right approach, because the universities that are failing to do well at that should be encouraged to do more on it.

We are concerned that talented individuals are not getting to university or to the best universities just because of the school they went to. They have not been to a school at which the ethos from the start is that people will go to university and will be developed to do so. However, people in such schools might be more talented than the people who have been trained to go to university. To allow people to get to university, we need to consider systems that are based not just on grades but on how much potential a person has.

The graphs that I mentioned also show the postcode lottery. In parts of Glasgow, people just

do not go to university and, in some cases, people hardly even go to colleges. We need to do something about that. However, it is difficult for universities to do that. We have to start almost at nursery age and have a different attitude, which is that people can go to university.

Another aspect to be considered is the attitude of employers towards somebody who has got into university but who comes from a community from which people do not normally go to university. A longitudinal study by Furlong and Cartmel showed that, all other things being equal, somebody from a deprived area finds it more difficult to find employment as a graduate. They find it even more difficult if they did not move out of their community but stayed there while they went to university.

We have to ensure that people receive funding that allows them to go through university—especially if they go to a university where widening access is not the main mission—but we also have to ensure that, once they leave university, they have an equal chance of getting jobs.

Liam Burns: For all the reasons described already, something for which we have long argued is some form of widening access unit—something central that is explicitly about policy development and not just about outreach. The widening access forums with the funding council are, I think, about intervention at a late stage, rather than about fundamental policy development and widening access. Down south, they have OFFA—the Office for Fair Access—which is the most toothless organisation I have ever seen. However, although I am not defending OFFA as it is, at the moment we in Scotland have no central watchdog for widening access. The funding council has good initiatives, but I am not convinced that it is taking enough of a political lead in this area.

It is not often the Scottish way, but we do not talk enough about sticks when it comes to widening access. There should be contextualisation of admissions. We should acknowledge that, although someone from a particular postcode is not going to get the same grades as someone from another postcode, that does not mean that they do not have the same ability or aspiration to go to university. Plenty of research has shown that people from certain backgrounds who achieve less good grades can still go on to be just as successful as people from different postcodes and backgrounds who have similar grades. There is a disconnect between where you live and the grades that you can achieve. Contextualisation would take that into account. To be fair to Edinburgh, I would say that it has quite a lot of really progressive policies in this area. However, the issue never seems to be raised nationally, because it would kick off politically.

I am not saying that we believe in the ideas that David Willetts has raised down south, but we should be considering those sorts of ideas. For example, we could acknowledge that a school in a certain postcode, with students from a certain background, will have fewer resources, and we could then say that high achievers from that school should be guaranteed a place in the most prestigious institutions. There is a link between the institution that a student attends and the success that they will have in their pay and in the type of job that they will go into.

With the funding council, there is what is referred to as the regionalisation agenda. In certain areas, certain institutions will be funded to widen access, and resources will be pooled for that. I am thinking, for example, of the University of the West of Scotland, Queen Margaret University, Glasgow Caledonian University and Robert Gordon University. On the one hand, it seems sensible to focus resources so that an institution can do the job properly but, on the other, if we know that those institutions do not necessarily get people into high-profile or high-earning jobs—if we know that they are post-1992 institutions and that their reputation has nothing to do with the standard of teaching and everything to do with their prestige—I get nervous that the message that we are sending out is, “You have to go to this particular institution, because it is the widening access institution.” Why on earth can people not have access to Edinburgh or Glasgow or the like? That links back to articulation and the two plus two model, and how we are not doing such things well enough at the moment.

Linda McTavish: The universities that Liam Burns has mentioned have good support mechanisms. However, like him, I believe that widening access should not relate only to particular courses. If someone who is starting out has a dream and has the ability, widening access should help them towards that dream.

I can accept only so much of the funding council’s view on regionalisation, but if I have somebody in Anniesland College who wishes to go to Glasgow or St Andrews—we sent somebody to study maths at St Andrews—my duty is to get them there. My duty is not to say to them, “Don’t you have that dream. You have to go here, because this is the regional agenda for you.”

This is about letting people move through the system and helping them to do so. In widening access, we should remember those who have gone down the apprentice route. I work with Rolls Royce and other big firms, where apprentices go through HNCs and HNDs. Let those apprentices also get on to the MEngs and the BEngs. Industry will take somebody who has that vocational experience and that academic experience. What

we are bundling is something that is really important for our economy. Perhaps we have to widen access even further to look at those who have gone down a work-based route earlier in their lives. That is a new dimension to access that we would all welcome.

The Convener: We are pushed for time, so this is probably an appropriate time to let Mr Macintosh in to ask his question about vocational qualifications.

Ken Macintosh (Eastwood) (Lab): I will start with a question for Linda McTavish. Skills Development Scotland has recently been asked to conduct a review of vocational training. What involvement has Scotland's Colleges had in that review?

Linda McTavish: We asked right away whether we could give evidence. We have nominated two members to do that. In fact, we met the person who has been asked to lead the review. We were chivvyng him yesterday about the fact that we had not been invited to give evidence. We welcome the review, because we have students who are in full-time vocational education, but we also have work-based students. We have an insight into that area as we are tied in with employers, their needs and what they are looking for from future employees or employees whom they place with us. We are actively participating but, until now, our engagement has been limited; we are preparing the information to put forward in the review.

Ken Macintosh: Liam Burns might want to comment on the review, too. You commented earlier on the disparity of treatment between part-time and full-time students. It is interesting that the Browne review down south highlighted that. Does the NUS have a position on the review of vocational education?

Liam Burns: I know about the review because of the press release, but I have heard nothing else since then. We are not involved in it in any way, shape or form. It sounds like we are behind Scotland's Colleges, too, because, although we have contacted civil servants, we do not know the review's terms of reference.

Perhaps the only good thing to come out of the Browne review was the recognition that part-time students get a very raw deal. I think that Browne proposes that someone who studies at more than one third of the rate of a full-time equivalent will now be treated in the same way as a full-time student, which we would wholly support. Part of our talk about the Scottish solution is about recognising not just part-time students but postgraduate students. At the moment, postgraduate students pay tuition fees, but they cannot access student support to anywhere near

the same degree as any other type of student. Both those issues need to be dealt with.

Ken Macintosh: Do you think that vocational education is regarded as secondary to the academic route? Do you think that equal financial treatment of students would be a way of countering that?

Liam Burns: Absolutely. Some of the stuff that Linda McTavish touched on is more important. One of the programmes that I think is really interesting is Heriot-Watt University's MA2MA course, which is about doing a modern apprenticeship and then progressing into doing the academic equivalent at Heriot-Watt University.

Linda McTavish: With Forth Valley College.

Liam Burns: Sorry—I did not mean to take credit away from Forth Valley College. It is now going out to Adam Smith College as well, as far as I know.

Dealing with the two-tier system of student support, whereby someone in FE has no guarantee that the funding will be there for them on a long-term basis but someone in HE has a legal requirement for the funding to come to them, would be a huge step forward.

Ken Macintosh: What can the universities contribute to the review, Mr Sim?

11:00

Alastair Sim: We are not yet clear what our contribution to the review will be. We have a meeting with the Scottish Government next week to discuss its scope. One of the points that we will be keen to make is that, along with colleges, we are massive providers of vocational education, given that a very wide range of our degrees are accredited by professional bodies as meeting the standards of particular professions and that we routinely embed employability into the curriculum to ensure that, even if students are not on a degree track that leads specifically into one professional vocational route, they come out of university with the breadth of attributes and knowledge of the workplace that will make them employable. In the most recent evidence of which I am aware, there is 80 per cent employer satisfaction with the work-readiness of graduates who are coming out of university.

I do not think that vocational education is an either/or. Both the colleges and the universities are utterly central to ensuring that Scotland has the right blend of skills to build social cohesion and economic success.

Tony Axon: I am not aware that the STUC has been invited to contribute to the review as yet—it

is possible that it has been invited and I am just not aware of it.

Part-time students have been in a different system for far too long. One of the recommendations from Cubie was that that system should be looked at. We kept hearing that it was going to be looked at, but it never was. Like the NUS, we think that part-time students should be treated on an equal basis to full-time students. It seems that they are being treated on an equal basis in England now—they are both being told to pay lots and lots of money. I am not sure that that is necessarily the way that we want to go.

On equal access and the issue of postgraduate students, as more people get degrees, the way that people will differentiate themselves is to go and do postgraduate qualifications. We might just be moving the equal access issue further on, because, once people have already accumulated masses of debt, it will become more and more difficult for them to do a postgraduate course to get them the extra money that they need in the jobs market these days.

The Convener: Unfortunately—or perhaps fortunately for you—that concludes our questions to you. I know that a number of members would have loved to have explored some of the issues a bit further but, unfortunately, the time constraints and our extensive agenda today have not allowed for that. However, I am sure that the committee would welcome any further written information that you would care to supply, although I recognise that some of you have already supplied quite a lot in advance of today's meeting. Thank you for your evidence.

The committee will suspend for a five-minute comfort break before we move on to our next item.

11:02

Meeting suspended.

11:09

On resuming—

Subordinate Legislation

Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Order 2010 (SSI 2010) (Draft)

Protection of Vulnerable Groups (Scotland) Act 2007 (Corresponding Disqualifications) Order 2010 (SSI 2010/346)

The Convener: I reconvene the meeting. The second item on the agenda is consideration of further subordinate legislation on the protection of vulnerable groups. The committee will take evidence from the Minister for Children and Early Years on the draft Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Order 2010 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Corresponding Disqualifications) Order 2010.

I am pleased to welcome Mr Ingram to the meeting. He is at meetings of this committee nearly as regularly as committee members are, so he should probably have a permanent seat at the table. He is joined by Andrew Mott, whose face is not unknown to the committee, and Michael Proctor, both of whom are from the Scottish Government.

I understand that the minister wants to make an opening statement.

The Minister for Children and Early Years (Adam Ingram): Yes. Hello again, and thank you very much for giving me the opportunity to make an opening statement about the orders, which form part of the implementation programme for the protecting vulnerable groups scheme. With the convener's permission, I would also like to update members on progress on implementing the PVG scheme more generally.

Members will recall that the PVG scheme was established by the Protection of Vulnerable Groups (Scotland) Act 2007. In essence, its aim is to ensure that people who have a past history of inappropriate behaviour are unable to work on a paid or voluntary basis with children or protected adults. I will give a brief recap of the scheme.

The scheme will bring about a streamlined disclosure process for individuals who work with vulnerable groups by replacing static enhanced disclosures with a dynamic membership scheme. For the first time, a Scottish adults barred list will be established, which will make it much harder for people who are unsuitable to work with so-called

protected adults to harm them through their work. Finally, the scheme will integrate the disclosure and listing processes for the first time, so that disclosure information will be assessed and may lead to the individual being considered for listing.

Before I give a general update on progress and speak to the two orders, I inform the committee that the Scottish Government has decided to delay the PVG scheme's going live to February 2011. I have written to the convener and committee members to inform them of that decision. We will notify stakeholders and the media today.

As I explained in my letter, the delay results from some challenges in the delivery of the information technology system. Those challenges have now largely been resolved, but the additional effort to complete that work has left insufficient time in the programme to complete the final elements of the system. We have a very good disclosure system in Scotland, and I was not prepared to switch to the new system, which will bring about additional benefits and protection, until I was absolutely sure that it was fully ready. That is an unfortunate position to be in so late in the implementation process, but we simply have to get things right. It is apparent to all of us who saw what happened when the disclosure service was introduced in 2002 that the decision that was taken then was made on the basis of timing rather than quality. The result of that decision was long delays in processing applications after the system was introduced. I do not think that that decision was right. We need to get the quality right. If that means a short delay, it is right to have it. We have learned lessons from the past.

11:15

Many members will recall that the implementation of the Protection of Children (Scotland) Act 2003 was also problematic. In particular, voluntary organisations were not supported in preparing for implementation. We have learned the lessons from that experience and provided a wide range of materials to help individuals and organisations to become familiar with the PVG scheme, including: comprehensive guidance on all aspects of the scheme; training materials, including a presentation that anybody can deliver in their own organisation; e-learning packages, which include test questions to help users to ensure that they understand the material; a regulated work self-assessment tool to help determine whether or not an individual is doing regulated work; an information booklet about the PVG scheme that covers some of the most commonly asked questions and more and is available in different languages and formats; answers to frequently asked questions on Disclosure Scotland's website; posters on the

PVG scheme; and sample PVG application forms. We launched a new PVG scheme help service at Disclosure Scotland on 30 June 2010, and it has handled hundreds of queries from organisations. We also continue to communicate directly with stakeholders through regular progress updates. Finally, the central registered body in Scotland is running free PVG scheme training events, which to date have attracted more than 500 delegates from voluntary organisations.

The two orders that are before the committee today deal with cross-border information provision and the full recognition of other United Kingdom barred lists in Scotland. The timing and need for the two orders is unaffected by the delay that I have announced.

The miscellaneous provisions order makes the devolved provision that is required to ensure that there are no gaps in the provision of information to and from Scotland in support of the PVG scheme and the vetting and barring scheme for England, Wales and Northern Ireland. The UK Government is progressing the reserved provision that is required through Westminster in two section 104 orders, one of which is affirmative and the other is negative.

The miscellaneous provisions order also amends the Protection of Vulnerable Groups (Scotland) Act 2007 to ensure that Disclosure Scotland can operate the cross-border protocol that was agreed with the previous UK Government in all possible permutations. The cross-border protocol is designed to ensure that where there is any ambiguity, either Disclosure Scotland or the Independent Safeguarding Authority will deal with an individual's case.

Members will be aware that the Home Secretary announced in June that the implementation of the vetting and barring scheme would be halted pending the outcome of remodelling work

"to bring the criminal records and vetting and barring regimes back to common sense levels."

Last month, the Home Secretary announced the terms of reference for that work. Although the UK Government is making the necessary legislative provision at Westminster for the PVG scheme to go live, the remodelling work has halted work to deliver the legislative and system support for the cross-border protocol in the rest of the UK. In the meantime, Disclosure Scotland is putting in place interim arrangements with the ISA to ensure that there are no gaps in protection in Scotland.

I would like to take the opportunity to welcome the review of the vetting and barring scheme, because it provides an opportunity to bring it closer to the PVG scheme in scope and proportionality. We are not reviewing the PVG scheme, because it was the subject of extensive

consultation and engagement with people who work with children and protected adults in Scotland throughout its development. I stress that the delay that I have announced today results from some challenges in the delivery of the IT system that are now largely resolved. There is no review in Scotland and we are not changing the shape of the PVG scheme in any way at all. Scottish stakeholders' continued interest and views on the PVG scheme have helped us to shape a system that strikes the balance between robust regulation and proportionate protection, without compromising on the need to minimise bureaucracy.

The PVG scheme applies only to people who work with vulnerable groups, not to personal arrangements that people make with friends or family, or to work positions in which there is no opportunity to cause harm to vulnerable groups.

The corresponding disqualifications order provides for the PVG scheme to recognise all the other barred lists in the UK. It preserves current barring arrangements with regard to work with children and puts in place barring arrangements for work with protected adults.

In conclusion, I commend the orders to the committee as an essential part of ensuring that the PVG scheme interacts smoothly and effectively with the Independent Safeguarding Authority and other UK bodies. That is important to prevent any loopholes that could be exploited by those who seek to harm children or protected adults. I am happy to answer any questions that the committee has.

The Convener: Thank you, minister. Your decision to delay implementation seems sensible to ensure that the system is effective and successful, but are you confident that it will be able to go live by February?

Adam Ingram: Yes. I am acting on recommendations that the PVG programme board made in its readiness review of the scheme that it reported back to me on Monday. The board is confident that a launch in February is both achievable and realistic. We will now revisit the programme that we established for a launch at the end of November and reschedule elements of it. I will be able to announce a specific go live date before Christmas.

The Convener: Okay. Does the short delay in introducing the new scheme have any implications for those organisations that were preparing for the changes?

Adam Ingram: As I said in my remarks, we are in close contact with all the relevant stakeholders. I will be sending out information to them on the back of today's announcement to explain what we are doing. For example, the marketing programme

that we set out will be rescheduled to take account of the different timetable. We will ensure that everyone is made fully aware of what we are doing.

Elizabeth Smith: Minister, thank you for your comments. As you know from my past record at committee, I am slightly reluctant about some aspects around the protection of vulnerable groups, but nonetheless I understand what you say about the need to ensure that all loopholes are closed and how the instruments that are before us will do that. I hear exactly what you say about how you are not revisiting the scheme, and I do not want to do that, but I put on record again that there are issues—voluntary groups and people such as the Scottish Parent Teacher Council have presented them to you—about the balance that you have just enunciated between legal protection and a commonsense approach. As you know, the coalition Government down south has been looking at the matter, because the last thing that we want is for the legislation to be overly bureaucratic and to stop that commonsense approach to many activities. There is still a need to allay the concerns of some groups about that. I ask you again to put on record that you will do everything possible to ensure that as much help as possible is given to those groups.

Adam Ingram: Absolutely. I endorse your comments. We have tried to create the robust protection regime that we need to protect our children and vulnerable adults in such a way that it does not constrain normal activities that parents and others would try to—

Elizabeth Smith: What I am asking, minister, is if we found that the new legislation constrained certain activities, would you reconsider it?

Adam Ingram: Obviously, we have taken a great deal of trouble to try to ensure that we do not end up with a system where that happens. We have consulted widely to try to make the scheme as proportionate as it possibly can be.

You mentioned the SPTC's criticisms, and I have responded to them. The examples that it put into the public domain were slightly misleading, in that none of the activities described would have required disclosure checks. As you might know, we are pretty rigorous in trying to ensure that inappropriate disclosures are not made.

We have a compliance regime in Scotland that includes measures such as registration. Disclosure Scotland has refused registration to about 35 organisations in the past 18 months, because it did not believe that they were related to regulated work of the kind that we are concerned with. There is an audit of organisations, so if a flood of applications come in that are not particularly appropriate or about which we have

concerns, they will be investigated. People can raise complaints against inappropriate requests for disclosures. We are trying to build into the system all the checks and balances that are needed.

Ken Macintosh: Just as a matter of interest, I was approached by a teacher a week and a half ago who raised yet another example of the absence of disclosure checks proving to be an obstacle to a school trying to organise an activity that required parent volunteers. That was for a one-off activity for which any exercise of proper judgment, in my mind, would have shown that such checks were simply unnecessary. The local authority was protecting its own back rather than protecting the interests of children. I mention that just to make the minister aware that our battle—and it is our battle, communally—goes on.

One big improvement in recent Scottish statutory instruments on the matter has been the introduction of disclosure portability. Does the delay mean that the portability part of the new system will also now be delayed until February?

Adam Ingram: The new scheme will be launched in its entirety in February, so the current service that is being provided will continue until that point. The portability kicks in along with the new scheme when it is launched.

Ken Macintosh: I appreciate that the complexity of the two orders that are before us is mostly to do with the transitional arrangements and the different timings north and south of the border and in Wales and Northern Ireland. I want to return to the underlying principles, just to remind me and the committee of them. What is the relationship between a barred list in England and a list in Scotland? Does an individual who is barred in England automatically go on to our list in Scotland and vice versa, so that all names should be on both lists?

Adam Ingram: Andrew Mott wants to say something on that specific point.

Andrew Mott (Scottish Government Children, Young People and Social Care Directorate): Basically, when an individual is listed, they are listed in only one jurisdiction, but the other jurisdictions can choose to recognise that listing. For example, an individual might have been considered by the Independent Safeguarding Authority and included on the children's barred list under the Safeguarding Vulnerable Groups Act 2006, which would prevent them from doing regulated activity in England and Wales. The corresponding disqualifications order ensures that, for all the different lists, that person is barred from doing regulated work in Scotland.

Currently, under POCSA, all the other UK children's barred lists are recognised so, in effect, the corresponding disqualifications order simply

preserves the current arrangements. Obviously, we do not have an adults list at present in Scotland, so although all the barred lists from around the UK are disclosed on an enhanced disclosure for working with protected adults, there is obviously no bar. However, with the PVG scheme, we are implementing the recognition of all those lists so that an individual who is on the protection of vulnerable adults list or the SVG act adults barred list would be barred from doing regulated work with adults in Scotland. In short, an individual should be listed only once in one place, but they will be barred throughout the United Kingdom.

11:30

Ken Macintosh: That makes sense. I could not make sense of why the corresponding disqualifications order talks about which list somebody should be on. You are saying that, in practice, when an organisation or employer applies to Disclosure Scotland to find out whether an individual is listed as unsuitable to work with children, Disclosure Scotland will automatically check not just the Scottish list, but the English, Welsh and Northern Irish ones.

Andrew Mott: That is right. Under enhanced disclosure in the PVG scheme, an organisation that applies to Disclosure Scotland for the appropriate disclosure can be assured that all the relevant lists have been checked. So that connection is made.

Ken Macintosh: That is fine.

I turn to another element that I am not quite sure of. The explanatory note for the miscellaneous provisions order states that the order will

"extend the provision that no proceedings are competent against Scottish Ministers to cover information provided to them in pursuance of any other power or duty".

I am not suggesting that Mr Ingram should appear in court to defend actions. I can understand the measure from one point of view, because we are dealing with information and I presume that the point is that ministers are not responsible for the accuracy of that information. However, how would an individual about whom information is incorrect challenge the authenticity of that information?

Andrew Mott: To take an example, if information was provided by an English employer or police force and on that basis we put an individual under consideration for listing, and it then turned out that that information was not right, the individual would make representation about the information as part of the consideration for listing process. It might be found that there was a problem with the information and that it was not accurate. The provision to which Mr Macintosh refers will mean that there cannot be any action for

damages against the Scottish Government or Disclosure Scotland, which would have processed the information in good faith. There might be issues with the organisation from which the information originated, but that would be a matter for the individual to pursue. However, in relation to the Scottish Government's responsibilities, Disclosure Scotland would have processed information that was received in good faith and handled it appropriately. The individual would have the chance to make representation, and when the problem came to light the consideration for listing would end. The legislation provides for us to do everything in our powers to ensure that such cases are handled fairly.

Ken Macintosh: There was a high-profile case that made the newspapers recently involving a man in Edinburgh whom the local authority said was a murderer. He went to hospital and was applying for something, and the staff suddenly changed their attitude to him because the information had been circulated. Once the information was out, it was almost impossible for him to unpick it. The original source of the information was difficult to find out, and there was another issue about who was misusing the information. I appreciate that the minister cannot be held responsible for the authenticity of some information, but there clearly must be a duty on Government, local government, the employer or somebody to ensure that information is not misused. If people cannot sue ministers, whom can they sue? I am not saying that people should necessarily sue anybody, but how do people correct information if ministers have no obligation on that?

Adam Ingram: As you will appreciate, several cases have been sent to me by members and others involving people with concerns about the quality of information that appears on their disclosure certificate. Most of that information emanates from police computers. We usually direct people to the relevant police force and ask it to review the information that it holds. That is normally the first port of call.

We have discussed in the committee how things move from there and the three different kinds of dispute through which the issues can be addressed. I am as concerned as anybody about individuals' civil liberties and the potential for miscarriages of justice or the equivalent happening. We always need to be vigilant.

On who can be pursued, can I—

Ken Macintosh: Let us put things this way. Ministers cannot be pursued in the courts, which is fine, but do they have a duty to rectify or address such matters if they are brought to their attention?

Andrew Mott: It is important to be clear that, for the purposes of the PVG scheme, the answer to that is absolutely. If information comes to light on an individual's disclosure certificate or leads to their being considered for listing, the individual can challenge it. The minister has just described how an individual can dispute what is on a certificate. Equally, if the individual is being considered for listing, they can make a representation on any information that is being considered. Therefore, by the end of those processes, the information in the PVG scheme or the information that leads to their being listed or not being listed will have been corrected for PVG scheme purposes.

The residual issue for the individual is whether they need to take action about the source. If, for example, an individual believed that an organisation had malevolently or mischievously made a referral, they might want to take action against it because of the reputational damage that had occurred. Members can rest assured that what is in the PVG scheme and what leads to consideration for listing will be accurate, as the individual will have every opportunity to engage in the process. The individual may want to pursue in the courts or elsewhere issues relating to how other organisations have behaved, if they have residual problems with that.

Ken Macintosh: I want to explore that. There is a balance to be struck. Much is being done in the minister's name, and the power of Government is being used to introduce and enforce a law, so it is important that there is a way of holding the Government responsible for its role.

Finally, I noticed that the miscellaneous provisions order allows for costs to be paid from Disclosure Scotland to the Scottish Police Services Authority. I did not realise that there was a transaction from one public body to another for the sharing of information. Are the costs significant? How much will be transferred? Is it a significant income for the Scottish Criminal Record Office?

Adam Ingram: The fee is charged by the Scottish Police Services Authority.

Michael Proctor (Scottish Government Children, Young People and Social Care Directorate): The SPSA provides the criminal history system. Currently, we do not pay any fees to it for the provision of information. The National Policing Improvement Agency in England provides the police national computer, and it charges Disclosure Scotland fees for the provision of access to that as part of its cost recovery model. It is the same fee that all the police forces are charged for their access to the police national computer. Arrangements that are in place mean that the Scottish Government pays the NPIA for Scottish police access to the PNC. Disclosure

Scotland pays the NPJA for access to the PNC for disclosure purposes. Those costs are fully covered within the fees that are charged for Disclosure Scotland services.

Ken Macintosh: I want to clarify matters. There would be no fee transactions or cost transfers for most cases in Scotland, but what if people were looking for information from England or Wales? If somebody was on the list in England, there would surely not be a cost for finding that out. Would there be a cost only if someone wanted to go to the Scottish Police Services Authority to find out more information?

Michael Proctor: The system works in two ways. The NPJA provides us with nominal information—that is, the names and dates of birth of everyone it has a record of. We pay an annual cost to access that information and receive daily updates on it. The provision of that information involves a significant transaction for the NPJA.

Ken Macintosh: Does it pay a cost to the SPSA similarly?

Michael Proctor: No.

Ken Macintosh: So it is only one way: we pay it, but it does not pay for our—

Michael Proctor: No. Sorry—I thought you were asking whether Disclosure Scotland pays.

Ken Macintosh: Does it pay a similar cost to Disclosure Scotland?

Michael Proctor: I am not the world's leading expert on this. Our colleagues in the justice department deal with all that, so perhaps the easiest way for me to be sure to give you the correct answer is to go away and confirm the position. My understanding is that English forces do not access the criminal history system at all. All the information that is on the CHS is updated on to the PNC, so there is not an equivalent transaction for us.

Ken Macintosh: It would be good to get further clarification on cost.

Adam Ingram: We shall write to the committee about that.

Kenneth Gibson (Cunninghame North) (SNP): Minister, this week I have had two constituents raise issues about disclosure and multiple applications. Ken Macintosh talked a wee bit about the commonsense approach. I have a constituent who got Disclosure Scotland approval in September from the General Teaching Council for Scotland, but the local authority to which they applied—East Renfrewshire Council—said that it wanted an additional disclosure check. There is an issue about portability and the unwieldy nature of the system. A lot of people are really quite concerned about the bureaucracy that they have

to go through. Surely it is a nonsense when a local authority refuses to accept a disclosure check by the GTCS. Those issues have to be addressed.

Adam Ingram: Absolutely, and that is the purpose of the protecting vulnerable groups scheme. Obviously it is disappointing that we are not able to launch as we planned to do at the end of this month, but there is only a short delay. I hope that your constituents' frustrations will be addressed very soon and we can do away with multiple applications. The problem is essentially that disclosure is only a snapshot in time, whereas with the membership scheme we will be able to update the information continuously. We will be able to flag up to employers if a person in their workforce has become unsuitable through getting a conviction or new information becoming available. It will be a considerable improvement and will address the issues that you have just described.

The Convener: That concludes our questions to you and therefore our consideration of item 2. We will move straight to item 3, which is formally to consider the Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Order 2010. I invite the minister to move motion S3M-7180.

Motion moved,

That the Education, Lifelong Learning and Culture Committee recommends that the Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Order 2010 (SSI 2010/draft) be approved.—[*Adam Ingram.*]

The Convener: We have up to 90 minutes to debate the motion, which I hope we will not take.

No member wishes to speak and the minister has no closing remarks to make.

Motion agreed to.

The Convener: Agenda item 4 is formal consideration of the Protection of Vulnerable Groups (Scotland) Act 2007 (Corresponding Disqualifications) Order 2010. No motion to annul has been lodged. No member wishes to comment on the order. Do members agree that we have no recommendation to make on the order?

Members indicated agreement.

The Convener: We will now suspend the meeting to allow the minister's officials to leave, although I ask the minister to remain with us.

Adam Ingram: I will be here.

The Convener: I hope that he will soon be joined by some officials from another section of the Scottish Government.

11:45

Meeting suspended.

11:48

On resuming—

Children's Hearings (Scotland) Bill: Stage 2

Section 159—Review of requirement imposed on local authority

The Convener: The final item on our agenda is the sixth day of our consideration of the Children's Hearings (Scotland) Bill. The Minister for Children and Early Years has remained with us for this item.

Amendment 400, in the name of the minister, is grouped with amendments 432, 477, 478, 475, 480, 465 and 479. In calling the minister to speak to the amendments, I ask members of the committee to pay attention and to cease their conversations, as the noise levels are a little distracting.

Adam Ingram: This group of amendments will make minor technical and drafting changes to the bill, but none will alter the policy. The amendments seek to achieve consistency of terminology and clarification of existing provision. For those reasons, I do not propose to go into them all in detail, but would be very happy to provide more detail should the committee so wish.

I move amendment 400.

Amendment 400 agreed to.

The Convener: Amendment 207, in the name of Kenneth Macintosh, is grouped with amendment 208.

Ken Macintosh: Amendments 207 and 208 provide that, where it is unclear which local authority is the relevant local authority in respect of a child, the named local authority will continue to act as the relevant local authority until the sheriff has made his or her determination. If the named local authority turns out not to be the relevant local authority, it should be entitled to expenses for the cost of caring for the child in the interim. As it is currently drafted, the provision does not clarify who has interim responsibility for the child. The amendments would ensure that the child continued to be looked after until the correct local authority was named, and that the local authority that is not the relevant local authority would be reimbursed for any costs that it accrued while caring for the child.

I move amendment 207.

Adam Ingram: I understand the logic behind amendments 207 and 208 as explained by Ken Macintosh. However, where there is dispute about the relevant local authority status, there remains

an absolute duty on the authority on which the duty is imposed under an order to continue to provide compulsory measures of supervision where a compulsory supervision order, interim order or medical examination order is in place. The bill does not interfere with the conditions that are set out in the orders and authorisations that are made by the children's hearing or sheriff. Amendment 207 is therefore unnecessary.

Amendment 208 appears to seek to ensure that where a local authority is successful in a review of a requirement that is imposed on it, costs should be reimbursed by the relevant local authority that is determined by the sheriff. I very much agree with that premise, but section 159(8)(b) already provides for it. The provision that is made by that section will provide the sheriff with the discretion to reimburse such sums as the sheriff considers appropriate, and not just the costs that are incurred from the making of the application by the local authority to its determination.

It seems that we both agree with the policy intention, so I ask Ken Macintosh to seek to withdraw amendment 207 and not to move amendment 208.

Ken Macintosh: I appreciate the clarification that there will remain an absolute duty on the named local authority to continue to provide for the child. The minister is right to say that there is already a mechanism in the bill to reclaim costs. The amendment, which I lodged on behalf of the Law Society, would make the process clearer and more automatic. However, in the light of the minister's comments, I ask permission to withdraw amendment 207.

Amendment 207, by agreement, withdrawn.

Amendment 208 not moved.

Section 159, as amended, agreed to.

Sections 160 and 161 agreed to.

Section 162—Child absconding from place

The Convener: Amendment 401, in the name of the minister, is grouped with amendments 402 to 415.

Adam Ingram: This group of 15 amendments will apply when a child who is required to stay in a place away from home—by virtue of various orders or warrants—absconds from a place or from a person who is authorised to have control of the child. Sections 162 and 163 set out recovery provisions whereby a child may be arrested without warrant and taken back to a place or a person that they have absconded from.

Amendments 401, 406, 411, 412, 413 and 415 will make minor drafting improvements with no impact on policy.

Amendments 402 and 403 will extend the scope of section 162 to ensure that recovery provisions apply in all circumstances where a child is kept in a place of safety, including under child protection orders and other such measures, and where the chief social worker decides to transfer a child who is already subject to a compulsory supervision order to an alternative place of residence, for example because a placement has broken down. That carries across to the bill the intentions of the Children (Scotland) Act 1995.

Amendments 404 and 405 will amend section 162 to provide clarity about the duration of the period during which the child may be detained in the alternative place of safety when they cannot be returned to the place from which they have absconded, perhaps because a person is unwilling to continue to care for the child. Those amendments will bring the bill into line with current practice and ensure that a child is detained for a minimum period, depending on arrangements that need to be put in place to provide longer-term protection for the child. For example, a child may be kept in an alternative place of safety until a children's hearing or review hearing is arranged or until a child assessment order is completed.

Amendments 407 to 410, which will amend section 163, mirror amendments 402 to 405, except that they will apply where a child absconds from a person who has, or is authorised to have, control of the child, rather than from a place.

Amendment 414 seeks to reduce unnecessary overlap in section 164 of the bill.

I move amendment 401.

Amendment 401 agreed to.

Amendments 402 to 405 moved—[Adam Ingram]—and agreed to.

Section 162, as amended, agreed to.

Section 163—Child absconding from person

Amendments 406 to 410 moved—[Adam Ingram]—and agreed to.

Section 163, as amended, agreed to.

Section 164—Offences related to absconding

Amendments 411 to 415 moved—[Adam Ingram]—and agreed to.

Section 164, as amended, agreed to.

Section 165—Use of evidence obtained from prosecutor

The Convener: Amendment 209, in the name of Kenneth Macintosh, is grouped with amendments 210 to 212.

Ken Macintosh: Section 165 says:

"The Principal Reporter may request a prosecutor to give the Principal Reporter evidence held by the prosecutor in connection with the investigation of a crime or suspected crime".

Amendment 209 would add the child, the relevant person and the safeguarder to those who are able to request information from the prosecutor. Amendments 209 to 212 come from the Law Society of Scotland. In its view, the reporter should not be the sole person with the power to make such a request; the child, relevant person or a safeguarder should have equal rights to recover evidence from a prosecutor. That is necessary to ensure a fair trial and equality of arms.

12:00

Amendments 210 and 211 are consequential. Amendment 212 is slightly separate. Currently, section 165(4) says:

"The prosecutor may refuse to comply with the request if the prosecutor reasonably believes that it is necessary to retain the evidence".

Amendment 212 would give the person who made the request for information from the prosecutor—that could be the principal reporter, if section 165(2) remains as drafted, or the additional individuals if we accept amendments 209 to 211—the right to apply to the sheriff for an order requiring the prosecutor to produce the evidence. The reason for the amendment, which also comes from the Law Society, is that a decision by a prosecutor that information should not be revealed to the reporter should be open to challenge before the sheriff. The court should be the final arbiter in such matters.

I move amendment 209.

Adam Ingram: As Ken Macintosh said, amendments 209 to 212 seek to provide the child, relevant person and safeguarder with the right to request evidence from the prosecutor in relation to an application to the sheriff to establish grounds for referral. I understand that, in developing the amendments, the Law Society believes that it is providing a child, relevant person and safeguarder with equal rights to the reporter. That is an admirable objective and one that I would normally support. However, I suggest that the Law Society has perhaps not fully thought through the implications of the amendments and the context in which the rights would be extended.

When a reporter makes an application to a sheriff for the establishment of grounds for referral, the onus is rightly on the reporter to provide the requisite evidence to assist the sheriff in making a decision. If the reporter cannot provide evidence to establish grounds in offence referrals beyond

reasonable doubt, the case falls. That is the foundation for providing the reporter with the power to seek information from the prosecutor to help with that process. The power would not be for the sole purpose of gaining evidence that supports the reporter's view but would be used for all evidence that would support the establishment of grounds or not support the case made.

Although the amendments are well-intentioned and support the worthy principle of equality of arms, they could lead to troublesome practice whereby the prosecutor would be required to release sensitive information without any consideration of its relevance being considered in the sheriff court. The threshold for making such requests is low and could lead to requests being submitted as a matter of habit rather than out of need.

The recently enacted Criminal Justice and Licensing (Scotland) Act 2010 contains a detailed scheme for the disclosure of evidence in criminal prosecutions in order to maintain the necessary balance between the right to a fair trial and ensuring that sensitive information that would prejudice the public interest or safety of others is not disclosed. Amendments 209 to 212 completely bypass those safeguards, so I consider them to be inappropriate and unnecessary.

I urge Ken Macintosh to withdraw amendment 209 and not to move amendments 210 to 212.

Ken Macintosh: I appreciate the minister's remarks, particularly those about the fact that other legislation contains other safeguards about the use of evidence.

Although the amendments were motivated by a desire to produce equality of arms and equality in the process, committee members are all conscious of the need not to overlegalise proceedings. I can imagine circumstances in which, even when the principal reporter does not request information, others do.

On that basis, I seek leave to withdraw amendment 209.

Amendment 209, by agreement, withdrawn.

Amendments 210 to 212 not moved.

Section 165 agreed to.

Section 166—Cases involving sexual behaviour: evidence

The Convener: Amendment 416, in the minister's name, is grouped with amendments 417 to 423.

Adam Ingram: Amendments 416, 418, 419, 422 and 423 all relate to taking and admitting evidence in sheriff court cases that are connected

to the children's hearings system and which involve sexual behaviour and the questioning of witnesses. The amendments clarify what is meant by sexual behaviour and include references to engaging in sexual behaviour as well as to

"undergoing or being made subject to any experience of a sexual nature."

By agreeing to the amendments, we will ensure that the provisions and the protections that they offer cover the victim of sexual behaviour and any child who is alleged to have committed an offence that involves sexual behaviour.

Child and adult vulnerable witnesses deserve to be protected, for self-evident reasons, and those who are alleged to have committed such an offence deserve protection because they are often the most concerning children. The protections also fit with the ethos of the children's hearings system, in which the child's welfare is paramount.

Amendment 417 makes it clear that statements can be made in different formats—for example, as a written document, sound recording or visual recording—and given at the hearing or before it.

Amendment 421 is a technical amendment that will clarify that, in section 168, it is a safeguarder who is appointed by the sheriff who may apply to the sheriff for an order in relation to evidence under the provisions.

I move amendment 416.

Amendment 416 agreed to.

Amendments 417 and 418 moved—[Adam Ingram]—and agreed to.

Section 166, as amended, agreed to.

Section 167—Cases involving sexual behaviour: taking of evidence by a commissioner

Amendments 419 and 420 moved—[Adam Ingram]—and agreed to.

Section 167, as amended, agreed to.

Section 168—Sections 166 and 167: application to sheriff for order as to evidence

Amendments 421 to 423 moved—[Adam Ingram]—and agreed to.

Section 168, as amended, agreed to.

Section 169—Amendments of Vulnerable Witnesses (Scotland) Act 2004

The Convener: Amendment 424, in the minister's name, is grouped with amendments 425 to 429.

Adam Ingram: This group of six amendments seeks to make technical, consequential and

drafting improvements to the Vulnerable Witnesses (Scotland) Act 2004 by amending section 169 of the bill.

Amendments 424 to 426 provide clarity on the timing of the principal reporter's lodging a child witness notice or making a vulnerable witness application. Those applications should be lodged or made before the hearing at which the child or vulnerable witness gives evidence.

Amendment 427 is a technical amendment that will provide consistency of terminology in proposed new section 16A of the Vulnerable Witnesses (Scotland) 2004 Act.

Amendment 428 is also technical; it clarifies what is meant by a "prior statement" in proposed new section 22A of the 2004 act. Amendment 428 will strengthen the 2004 act against any challenge to the admissibility of a prior statement.

Amendment 429 is a new provision within proposed new section 22A of the 2004 act. It clarifies what is meant by "contained in a document", and it ensures that the document is appropriately authenticated, personally, by the person who makes it and who has direct knowledge of it or who approves it.

I move amendment 424.

Amendment 424 agreed to.

Amendments 425 to 429 moved—[Adam Ingram]—and agreed to.

Section 169, as amended, agreed to.

Section 170—Children's hearings: procedural rules

Amendment 167 moved—[Adam Ingram]—and agreed to.

Section 170, as amended, agreed to.

Section 171—Children's hearing: disclosure of information

The Convener: Amendment 329, in the name of Elizabeth Smith, is grouped with amendments 213, 330 and 430. Some information about pre-emption is given with the groupings of amendments; the information was circulated before today's meeting.

Elizabeth Smith: Amendments 329 and 330 are really probing amendments. We have discussed the extremely important issue of the confidentiality of the child, and I have been struck by the question of whether by increasing the confidentiality of the child we might create a problem by reducing the confidentiality of the parents and reducing their right to find out information during the process. I would welcome the minister's comments on that. If we create a

system that allows for greater confidentiality of the child—which I would fully understand in certain circumstances—but, in so doing, deny parents some of their rights to know information so as to make their own judgment on what has or has not been discussed, I think that difficulties would arise.

I move amendment 329.

Ken Macintosh: I thank Elizabeth Smith for her amendments 329 and 330. I lodged amendment 213 for the same reason. As members will remember, the issue was raised during earlier discussions in committee. Our adviser has also raised concerns about confidentiality implications and legal implications.

Amendment 213 provides that information relevant to the decision of a children's hearing can be withheld only if

"disclosure would result in a real possibility of significant harm to the child";

if

"the hearing is satisfied that the interests of the child require non-disclosure";

and if those two considerations

"are not outweighed by the interest of other parties in having an opportunity to see and respond to the material".

The Law Society of Scotland has pointed out several cases that highlight the difficulties with this section of the bill and the European convention on human rights. Information can be withheld only if disclosure would result in a real possibility of significant harm to the child.

Amendment 213 has three parts to it, and the Law Society would point out that non-disclosure should be the exception, not the rule.

12:15

Adam Ingram: This group of amendments addresses the provisions in the bill that are intended to provide the hearing with the power to withhold information about a child from a particular person when it considers that release of the information to that person would place the child's welfare at risk. The circumstances in which the power could be used are fairly wide. It could be used to withhold information about a child's residence from anyone—not just a relevant person—or to withhold details of a supervision order or information that the child has provided.

This is an entirely new power for children's hearings and has been widely supported in principle. However, the range of potential uses of the power and its impact on the rights of relevant persons have been the subject of some discussion—certainly during the committee's stage 1 evidence sessions. The committee also raised concerns about the power in its stage 1 report.

It should be noted that the power provides for an exception to the position in section 75, which states that, when a relevant person is excluded from a hearing to allow a child to speak, the chairing member of the hearing must explain to that person what has taken place during their absence.

There is undoubtedly a challenge in using the power: how to balance a child's safety with the rights of relevant persons. In my reply to the stage 1 report, I provided an illustration of how the power could operate. I would like to revisit that now.

The policy intention behind the provision is to provide the hearing with the power to ensure the safety of the child by withholding information when that is required to provide such protection. During the scrutiny process, all of us have agreed that we should not lose sight of the fact that these are children's hearings, in which the voice of the child must be heard. To that end, section 26 ensures that a child has the opportunity to express his or her views. Section 75 allows the hearing to exclude the relevant person from the hearing if their presence is preventing it from obtaining the views of the child or is causing, or is likely to cause, significant distress to the child.

Section 171 builds on those sections and allows a child to feel safe and comfortable when expressing any views and to feel confident that, as far as is possible, those views will not be shared in a way that could place the child at risk. It removes a potential barrier to children informing the hearing about events in their life or giving the hearing the true reason for their behaviour.

Although the power is important, I do not support its becoming the norm for all hearings. The norm is set out in section 75. The use of the power for which section 171 provides should be circumspect and, as a result, rare; I agree with the Law Society of Scotland on that point. For that reason, I have lodged an amendment that makes it clear that the test for using the power is whether the disclosure of information to any one of a range of individuals—not only relevant persons—would place the child at significant risk of harm. That benchmark is commonly used and understood in the context of child protection.

The amendment would allow the hearing, if it considers that the test has been met, to continue for further investigation without having to disclose the reason for continuation at that time. Once the risk of harm is removed, the justification for withholding information is removed. That may be the point at which a hearing makes a decision that has the effect of removing the risk to a child. The reason for that decision could include information that was not previously disclosed, on the basis that there is no longer a risk to the child. The

benchmark is in line with the views of the Law Society that drove Ken Macintosh's amendment.

I believe strongly that the power should be retained, but I agree with the intention behind the provisions in Liz Smith's and Ken Macintosh's amendments.

Liz Smith has lodged amendments that seek to ensure that information is disclosed, as a matter of course, to all those who have parental responsibilities or parental rights. I have two concerns about the amendments. First, they do not allow for situations in which the disclosure of information could put the child at risk, and they seem to remove the original policy intention behind the bill. Secondly, I do not understand why a distinction is made between those who have parental responsibilities and rights and other relevant persons. All of those who are relevant persons, either through the automatic process that is set out in section 185 or because they are deemed to be relevant persons under section 80, will enjoy the same rights. The provisions in the amendments seem to be intended to protect one category of relevant persons above others. For those reasons, I urge Liz Smith to withdraw amendment 329 and not to move amendment 330, as they have the potential to take the hearing back to the current situation, in which it is powerless to protect children when there is a clear need to do so.

I agree with the intention behind the amendment that Ken Macintosh has lodged on behalf of the Law Society—to clarify the use of the power. I have already noted points on which my amendment addresses common ground. However, I suggest that amendment 213 is an overly complex means of achieving what my amendment is intended to achieve: to clarify the high benchmark that justifies use of the power, with the result that its use should be the exception rather than the rule. The default position is that all information should be disclosed—and for the purpose of protecting the rights of relevant persons—unless a fairly complex set of exceptions apply. I argue that my amendment has a greater focus on child protection—without losing sight of the rights of relevant persons—and is, therefore, a preferable means of achieving the same aim. I urge Ken Macintosh not to move amendment 213.

Elizabeth Smith: Mr Macintosh raised the issue of ECHR compatibility. Can the minister guarantee that there is no problem with that?

Adam Ingram: You can have that guarantee.

Elizabeth Smith: On that basis, I am happy to seek permission to withdraw amendment 329.

Amendment 329, by agreement, withdrawn.

Amendments 213 and 330 not moved.

Amendment 430 moved—[Adam Ingram]—and agreed to.

Section 171, as amended, agreed to.

Section 172 agreed to.

Section 173—Sharing of information: panel members

The Convener: Amendment 431, in the name of the minister, is grouped with amendments 467 and 468.

Adam Ingram: I welcome the opportunity to discuss the feedback loop, which is a really helpful provision that will ensure a better flow of information across the hearings system.

Amendment 431 fulfils the commitment that I gave to the committee in response to its stage 1 report. It proposes a small change to the national convener's power under section 173 to request information from a local authority and to disclose it to members of the children's panel who live or work in that local authority area. In addition, it would be beneficial for the national convener to be able to disclose national statistics to panel members and to share information about the implementation of compulsory supervision orders across all local authority areas, so that panel members can see the national, as well as the local, picture.

Amendment 431 seeks to broaden the power of the national convener to disclose information to all panel members.

Ken Macintosh's amendments in this group seek to put into the bill an excessive level of detail about the operation and purpose of the feedback loop on a micro level. Amendment 467 would require the national convener to gather a vast amount of detailed information about the implementation of every compulsory supervision order—in particular, about any changes to the circumstances or the overall wellbeing of the child concerned. It stipulates that that information should be provided to the members of any future hearing that considered that child's case and to the members of the hearing that made the order.

Amendment 468 provides for the same information to be gathered annually in an anonymised format and submitted to ministers in a report to be laid before Parliament. That report would present the information that had been gathered at national level and by each local authority. In my opinion, requiring all that information to be gathered would be a disproportionate use of the feedback loop.

In developing our provision, our aim has been to ensure that panel members are aware of issues, trends and outcomes at local and national level. At the same time as doing that, we want to avoid

bombarding them with more detailed reports, given the many pressures that they face in their work and their home life, not to mention the preparation that they already do for hearings.

Feedback from our partner engagement events in the summer supported that approach. A call was made for a balance to be struck between providing useful information and not overburdening panel members. I am not convinced that a requirement to provide feedback on each and every supervision order would pass that test. It would be extremely time-consuming and complex to ensure that all relevant panel members received all the information proposed. That was recognised at stage 1 by one of the panel chairs who, in evidence, cautioned that a system for providing feedback on individual cases "could become extremely bureaucratic."

I wonder whether Ken Macintosh has made any assessment of the likely cost of gathering and passing on the information in question, given that there are currently more than 13,000 supervision requirements in place each year. The national convener would almost certainly need to employ dedicated, probably full-time, staff to gather it and send it on to panel members. It would place a considerable burden on local authorities and would divert their staff from providing services to children and young people if they had to spend time preparing numerous detailed reports. Has Ken Macintosh sought the views of the Convention of Scottish Local Authorities or the Association of Directors of Social Work on his proposal? I think it unlikely that they would be supportive of it.

Amendments 467 and 468 raise some other questions. It is not clear whether the members of the panel that made a supervision order are to receive all quarterly reports throughout the duration of the order, which could last for a number of years, until the child is 18. What information should be provided to panel members who have varied or continued an order on review? Perhaps Ken Macintosh can share his thinking on those points.

I also have concerns that requiring the proposed information to be gathered would create duplication. The national convener would be asked to collect, in part or in whole, the same information that the principal reporter may request for the purposes of a review hearing under section 133, which will be provided to the panel in advance of that hearing. It clearly makes no sense for them both to do the same thing. I think that that is a key point. There is already a lot of information in the system, but it is not pulled together in a coherent way. If we are prescriptive in the bill about what should be collected, we run the risk of duplication or overlap.

Allowing the national convener to consult on and agree the information that should be gathered provides a means of ensuring that relevant information is gathered and fed back in a sensible and constructive fashion. We have asked partners at our engagement events and elsewhere what that information should be, and there is no consensus.

I suggest that we give the national convener a little time to determine what information should be collected and fed back. That is what the bill, as drafted, allows for. Our implementation working group has already done some initial work on that, which I shared with the committee in response to its stage 1 report, and that should provide a useful starting point for the national convener.

It follows that I do not support amendments 467 and 468. I do not believe that they are needed to enable the feedback loop to work effectively and proportionately.

I move amendment 431.

12:30

Ken Macintosh: I will speak to amendments 467 and 468. The feedback loop is one of the most important elements of the bill and the committee welcomed it. Apart from anything else, the bill focuses mainly on updating processes and structures, and one of the big attractions of the feedback loop, which committee members appreciate, is the fact that, for the first time, that action will focus on the outcomes for children. All of us welcome that.

The evidence that we have heard from children's panel members is that they are often in the dark. Some local authorities are very good at sharing information and there is good practice at a local level, but in other local authorities there is not. We have all heard stories about panel members making a decision and hearing no more about a child until the child appears before them the following year.

The two amendments address the detail of what should be in the feedback loop. Amendment 467 is concerned specifically with information that should be shared with the panel members themselves. As the minister suggested, it would cover any changes in the circumstances that gave rise to the decision to make a compulsory supervision order and any changes in the overall wellbeing of the child. That information would be shared with both the original panel members and any future panel members. It is difficult to see what is wrong with any of those requests for information. I would have thought that any panel member would want to know exactly what had happened as a result of the decisions that they had made and that any panel member who came in to look at a decision that

had been made by a previous panel would want to know what the outcome had been. That is absolutely the minimum information that should be provided to panel members.

The committee welcomed the feedback loop but raised questions about the lack of information concerning what the feedback loop would entail. Since the bill was brought before the committee, we have received further information from the minister on how the feedback loop will operate, but I am still concerned about the lack of detail in the bill. The minister has referred to my amendments requiring an excessive level of detail, but I think that that would be the bare minimum that panel members would require. The minister also described the proposal as disproportionate. I am sure that he does not wish to patronise panel members, but he must be aware that the number of papers that the committee receives pales by comparison with the number of papers that a panel member receives every time that a case comes up. The suggestion that panel members would be unable to cope with such information about the welfare of the child in whom they have taken an interest and about the outcome of the decisions that they have made is simply wrong. Panel members have an active interest and they want to learn and be informed.

I suggest that, in asking for that detail, the amendments simply emphasise the good practice in sharing information that already exists in local authorities. If local authorities do not hold that information, they certainly should do. I believe that they do hold all the information. Sometimes, local authorities hold information that is of no use to anybody—they often collect it at the behest of national Government. However, in this case, we are talking about specific information about how the outcome of a children's panel decision affected the life of a child. The evidence base is the poorest part of the children's panel system, as we have discovered through the committee's evidence sessions, and it should be improved.

Amendment 468 is concerned with the same information but more in the round, in the sense that it considers the way in which children's panels operate throughout Scotland. It was of some concern to the committee to hear about the huge variation in decisions and outcomes in different areas. For example, in some local authorities, secure accommodation is used regularly; in others, it is never used. There may be good reasons for that, and both approaches may be successful. It is a positive aspect of the children's hearings system that it is local, and that local people can apply local decisions. However, it is difficult to know, without collecting, evaluating and sharing information, whether those are the most appropriate outcomes. It is important to include that in the bill.

I note in passing that my two amendments originated with Children Scotland, although other children's organisations had a lot of sympathy with them. The children's commissioner, in particular, highlighted his support for amendment 468 and quoted the recent Audit Scotland report, "Getting it right for children in residential care". Although he suggested that the issue is limited to only one section on children's services, he said that that highlighted the need for better information about outcomes for children and young people.

I was hoping for reassurance from the minister about how feedback would operate and the level of detail and amount of information that would be shared with panel members. Instead, I am far from reassured. It appears from his comments that he does not wish to share such information with panel members. I feel that that is wrong, and I feel stronger than ever that these amendments should be made to the bill.

Elizabeth Smith: I am very much in the middle of both arguments here—hopefully for good, logical reasons. I share Mr Macintosh's concern, because one of the most important factors—which, as Mr Macintosh says, is inherent in local delivery—is good-quality information. It has been put to us by many witnesses, and by children's groups, that the quality of information is crucial in making the best possible decisions. I am utterly convinced of the need for a bit more feedback than the current system provides. That is essential if we are to ensure that those who are making decisions on children's behalf are better informed.

I sympathise with what the minister says about the potential costs. I also hear what he says about the volume perhaps being a bit over the top. Obviously, that could increase the costs. However, I wonder whether we can have a bit of a compromise here. There is a need for more and better-quality information. I am struck by the accountability and transparency arguments that have been put to us by witnesses and by groups representing children's issues. I would welcome the minister's comments on that.

Margaret Smith: Over the past few weeks, as we have debated hundreds of amendments, there has been a tendency to lose sight of what the bill is meant to be about, which is improving outcomes for children. This is one area of the bill in which there is a real possibility of doing that, as long as the information that is given back to panel members is information that they can use to improve their best practice.

This has the potential to be an extremely important part of the bill. I am a bit like Liz Smith in the sense that I have some concerns that we might be using a sledgehammer to crack a nut. On the other hand, in the absence of greater reassurance from the minister, I am minded to go

for the sledgehammer in the hope that the minister might come back with something a bit more finessed—some sort of nutcracker—at stage 3.

Ken Macintosh's amendments have the benefit of giving clarity about what is involved. I think that that clarity is lacking in the bill as it stands, and to a lesser extent possibly in the minister's amendment.

I am caught slightly between the two proposals, although I am probably minded towards supporting Mr Macintosh's amendments. I am aware that Children in Scotland and other children's organisations support that approach. My main concern is whether the bill can improve results in the system for children. I feel strongly that it probably can and want to ensure that we take a bill into stage 3 that ensures that that can be done. Mr Macintosh's amendments would give clarity to, and probably improve, the bill.

I have a question for clarification. Is there any pre-emption or any reason why we cannot support both the minister's amendment and Mr Macintosh's amendments? Are they absolutely opposed to each other, or does the minister's amendment allow for, in effect, going beyond what is in Mr Macintosh's amendments to a more general power for the national convener? I would welcome clarification on that from the minister.

The Convener: I can clarify the procedure. There is absolutely no reason why members cannot agree to all the amendments in the group if they choose to do so. No amendment would be pre-empted by another amendment.

The issue that we are discussing is important. Children in Scotland's briefing to the committee in advance of the debate on the group of amendments makes the point that the Scottish Government has embarked on a recruitment campaign for children's panel members that asks people to help to fill in the cracks in children's lives. The point that many children's organisations and panel members would make is that, if people rise to that challenge, become panel members and sit in hearings, they will have no idea whether they have helped to fill in the cracks in children's lives. The information loop is key to helping all of us to ensure that we are helping to fill in those cracks. That is why many committee members are attracted to Mr Macintosh's amendments.

I would not want to put an unnecessary information-gathering burden on our local authorities, but could we reach a compromise that satisfies us all? I believe that the Scottish Government wants to ensure that we have the necessary information.

I hope that, in responding to the points that have been made in the debate, the minister will reflect on the points that I have made.

12:45

Adam Ingram: I agree with colleagues' views on the importance of the feedback loop. We need to introduce it to the system, not least to help panel members in reviewing decisions that they have made in the past and to help them to think about how they can improve decision making in the future. That is the key purpose of the feedback loop. It is not intended to hold local authorities to account.

I am concerned that Ken Macintosh's amendments would introduce something almost akin to a case management approach in view of the wealth of detail that would be required to be collated and presented to panel members. We should remember that panel members might see a young person only once. Further down the line, it will be another panel who sees them.

The sledgehammer to crack a nut analogy has been used several times during this bill process, but I think that the proposal is a bit over the top. It would be very costly, in that it would be a bureaucratic burden for local authorities, and it would lead to an information overload for panel members, who would be required to assimilate the information.

Having said all that, I appreciate the committee's concerns and I would like to develop a consensus on the issue, so I suggest that I work with committee members to introduce an amendment at stage 3 that will address the key issues that have been expressed today. We could take the matter forward jointly rather than moving ahead with the amendments that are in front of us today—except for the Government's amendment 431, of course, which extends powers.

The Convener: The minister has indicated that he wants to continue consideration of amendment 431, so the question is, that amendment 431 be agreed to.

Amendment 431 agreed to.

The Convener: Amendment 467, in the name of Ken Macintosh, has already been debated with amendment 431. Do you wish to move the amendment, Mr Macintosh? Have you had a chance to consider the minister's offer to attempt to reach consensus on the issue?

Ken Macintosh: I welcome the minister's very good offer but, if I may say so, I would like to welcome it from the position of having the provision in the bill. We will be happy to remove it at stage 3. I do not think that that is a difficult situation. I am approaching the matter in good faith and the minister is obviously also approaching it in good faith. I am sure that we can reach a compromise at stage 3 but, in the meantime, I think that the position as set out in my

amendments would be a better position to be in as a fallback.

Amendment 467 moved—[Ken Macintosh].

The Convener: The question is, that amendment 467 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

Against

Allan, Alasdair (Western Isles) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)

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

Amendment 467 agreed to.

The Convener: I hope that we will return to the issue at stage 3.

Amendment 468 moved—[Ken Macintosh].

The Convener: The question is, that amendment 468 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Smith, Margaret (Edinburgh West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

Against

Allan, Alasdair (Western Isles) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
McKelvie, Christina (Central Scotland) (SNP)

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

Amendment 468 agreed to.

Section 173, as amended, agreed to.

Section 174 agreed to.

Section 175—Mutual assistance

The Convener: Amendment 469, in the name of Christina McKelvie, is grouped with amendments 470 to 474.

Christina McKelvie: These amendments provide that the national convener, the Scottish Children's Reporter Administration and the principal reporter may request assistance in carrying out their functions under the bill. That

request could be made to local authorities and health boards to assist them with realising the decisions of a hearing and with supporting the care of the young person concerned.

Amendments 471 and 473 extend the scope of section 175(3) to provide that a local authority, in exercising its functions, may make a request for assistance to not only another local authority, but a health board. The purpose of that is primarily to take account of the fact that a compulsory supervision order could require the local authority to provide services that the authority does not itself provide, for example a health assessment.

The power to request that assistance and the duty to comply extend to all a local authority's functions under the bill, so they would cover, for example, an investigation into whether a child should be referred to the reporter, responses to requests for information by the national convener under section 173 and other functions relating to the implementation of any order. Sometimes there are health considerations to take into account in the implementation of orders, so health is tied into the system in a way that it has not been in the past.

There is evidence to suggest that appropriate health intervention leads to better outcomes for young people, and better outcomes are why we are here. In my experience, a truly holistic care plan for a young person leads to a much better outcome. Ensuring that a young person has access to all appropriate assessment and support is paramount to the welfare-based approach that we all believe in, and to the system.

The amendments follow the recommendations of our stage 1 report, and they meet the aspirations of a number of children's organisations, specifically Scotland's Commissioner for Children and Young People, who, in evidence at stage 1, suggested that we could do something of this sort.

I can give the example of a hearing that I was involved in a number of years ago. One of the outcomes was that the young person needed adolescent psychiatric treatment, but it was not until he came back to the review a year later that it was realised that he had not received the service. In that time, the self-harm that was going on had dug in a bit deeper and become more difficult to solve.

I hope that my colleagues will support me on this group of amendments, which I think address a key issue and ensure that a holistic health and care service is wrapped around children so that they get the best outcome, especially if some of the concerns are health based.

I move amendment 469.

Adam Ingram: I welcome these amendments. Children and young people who are under supervision have the right to expect that the help and support that they need will be delivered. As I indicated in my response to the committee's stage 1 report, I believe that it is right that not just local authorities but health boards are held to account for the support that they provide to children and young people who are under supervision.

Christina McKelvie's amendments offer a proportionate way to achieve that. It would not be right to make health boards subject to the enforcement power in the bill, which was designed specifically to deal with local authorities and serves that purpose. Building on the existing powers that ministers have to direct health boards offers us a constructive way forward. That will ensure that concerns about the provision of health services can be brought to the attention of ministers, who can, when required, direct the health board to take the necessary action.

It is positive that, under the proposed amendments, health boards will contribute, when appropriate, to the information that is gathered under the feedback loop. That information will be needed to ensure that the national convener can gain a full understanding of things, and it will be fed back to panel members. It is welcome that the ministerial power to direct a health board will apply in such instances, too.

It follows that I support the amendments. If the committee and the Parliament decide to accept them, the Scottish Government will take steps to emphasise to health boards how important the issue is. We will issue a formal chief executive's letter to all health boards prior to commencement of the provisions, drawing them to their attention and making clear ministers' expectation that health boards will play their part in the full implementation of supervision orders.

Christina McKelvie: I have made my argument. I hope that members will accept it and support the amendment.

Amendment 469 agreed to.

Amendments 470 and 471 moved—[Christina McKelvie]—and agreed to.

Amendment 432 moved—[Adam Ingram]—and agreed to.

Amendments 472 and 473 moved—[Christina McKelvie]—and agreed to.

Section 175, as amended, agreed to.

After section 175

Amendment 474 moved—[Christina McKelvie]—and agreed to.

**Section 176—Application of section 32 of
Sheriff Courts (Scotland) Act 1971**

The Convener: Amendment 433, in the name of the minister, is in a group on its own.

Adam Ingram: Amendment 433 enables court rules to be made in relation to proceedings before the sheriff under the bill. Section 176 currently makes it clear that all proceedings before the sheriff under the bill are civil proceedings, for the purposes of section 32 of the Sheriff Courts (Scotland) Act 1971. The Court of Session may make court rules under section 32 of that act. Section 176 currently enables court rules to be made in relation to the functions and rights of safeguarders who are appointed by the sheriff under parts 10 or 15 and for the sheriff to permit a person to be represented by someone who is neither an advocate nor a solicitor.

Amendment 433 will replace section 176 in its entirety. The new section retains the substance of the current section, but does so by specifically amending section 32 of the 1971 act. It also makes it clear that the power in section 32 can be used for two particular purposes in relation to proceedings under parts 10 and 15. One is to enable a witness to give evidence remotely, for example, by television link, and the second is to prohibit a person from personally conducting the examination of witnesses.

I move amendment 433.

Amendment 433 agreed to.

Section 176, as amended, agreed to.

Section 177 agreed to.

After section 177

Amendments 376, 377 and 331 moved—[Adam Ingram]—and agreed to.

The Convener: Although I hoped that we would complete our stage 2 deliberations this morning, that has not proved possible. The meeting will now close, but we will meet again tonight at 6pm in committee room 4.

Meeting closed at 12:59.

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