

# **EDUCATION, CULTURE AND SPORT COMMITTEE**

Tuesday 29 January 2002  
(*Afternoon*)

Session 1

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# CONTENTS

Tuesday 29 January 2002

	Col.
<b>ITEMS IN PRIVATE</b> .....	3035
<b>SUBORDINATE LEGISLATION</b> .....	3036
Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 (SS1 2001/476) .....	3036
Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001 (SS1 2001/477) .....	3036
Children's Hearings (Legal Representation) (Scotland) Rules 2001 (SSI 2001/478) .....	3036
<b>PETITION</b> .....	3050
Technology Teachers Association (PE233) .....	3050
<b>SCOTTISH QUALIFICATIONS AUTHORITY BILL</b> .....	3051

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## EDUCATION, CULTURE AND SPORT COMMITTEE

### 4<sup>th</sup> Meeting 2002, Session 1

#### CONVENER

\*Karen Gillon (Clydesdale) (Lab)

#### DEPUTY CONVENER

\*Mr Frank McAveety (Glasgow Shettleston) (Lab)

#### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)  
\*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)  
\*Irene McGugan (North-East Scotland) (SNP)  
\*Mr Brian Monteith (Mid Scotland and Fife) (Con)  
\*Michael Russell (South of Scotland) (SNP)

\*attended

#### WITNESSES

Cathy Jamieson (Minister for Education and Young People)  
Boyd McAdam (Scottish Executive Education Department)  
Linda Sneddon (Office of the Solicitor to the Scottish Executive)

#### CLERK TO THE COMMITTEE

Martin Verity

#### SENIOR ASSISTANT CLERK

Susan Duffy

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

Committee Room 2



## Scottish Parliament

### Education, Culture and Sport Committee

*Tuesday 29 January 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 13:38*]

### Items in Private

**The Convener (Karen Gillon):** Welcome to this meeting of the Education, Culture and Sport Committee.

Do we agree to take items 5, 6 and 7 in private, as they concern draft reports?

**Members** *indicated agreement.*

## Subordinate Legislation

### Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001 (SSI 2001/476)

### Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001 (SSI 2001/477)

### Children's Hearings (Legal Representation) (Scotland) Rules 2001 (SSI 2001/478)

**The Convener:** The next item on the agenda concerns three motions, in the name of Frank McAveety, that nothing further be done under instruments SSI 2001/476, SSI 2001/477 and SSI 2001/478.

I invite the Minister for Education and Young People and her officials to come to the table. Thank you for coming. I welcome you to your first formal meeting of the Education, Culture and Sport Committee in your capacity as minister. I am sure that the committee will meet you often in the future. Perhaps not all our meetings will be on issues such as this one.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** When I look at the volume of responses that we received and the amount of legal terminology that is contained in them, I almost regret the fact that the committee discussed the matter last week.

Last week, the committee expressed concern about a number of factors relating to the regulations. We had general concerns about defective drafting and inappropriate use of language, and felt that no parliamentary committee should have been presented with regulations that had been drafted in such a fashion. Our core concern was whether elements in the regulations were ultra vires. We did not get a satisfactory response to a concern that we raised last week about whether, in an attempt to address a presumed breach of the European convention on human rights, the Subordinate Legislation Committee and the Education, Culture and Sport Committee were being asked to verify legislation that might also constitute a breach of the ECHR. Given that this committee has previously had to revisit legislation for that reason, we felt that it was appropriate to raise the matter.

Having received a letter from the minister and obtained advice from our legal officers, we felt that certain issues of concern could best be dealt with in discussion today.

Do any other members wish to assist me in identifying issues relating to the instruments?

**Michael Russell (South of Scotland) (SNP):**

This is a difficult matter and last week's debate on it was intended to produce light as well as heat. The subsequent process has produced some light, but I do not know how much.

The key issue is the extent to which the concerns that were raised by this committee and the Subordinate Legislation Committee have been addressed. To find that out, we must deal with those concerns one by one. We must also have an indication of where the Executive's thinking has changed and—because it is always nice to hear this—where the Executive now believes that the drafting was defective and whether it accepts the criticisms.

The purpose of the motions is to find a way in which we can do the best for the children and others who will be served by the instruments, rather than to have an arcane debate about drafting. However, if the drafting is so defective that it damages the cause and the individuals involved, it would be irresponsible to allow the instruments to pass. An agreement between the Executive and the committee will be preferable to a defeat for one side or the other. That said, the minister's letter does not contain a clear indication of what she accepts was done wrongly or why she has chosen to reject some of the Subordinate Legislation Committee's advice and this committee's questions.

**Jackie Baillie (Dumbarton) (Lab):** They say that much can be achieved in a week. I am glad that the minister is aware of the details that were before the committee and that there have been substantial changes. Although the points on defective drafting, including some spelling errors, were less serious, some substantive errors were highlighted. I note that one of the issues that has not been accepted relates to payment of fees to legal representatives and I would welcome further clarification, because the Executive's legal advice is different from ours. Mike Russell's point is absolutely accurate. The people who will benefit from the instruments are more important than our debates about points of legal drafting.

As a relatively new member of the committee, I find that the whole process raises issues about the Parliament's procedures. Although I accept that there was no unnecessary delay because of Christmas, it strikes me that 40 days is insufficient for the Subordinate Legislation Committee to come back to the Executive and say that it has further concerns and would welcome further discussion. That is why we are in the rather bizarre position of potentially annulling an instrument without having anything to put in its place. If the convener were minded to raise that issue of parliamentary procedure, I would welcome the Executive's comments on that.

13:45

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** If we proceed and do not annul the instruments today, I ask the civil servants to recognise and examine the remaining vices issues.

**The Convener:** I certainly intend to write to the convener of the Subordinate Legislation Committee to ask whether she and I can make a direct approach to the Procedures Committee on the timetabling issues. I also intend to mention the consistently bad drafting. The instruments that we are considering today are not the first example that we have seen. Bad drafting has happened in a bill and in other instruments and it is affecting the issues. We do not want the issues to be affected by drafting problems in that way. It is important that we are able to distinguish between the two issues.

I suggest that I should approach Margo MacDonald so that she and I can write jointly to the Procedures Committee and make representations about the points that concern us. Do members agree to that course of action?

**Members indicated agreement.**

**The Convener:** I ask the minister to respond to some of the points that have been made before we discuss the matter further.

**The Minister for Education and Young People (Cathy Jamieson):** I am pleased to be at the Education, Culture and Sport Committee, having once been a member of the committee in what now seems like the dim and distant past.

I would like to take this opportunity to clarify some of the issues. I shall then ask the officials, who are known to members from previous meetings, to pick up on some of the specific points. I welcome the comments from committee members. It is important to remember that we are trying to introduce a scheme to give additional protection to children and young people in the hearings system, in the light of some ECHR concerns and of a judgment relating to the system. I hope that members found it useful that we circulated an example of the situation that the scheme would deal with. If we are talking about depriving a child or young person of their liberty by putting them into secure accommodation, we must try to ensure that their rights are adequately represented at a hearing. That is what we are trying to achieve.

We have tried to achieve that within the existing regulations and rules of the hearings system. Following last week's committee meeting, we gave a fairly full explanation, which deals with the points one by one. I hope that members will recognise that there has been an acceptance that drafting errors were made on some issues. Those errors

have been corrected or steps are under way to correct them. In some areas, there are different opinions and we can explore those in more detail if necessary. There are issues on which we are clear that the existing regulations and rules, which form the basis of the new regulations and rules, need to be examined. That is particularly true of the whole issue of safeguarders and curators.

The scheme, as outlined, has not attracted adverse reactions. In general, people think that it is an appropriate way forward. The people who are involved in training to implement the scheme are happy with it. The local authorities are taking appropriate steps to ensure that people are on the panels and will be available. The nub of the matter is to get the language and the drafting right, so that we can do what everyone agrees needs to be done. Some amendments have been made to tidy up the language and the drafting.

Having said that, we accept that some areas might need to be examined to tidy up the existing regulations. We must recognise that we are dealing with a number of different pieces of legislation that relate to children and young people. Although some of those acts contain cross-references to other acts, some do not contain such cross-references. It is only in attempting to implement some of the present measures that we are beginning to realise what some of the difficulties are. I do not want to give the impression that nothing needs to be done in the future, either on the current position or on ensuring that the operation of the scheme serves the best interests of children and young people.

Clearly, we have two different legal opinions, particularly on the payment of fees. If it is helpful, perhaps we could deal with that first and then come back to the other issues.

**The Convener:** That would be helpful.

**Linda Sneddon (Office of the Solicitor to the Scottish Executive):** The Executive has been considering the payment of fees for the past six months. Originally, a scheme was proposed in which a safeguarder would appear as a representative as well as a safeguarder. When we consulted on the proposal, all sorts of issues arose about conflict of interest, particularly among safeguarders.

We consulted a specified group of individuals who had their own payment scheme. Although such a scheme would be by far the easiest way to proceed, it would simply not work on an ECHR basis. There was no way that we could get such a scheme to operate. Subsequently, we considered using the safeguarders and curators panels, which are paid under section 101 of the Children (Scotland) Act 1995. Although I appreciate that there is a view that we should use section 42 of

that act, our interpretation is that that section allows us to stipulate who can and cannot appear at children's hearings. We have said that, under section 42, a legal representative can appear. However, we stipulate that those people must come from the panels, which operate under section 101. That is where the payment for the people on the panels comes in.

If we were to change the system—in other words, if we were to include under section 42 people who work on a panel that is set up under section 101—that would create a difficulty. One panel would be operating under two completely different systems. Some solicitors might be employed as safeguarders in one case and as legal representatives in another and they would get confused about the basis on which they were operating. As a result, we opted to use section 101.

We have tried to point out that that is how curators *ad litem* tend to operate within the adoption system. They are appointed under section 87 of the Children (Scotland) Act 1995, which makes no provision for the payment of curators. Curators are paid because they are on the panel that operates under section 101. We have tried to base the operation of the legal representatives on that. We recognised that we had a pool of people, some of whom were legally qualified, who were used to working in the system and that we could use those people in the system that had been set up to operate under section 42.

We have done the same as we did under section 87, although in a slightly different way. Whereas section 87 refers to the appointment of curators, in this case we have included such reference in the rules. The *vires* is quite clear—the panels must operate under section 101. We accept that there is no provision to pay fees and expenses to legal representatives under section 42. That is why that route was not open to us—we had to use the existing panels. In theory, if that route had been open to us, we could have set up a completely separate legal representation panel. However, we do not have the power to do that.

Under the existing legislation, we have to use panels as permitted under section 101 of the Children (Scotland) Act 1995; we have no power to set up a panel under section 42 of that act.

**The Convener:** Why is that the case?

**Linda Sneddon:** The primary legislation does not give us the power to do so. The problem is that we are working under the terms of the Children (Scotland) Act 1995. The continuing review is considering amendments to the primary legislation in order to reach a permanent solution. That would involve setting up a system that, although similar to the one that we have, would be much clearer

and more easily ascertainable. Although we appreciate that jumping between systems is not ideal, unfortunately the 1995 act limits what we can do.

**Cathy Jamieson:** We examined what we could do within the legislation, which was to implement an interim scheme. That scheme may well work in practice; we have to work within what is available to us now. People have tried to find a way to make payments to people under what is currently permitted.

**Jackie Baillie:** I welcome that clarification, which sheds some light on the reasons for the decisions that have been made. It would be helpful to discuss two further issues, the first of which is the termination of appointments. I am conscious that the appointments last for three years. In the normal course of events, when the three-year period expires, that is it. Although this may be the exception rather than the rule, there may well be cases where someone is incapable, unfit or unsuitable to continue their appointment. In such cases, the appointment would be terminated earlier.

The Executive acknowledges that the people concerned will have daytime jobs, and that the risk is therefore minimised. However, as we are discussing legal representatives, whose professional career often depends on the quality of their work, on behalf of clients and in the wider arena, any judgments that are made with regard to their appointment would cross over to their professional lives. I would like the Executive to consider seriously the right of appeal, and I welcome the movement in that regard as indicated in the minister's letter.

The second issue is the continuity of appointments, which was not previously considered by the Executive, although I note that it is covered in the minister's letter. The Subordinate Legislation Committee was particularly concerned that the regulations had perhaps not been drafted as effectively as they could have been, although that was clearly not the Executive's intention. The minister's letter suggests that minor changes will be made if the committee feels strongly: I register my strong feeling that those minor changes should be made.

**Cathy Jamieson:** On the first issue, Jackie Baillie is correct to say that a person's membership of a children's panel will be terminated on only a very small number of occasions, or perhaps never. Appointments to the panels are not contracts of employment in the traditional sense. People will be available and they may be called upon and used, or that might never happen. Our initial advice was that we would not be required to consider provision for a right of appeal, given that appointments would be made

for a fixed term.

However, after examining some of the issues that are under discussion about the regulations that apply to both safeguarders and curators, we feel that there is scope for consideration. Although we do not accept that this is a major ECHR issue, that does not mean that we cannot consider the regulations in order to bring things into line in the future. We could consult on the need for amendment to bring the regulations for curators and safeguarders more in line and address some of the points that members have made.

There is a question about the timing of the consultation. We could either do it straight away or wait until the completion of the current review of the operation of safeguarders.

**Boyd McAdam (Scottish Executive Education Department):** We are awaiting research on the operation of safeguarders under the Children's Act 1995, which is due out at the end of February or early March. It will help to inform consideration of how safeguarder operations should be reviewed.

**Cathy Jamieson:** I assure the committee that, although we do not accept that the issue is a major one, we can consider how to ensure that the regulations are in line with each other and that they take into account what might come out of the research to which my colleague referred.

**The Convener:** That is a helpful point. Do any other members have comments?

14:00

**Irene McGugan (North-East Scotland) (SNP):** I am sure that the committee appreciates the minister's statements about understanding that the response is an interim one because of the implication that anything more radical would have for primary legislation. What time scale do you have in mind? How long must the proposed SSIs be in operation before you begin a review of how the system is working, of what might need to be changed and of what the implications might be for primary legislation?

**Cathy Jamieson:** We would want to check any system for effectiveness and we would want to learn from the procedures that are put in place. If we consider changing the primary legislation in future, there will be a lead-in time and a consultation process that will have to be gone through.

At the moment, we require feedback on how the panels process is working in practice and whether it is delivering for young people. We might find that the scheme is adequate and needs merely some tidying up at the edges. Alternatively, it might need a radical overhaul. We will not know until the new scheme is in place. We want to keep our options



open. It is not an issue on which we will go away and do nothing. I am sure that, since the committee is interested in the issue, we will be happy to report on progress.

**Michael Russell:** On what are your comments on paragraphs 39 to 42—on termination of appointments—based? You say:

“The Scottish Executive does not accept that an ECHR issue arises”.

Why not?

**Cathy Jamieson:** After that issue was raised, the Executive considered it again in some detail and made comparisons with other matters. Linda Sneddon will explain what has been considered since the issue was raised.

**Linda Sneddon:** We had a meeting last week to discuss the issue. We started our consideration by asking what right is being protected under the European convention on human rights. We hit the problem that no one has a civil right in law to be on a panel. I understand that not all panel members will appreciate that. However, there is no employment relationship and no one on the panel is employed by anyone or paid to be on the panel. It is easier to equate a place on the panel to a consultancy; someone comes in to do a specific piece of work and is paid at an appropriate rate. The view that was taken on that was that there was no right to be protected. Everyone has the right to employment in that they can apply for employment. We are not stopping people from applying to be on the panel. However, an appointment can be terminated provided that that is done using a proper system.

Secondly, it was hard to work out the precise ECHR issue in relation to termination. We are not dealing with a person's actual rights to do something—even being on the panel does not give a person a right to be there. Panel members do not have a right to be used. In practice, if someone does not do anything for the panel, they are not asked to attend in future.

In responding to the committee's point, the difficulty was that although the Subordinate Legislation Committee said that there was an ECHR issue, it did not explain fully to what that issue related. We cannot see where the initial right of a person to be on the panel is enshrined in the ECHR.

In the regulations, termination of membership of the panel can happen on three specific grounds, which are if the panel member is unsuitable, unfit or unavailable. Unavailability relates to members just not turning up. To a certain extent, there is a legal definition of unfit. For example, it is hard to terminate sheriffs' employment on the basis that they are unfit. The option tends to relate to people

who have severe mental problems and who have been sectioned. Legally, it is hard to terminate employment on the basis of a person's being unfit. On unsuitability, the courts would need to consider arguments about whether a person is unsuitable, but I am not sure that there is much in the way of court reference on that. Authorities would have to give fair notice and would need good evidence.

Last week, we talked about judicial review. In a judicial review, the courts must consider fairness. It must be borne in mind that local authorities are public bodies and must therefore be ECHR compliant. The courts would consider on the basis of fairness the substance of what authorities do. People should have fair trials and fair rights and a local authority can be criticised for failing in that regard.

We considered the discussion on the McIntosh case—which was in the district courts—in relation to sheriff clerks and ECHR issues that were involved. The court's judgment seemed to suggest that local authorities, although they make appointments and terminations, derive no benefit from a person being on or not being on the panel. Authorities act in an administrative capacity. We cannot see any prejudice that they might have in relation to specific reasons for terminating a person's membership. Authorities would have no bias that would cause an ECHR issue.

**Michael Russell:** I want to clarify something. A termination could be challenged in the courts.

**Linda Sneddon:** Yes—a termination could be challenged through a judicial review.

**Michael Russell:** In paragraph 39 of its report, the Subordinate Legislation Committee draws attention to the fact that there is no additional right of appeal. That committee is concerned about that. You are telling us—I have no reason to doubt you—that there is no ECHR element, but you are not telling us that there should be an additional right of appeal.

**Linda Sneddon:** We will consider that as part of the safeguarders and curators review that is under way. In relation to the safeguarders and curators regulations, we simply rewrote what existed on the basis that ECHR was not the issue with which we were dealing. We had to re-write them for technical reasons. We simply rewrote the regulations because we knew that other reports were under way and that the chances are that there might be a major review of the regulations. However, there might not be such a review. Matters are being considered in depth that were not part of the emergency legislation that was passed as a result of the case of *S v Principal Reporter and Lord Advocate*. The legislation was rewritten bearing in mind that we will consider the two on-going reports.

We will study the way in which all appointments are made. We understand that there are concerns about the appointments procedure in general and we probably need to have a much clearer system. We would deal with those matters in consultation with the relevant people. We did not consult widely on anything other than what we were doing in the children's hearing system, so we need to go out and consult fully and give people time to consider what procedures they would like.

**Michael Russell:** Does not that illustrate the unsatisfactory and perhaps dangerous nature of the regulations? If we agree to the instruments, we will in essence be agreeing to statutory instruments that are, by our own admission, flawed and that do not properly address issues, some of which relate to the rights of people who are employed by authorities. Those people might find themselves severely disadvantaged if we pass regulations that we all acknowledge are not right.

**Cathy Jamieson:** I want to clarify some points and to answer the question that Jackie Baillie asked, which I did not have the opportunity to answer.

I do not accept that the regulations are flawed. We acknowledge that some of the existing regulations must be examined—which has arisen as a result of the regulations that we are considering. At the end of the day, there are legal opinions on the extent to which the termination of membership is challengeable. The opinion that has been given to the Executive—which we are adopting—is that membership of the panels is not an employment situation in terms of a contract of employment.

Examples have been given of terminating a person's membership of a panel, but it would be unlikely that that would ever come about without other things having happened, for example a panel member having been found unfit elsewhere. It would not be a question of local authorities triggering that power—the power is about being able to remove a person who in some other way has been found to be unfit.

I understand fully that people want to preserve employment rights—that is what Jackie Baillie is concerned about—but I do not think that we are being asked to approve regulations that are fundamentally flawed. We can use the regulations that we are considering, but in future we will address issues to do with regulations and rules that have existed for many years and that so far have not been addressed.

Jackie Baillie raised the continuation of appointments that were made under the previous regulations. For clarification, we have proceeded as we have simply to avoid the need to discontinue existing panels and to allow those

panel members to continue to be available while the new panels are brought in alongside them. If we had not done that, we would have had to wind up the existing operation and reappoint members. The way in which we have proceeded will allow the two panels to sit side by side without having to reappoint members. I hope that that clarifies the issue.

**Jackie Baillie:** It does, but the Subordinate Legislation Committee was concerned. Although that committee acknowledged your intention, it felt that that intention was not necessarily expressed in the regulations. It is a drafting point.

I return to appeals. I accept that reviews are under way that will be produced in February or early March and that that will afford the Executive an opportunity to re-examine the situation. However, I take a slightly different view on whether we need an appeals mechanism. I know that such a mechanism would be required only for exceptional circumstances, but a judicial review will merely examine the fairness of the process; it will not overturn a defective decision. There is no mechanism through which do that.

A number of professionals, such as doctors—or in this instance lawyers—do not have a direct employment relationship with panels. However, the ECHR article that deals with the right of employment has an indirect impact on a lawyer's ability to fill a post if that lawyer is found to be unfit or unsuitable in whatever circumstances. That would have an impact on the lawyer's professional life and, in the interest of fairness, that person should be afforded every opportunity to appeal.

I take comfort from the minister's words. I look forward to seeing changes at the end of February or early March. I just wish the minister had become involved slightly earlier, but maybe that is a point from which the civil service should learn.

**Cathy Jamieson:** I stress that the new regulations are based largely on regulations that already exist. It has come to light that there are some areas that we must examine, but we need to examine them as a package and ensure that we are consistent, that we improve the situation and that we tie all the loose ends together. Some of the issues that the committee has raised have assisted in focusing our attention, but it is still my view that we require a scheme that works in the best interests of children and young people. If there are issues that we need to consider in future—some have been identified—we will do that. Members know that I take a strong interest in the subject. My priority is to have a scheme in place.

People out there are being trained and are examining the issues. They believe that the scheme can work. It is unfortunate that the

wording has caused us grief and difficulty. Mike Russell said that it would help to know what we had accepted, what we felt was an improvement and what we did not accept. Those matters are described extensively in the information that has been sent out and which I hope addresses the points that have been made.

14:15

**Michael Russell:** The points are addressed up to a point. However, the difficulty that the committee has experienced twice still worries me. The committee has asked legitimate questions about drafting that has been done by the civil service. The committee has started constructively to mention those difficulties and has come up against a civil service brick wall that justifies the unjustifiable. It has taken the undoubted political skills of ministers—once Cathy Jamieson and once her deputy—to help us out of those difficulties.

As I said in the debate in the chamber on the School Education (Amendment) (Scotland) Bill, that difficulty raises a fundamental question about the relationships between civil servants, ministers and parliamentary committees. Such problems could be avoided by exchanging ideas and views, rather than having a battle royal. That battle was not chosen by the committee but—I say this with the greatest respect to Mr McAdam—by the civil service.

That is a waste of our time, because what is important is that we assist those who need our help, such as the people who are affected by the statutory instruments. If the committee chooses not to move Mr McAveety's motions, it will do so partly because there is a gun to its head—the children who are involved need to be helped—and not because it feels that the civil service has done much to help those children. The minister might have helped, but the civil service has done little.

**Cathy Jamieson:** I hope to assist the committee. We want to resolve issues before they arise. In this instance, we might not have been able to provide all the answers in advance, but I hope that we have provided the answers today. No committee member has suggested that the scheme or the way in which we want to proceed is not correct. Everyone learns during the development process and that has been taken on board.

In defence of the people who had to put the scheme together at fairly short notice, I say that I was concerned that we had to put a scheme in place and that we had a system that protected very vulnerable children. As for the time scales, I wanted a scheme in place that would allow people who work at the sharp end to receive the

appropriate training in time for the scheme to start as planned.

The committee will make the appropriate representations to Parliament about some of the general time scale issues that the convener and other members raised. We can consider those issues.

**The Convener:** Some confusion exists about panel members being members of the Law Society of Scotland. I understood that the Subordinate Legislation Committee was asking whether it was open to solicitors and counsel to belong to a panel, or only to solicitors. Some clarification on that would help.

**Cathy Jamieson:** That comment is helpful, because it casts a slightly different light on our interpretation of the problem. I understand that if a person is legally qualified and has a practising certificate, that to all intents and purposes answers the question about the Law Society. I will ask one of my colleagues to clarify that.

**Linda Sneddon:** The regulations do not allow counsel to appear and be paid for appearing. Counsel are entitled to appear at children's hearings as child representatives and have been entitled to do that since the Children's Hearings (Scotland) Rules 1996 were introduced. The scheme that has been established would allow solicitors into hearings. The court's judgment was that some form of legal representation must be available. We have used solicitors because it is expected that most of the questions that are asked will not be technical legal questions.

Children's hearings deal with people and their situations, not with complex legal questions. Counsel deals with those questions. Complex legal issues that arise in relation to whether grounds for referral have been established are referred to the sheriff court, where legal aid is available and at which counsel can appear if that is sanctioned by the Scottish Legal Aid Board.

Under the ECHR, we must make legal representation available to people. We have done that by allowing solicitors into the system.

**Cathy Jamieson:** The intention is to preserve the integrity of the children's hearing system as a non-adversarial setting. The intention is to have people present not who will take legal arguments into the system, but who will ensure that children's rights are protected. That is why the instruments have been designed as they have. We are not seeking to stop appropriate representations being made in court if the grounds for referral are contested and a case must go to court for proof.

**The Convener:** We intend to take up with the Procedures Committee issues relating to timetabling and drafting. I hope that the minister

will take on board the points that the Education, Culture and Sport Committee has made and the many difficulties with drafting that we have had over the past months. Defective drafting does not help the work of the committee, nor does it help the progress of bills and statutory instruments. The issue needs to be examined closely.

I welcome the minister's acknowledgement of the committee's concerns. Mike Russell is right to say that those concerns related not to what the Executive is trying to do, but to procedures and to the wording of the regulations. Everyone who is sitting around this table is committed to protecting the most vulnerable young people in our society, who will be affected by the regulations that we are debating.

I welcome particularly the fact that in the coming months we might have an opportunity to re-examine appeals and to propose alternative measures if the system turns out not to be right or needs to be tweaked in some way. I welcome the minister's commitment to keeping those matters under review.

Does Frank McAveety wish to move the motions in his name?

**Mr McAveety:** I do not.

**The Convener:** The committee will allow the instruments to remain in force. However, I hope that the points that we have made have been taken on board and will be acted on in future. I thank the minister for her attendance.

## Petition

### Technology Teachers Association (PE233)

**The Convener:** Item 3 on the agenda is consideration of an update on progress on petition PE233, from the Technology Teachers Association. Members will be aware that the matter has been under consideration for some time. At the end of last year, the committee wrote asking the Executive to consider the submissions that have been made and to inform the committee of its views. Have we received a report back from the Executive?

**Martin Verity (Clerk):** I am afraid that we have not. We understand that a report will be with us very soon—within the next few days. I am sorry that I cannot be more precise than that.

**The Convener:** That is unfortunate, because I asked the Executive to provide us with a report in time for today's meeting. I will raise the matter with the appropriate minister and ask that a report be forwarded to us. This matter has been dragging on for some time. I suggest that, once we have received the Executive's report, we copy it to committee members urgently. When we have had some time to examine the report, we can fix a date for inviting the minister to appear before the committee to discuss it in more detail.

**Michael Russell:** Should that be necessary.

**The Convener:** Yes. The Executive's report might clarify all that we want to have clarified. However, if we wish to speak to the minister, we will make space for that on our agenda. Is that agreed?

**Members** *indicated agreement.*

## Scottish Qualifications Authority Bill

**The Convener:** Members will be aware that the expected Scottish Qualifications Authority bill is due to be introduced on Thursday. The reason why I have placed this item on the agenda is that I felt that it would be helpful for us to try to agree a way forward sooner rather than later, given that the bill has been delayed by some three weeks.

I suggest that we agree that when the bill is introduced to Parliament, a notice calling for written evidence for the committee is placed immediately. As a matter of urgency, we should also try to have the Scottish Qualifications Authority's chief executive and the minister come to an early meeting of the committee. When we have seen written evidence, we can consider again what organisations we might want to invite to give oral evidence.

On this occasion, we should perhaps invite the Association of Directors of Education in Scotland rather than the Convention of Scottish Local Authorities, because the ADES will have a particular perspective on the SQA bill. However, we could consider inviting both bodies to come to the same meeting. For diary and timetable reasons it would be useful to have an indication from members about whom they think should be invited. However, I am certain that the chief executive of the SQA and the relevant minister would want to be approached urgently regarding their inclusion.

**Michael Russell:** As well as a chief executive, there is a chairman of the SQA, who has been particularly involved in discussions during the year. We should also invite the teaching unions to give evidence. We should consider how much wider we should go.

I wonder whether the convener or the clerks could advise committee members what work the period until the Easter recess holds for us and where we are going. We have not seen an update of that for some weeks. It would be useful to have that information circulated.

**The Convener:** I will arrange for that information to be circulated. I can also tell members now where we are going. I hope that we will sign off various reports this afternoon. That is to be agreed by members.

Next week and the week after we will look, if necessary, at the Education (Disability Strategies and Pupils' Records) (Scotland) Bill when we receive evidence from other committees. We will continue also to look at the issue of a children's commissioner until we bring that matter to a conclusion. I hope that we will be able to do that

sooner rather than later. We will then need to proceed to taking evidence on stage 1 of the SQA bill. It is important—because of the February recess—that we move that matter forward. We all acknowledge that the bill needs to be passed soon. I hope that we will be able to do that.

The other issue that we agreed to take on is cultural tourism and its impact. We asked the Scottish Parliament information centre to provide a briefing on that issue. The Enterprise and Lifelong Learning Committee, which has just embarked on a fairly major inquiry into tourism, approached us on that matter. That committee is taking written evidence, but it does not intend to take oral evidence until September. I will liaise on cultural tourism with the Enterprise and Lifelong Learning Committee's convener in the period before our paper is produced.

Finally, members should have the paper on the purposes of education. I suggest that we invite the paper's authors to next week's or the following week's meeting—depending on their diaries—to discuss the paper in more detail and to consider how we move forward.

That is the work that we have until the Easter recess. It is a fairly substantial work load to be getting on with.

**Michael Russell:** That timetable should be circulated to members so that we can put it into context. The SQA bill is much needed, but it might require amendment from the SNP.

**The Convener:** I am sure that Mr Russell will welcome the opportunity to examine the bill in more detail.

**Ian Jenkins:** What about the Borders report?

**The Convener:** I omitted to mention the Borders report. Next week, we will consider a report into our inquiry into Borders education.

**Ian Jenkins:** It is a draft report.

**The Convener:** Yes. I will arrange for the timetable to be circulated to members tomorrow.

**Michael Russell:** If you will forgive me, convener, I must leave to attend another meeting, although I might be back.

**The Convener:** We now move into private session.

14:28

*Meeting continued in private until 16:16.*



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