

EDUCATION, CULTURE AND SPORT COMMITTEE

Tuesday 12 March 2002
(*Afternoon*)

Session 1

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EDUCATION, CULTURE AND SPORT COMMITTEE

9th 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

THE FOLLOWING ALSO ATTENDED:

Nicol Stephen (Deputy Minister for Education and Young People)

WITNESSES

Boyd McAdam (Scottish Executive Education Department)

Gill Ottley (Scottish Executive Health Department)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Susan Duffy

ASSISTANT CLERK

Ian Cowan

LOCATION

The Hub

Scottish Parliament
Education, Culture and Sport
Committee

Tuesday 12 March 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:06*]

Item in Private

The Convener (Karen Gillon): I call this meeting of the Education, Culture and Sport Committee to order. Members should ensure that all mobile phones and pagers are turned off or switched to silent mode.

The first item on the agenda is to decide whether to take in private item 5, which concerns consideration of the committee's draft report on stage 1 of the Scottish Qualifications Authority Bill. Are members agreed?

Members *indicated agreement.*

Education (Disability Strategies
and Pupils' Records)
(Scotland) Bill: Stage 2

The Convener: The second item on the agenda is stage 2 consideration of the Education (Disability Strategies and Pupils' Records) (Scotland) Bill. Committee members have copies of the marshalled list, the groupings of amendments and a letter from the Deputy Minister for Education and Young People. There are also several spare copies of the bill should anyone require one.

The amendments have been grouped to facilitate debate. The order in which they are called and moved is dictated by the marshalled list. All amendments will be called in turn from the marshalled list and will be taken in that order. We cannot move backwards on the list. I will call the proposer of the first amendment in the group, who should speak to and move the amendment. That member may also speak to the other amendments in that group. I will then call other speakers, including the proposers of all the amendments in the group, whom I will call at the appropriate time to move those amendments. I will also clarify whether the member who moved the amendment wishes to press it to a decision. If not, he or she may seek the committee's agreement to withdraw it. If it is not withdrawn, I will put the question on the amendment. If any member disagrees, we will proceed to a division by a show of hands. If a member does not wish to move an amendment, they should simply say, "Not moved" when the amendment is called.

Section 1—Accessibility strategies

The Convener: Amendment 8, in the name of Jackie Baillie, is grouped with amendments 9, 11 and 12.

Jackie Baillie (Dumbarton) (Lab): I will take amendments 8 and 11 together. They are essentially minor amendments, the purpose of which is to ensure that communication is effectively a two-way process. In other words, the amendments are about not just "doing to", but "doing with".

The Standards in Scotland's Schools etc Act 2000 and the Children (Scotland) Act 1995 recognise that education authorities must have due regard to the views of the child or young person on issues that significantly affect them. We are trying to bring the bill in line with the spirit of those two pieces of legislation and with article 12 of the UN Convention on the Rights of the Child.

Amendments 9 and 12 are intended to be helpful to the Executive and to allow sections 1

and 2 to be interpreted as meaning not simply communication in writing, which may be unnecessarily narrow and prescriptive. As we discussed at stage 1, information should where possible be provided in alternative formats. That principle seems to have been clearly accepted by the Executive in its amendment to section 3, which allows information on the accessibility strategy to be provided in alternative forms. I am seeking to extend that good practice to sections 1 and 2.

I move amendment 8.

The Deputy Minister for Education and Young People (Nicol Stephen): We appreciate the principle that Jackie Baillie's amendments address. However, in respect of amendments 8 and 11, the problem with deleting "to" and inserting "with" is that—in legal terms—it would create confusion. There would be a lack of clarity as to intention. Jackie Baillie made the intention clear in her explanation: to ensure that communication is a two-way process. The problem with the current wording is that it covers the communication in one direction well—from the relevant body or school in the direction of the pupil. The suggestion is that there should be clarification on the communication coming back, which might be from the parent as well as the pupil. If the committee is supportive of that aim, I do not think that that would be achieved by inserting the word "with". We might need to consider ways in which that aim could be achieved.

If the proposal in amendments 8 and 11 is of interest to the committee, the Executive could consider introducing an amendment at stage 3. If, in the meantime, the committee or individual members want to provide further guidance to reflect in greater depth the matters that they want to raise—which Jackie Baillie might cover in her summing up—that would help the Executive to obtain greater clarity.

The point about the words "in writing" is slightly different. I do not support amendments 9 and 12 for the following reasons. We expanded the categories of communication beyond just written communication, but we kept the words "in writing" in the bill. We clarified that that phrase covers other forms of communication and that such forms could be specified. Removing the words "in writing" from sections 1 and 2 clearly widens the duty so that it also covers improvements to communication or information that would usually be provided orally or visually, by the use of different teaching strategies and the provision of auxiliary aids and services. We feel that that would be duplication, because teaching strategies and auxiliary aids and services should already be covered by the responsible bodies when planning to increase the extent to which pupils with a

disability can participate in the curriculum. That falls under sections 1(2)(a) and 2(1)(a).

Access to the curriculum for an individual child would be provided by the special educational needs framework, according to the individual child's needs. We will refer to that issue more than once this afternoon. The bill is about general strategies for all schools and all children with disabilities in a local authority area or, in the independent sector, all those children with disabilities in a school. The bill is not about provision for individual children, which is covered by the Special Educational Needs and Disability Act 2001 and by part 4 of the Disability Discrimination Act 1995, which give rights to individuals.

14:15

At this stage, I resist all the amendments in the group. I ask Jackie Baillie to withdraw or not to move them, based on the commitment that I gave earlier to consider whether we can lodge an amendment at stage 3 to cover communication back the way from the pupil or the parent.

Jackie Baillie: I will not press amendment 8 or move amendment 11 because the last thing that I want to do is to cause further confusion for lawyers. I am pleased, however, that the minister has accepted the principle of what I outlined and that there are technical considerations that prevent the amendments being agreed.

Nicol Stephen: My commitment is not necessarily to include something in the primary legislation. We might be able to achieve the objective through guidance. We will consider all the ways of achieving that objective, which is clearly the will of the committee and which I understand.

Jackie Baillie: I am happy not to press amendment 8, provided that the Executive considers the matter before the bill comes back to Parliament at stage 3. I welcome the minister's invitation to committee members to assist with providing the policy instruction to develop the suggestion.

I will not move amendments 9 and 12 because I have received an assurance from the minister in his evidence today that, together with the special educational needs framework, sections 1(2)(a) and 2(1)(a) cover the matter.

Amendment 8, by agreement, withdrawn.

Amendment 9 not moved.

The Convener: Amendment 10 is in a group on its own.

Jackie Baillie: The issue raised by amendment 10 was also raised during the committee's

proceedings at stage 1. The purpose of the amendment is to avoid the narrow interpretation of education, school activities and associated services in the Special Educational Needs and Disability Act 2001. The minister helpfully wrote to the committee prior to the stage 1 debate. He stated that neither that act nor the Standards in Scotland's Schools etc Act 2000 provides a definition of education and associated services.

From the minister's evidence to the committee, I note that the intention is that education and associated services should include such things as out-of-school trips and should be aligned with the breadth of coverage of the Special Educational Needs and Disability Act 2001. Amendment 10 seeks to make that link absolutely explicit and in no doubt.

The primary purpose of the bill is to provide education authorities with a tool to anticipate and prepare for their duties under the 2001 act. In keeping with the enabling rationale that underlies the bill, it is appropriate to ensure that accessibility strategies cover the recognised areas of education and related activities, while not limiting ministers to a consideration of definitions.

I move amendment 10.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): During earlier evidence, we pointed out that there might occasionally be difficulties if accessibility regulations acted as a disincentive to activities in a school because, at any particular moment, the accessibility strategy did not allow for every individual to participate. There are genuine problems that need to be worked out in the longer term. I would not want us to tie things down to the point that there is a lack of the practical flexibility that must be catered for by the accessibility strategy, which might not be able to be implemented immediately.

Nicol Stephen: The simplest explanation for wanting to resist amendment 10 is that Scottish ministers must have regard to the relevant provisions of other legislation. The risk in relation to identifying specific sections of the two particular acts of Parliament is that it will narrow things in an unfortunate way.

As the committee is aware, the Scottish Executive does not expect to need to use the regulation-making power in section 1(6) of the bill to define education and associated services. Instead, the terms "education" and "associated services" will attract their natural meaning and they need not be read together. Regulations will only be made if it is felt that responsible bodies are unclear about what they should be considering as education or associated services when improving the physical environment.

I do not support amendment 10, even if the

regulation-making power were to be used. First, the effect of the amendment is likely to be minimal because Scottish ministers already must have regard to all relevant legislation when making regulations. Secondly, the amendment could restrict the types of service that could be defined as associated services in the regulations. We want accessibility strategies to improve a range of education and associated services, not just school-based activities, which is what the legal references in the amendment cover.

In addition, I am told that amendment 10 is not drafted in the most effective way. The relevant provisions of the Special Educational Needs and Disability Act 2001 are undefined in amendment 10. It is unclear what provisions are meant, as there is no definition of "education" and/or "associated services" in that act.

It would also be difficult to use sections 1 and 2 of the Standards in Scotland's Schools etc Act 2000 to define "education" and "associated services". Those sections are general and apply only to education authorities, whereas regulations under section 1(6) of the bill would also apply to other responsible bodies.

Section 135 of the Education (Scotland) Act 1980 only defines school education but, under section 2 of the bill, accessibility strategies should also cover access to education and associated services for children educated outwith schools. I therefore feel that amendment 10 would be too restrictive and could lead to a narrow definition of education and/or associated services. I do not think that the committee would wish that.

Jackie Baillie: I am clear that amendment 10 is not about seeking to define education and associated services, but to make explicit the links with two other pieces of legislation from the Executive that I thought were helpful. However, I have noted that the minister has said that the effect of the amendment would be opposite to that desired.

I am not convinced, and never will be, by technical arguments about poor drafting. That is something that the Parliament and the Executive between them can get right by stage 3, so it is not a convincing argument. I have been flicking through the draft guidance, but I cannot find the section that makes the link with the provisions to which I referred. If the matter will be clearly explained in guidance—and I would welcome the minister's confirmation on that point—I would be happy not to press amendment 10.

Nicol Stephen: I am happy to give that commitment.

Amendment 10, by agreement, withdrawn.

Section 1 agreed to.

Section 2—Accessibility strategies: education of children under school age outwith schools

The Convener: Amendment 1 is grouped with amendment 2. I ask Nicol Stephen to speak to and move amendment 1.

Nicol Stephen: Members will recall that the Equal Opportunities Committee rightly pointed out at stage 1 that school-age children being educated on Gypsy or Traveller sites were being excluded from the benefits of the bill. Local authorities should, and do wherever possible, include children from Gypsy or Traveller communities in local schools. Although educational and other services provided on Gypsy or Traveller sites are normally only a temporary solution, it is important that such education should still be included in the accessibility strategies that will be prepared under the bill. Children with disabilities who are educated outwith schools should be able to benefit from the same learning support and teaching strategies that children within schools receive. The amendments will require those local authorities that provide education on Gypsy or Traveller sites to include such support in their accessibility strategies.

I move amendment 1.

Amendment 1 agreed to.

Amendments 11 and 12 not moved.

Amendment 2 moved—[Nicol Stephen]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Accessibility strategies: procedure

The Convener: I call Irene McGugan to speak to and move amendment 13, which is in a group on its own.

Irene McGugan (North-East Scotland) (SNP): Amendment 13 would change some wording. As it stands, the bill requires consultation by responsible bodies with

“such children, parents and young persons as they think fit”.

I suggest that that be changed to leave out “as they think fit” and insert,

“as would appear to them to have an interest in the matter”.

We are pleased that there is a requirement to consult, but amendment 13 seeks to avoid that requirement being very narrowly interpreted. A narrow interpretation would go against the spirit and intention of the bill. Wide-ranging and effective consultation will deliver successful policies. It is important that all key stakeholders are engaged in that process so that a full picture can be conveyed.

I suspect that the minister will say that the

phrase, “as they think fit”, appears in other legislation and is commonly used. However, the wording that I have suggested also appears in another piece of legislation—the Standards in Scotland’s Schools etc Act 2000. That act requires education authorities to consult children, young people and others on the annual statements of improvement objectives. I commend my amendment on that basis.

I move amendment 13.

14:30

Ian Jenkins: I am not altogether clear what the difference is between the phrase in the bill and the phrase in the amendment, although the minister might make it clear. In both cases, ministers have discretion. Given that the ministers are to decide whom to consult, it does not matter which form of words is used. Until I hear what the minister has to say, I will not commit myself one way or the other.

Nicol Stephen: I understand what Irene McGugan is trying to achieve with amendment 13. It is important that we place on record the fact that we do not intend there to be a narrow interpretation of the words, “as they think fit”. We will issue guidance to make clear the nature of the consultation that will be required. Responsible bodies will be required to have regard to that guidance when determining whom they should consult, including which children, young people and parents. The guidance will tell responsible bodies what form the consultation should take. Detailed guidance has the advantage of not being overly prescriptive and of being easily amended if circumstances change.

I hope that I have assured the committee that we take the issue seriously. We want to go beyond any narrow interpretation of the words, “as they think fit”. Having made the draft guidance available, we will ensure that the final guidance reflects the concerns of the committee and of Irene McGugan.

Ian Jenkins: I made a mistake when I attributed responsibility to the ministers. I meant that the responsible bodies would have discretion either way, not the ministers.

Irene McGugan: I accept the minister’s response, which gives some reassurance. On that basis, I seek leave to withdraw the amendment.

Amendment 13, by agreement, withdrawn.

The Convener: Amendment 14 is grouped with amendment 15.

Jackie Baillie: I confess that I consider the issue that amendment 14 deals with to be one of the most important issues before us. The committee spent considerable time on it and took

a considerable amount of evidence on it at stage 1. I have no doubt that the effectiveness of any piece of legislation relies on the effectiveness of the monitoring of its implementation and on having—for want of a better phrase—a reality check on the ground.

Amendment 14 seeks to insert an explicit provision for the monitoring of accessibility strategies at the authority level and for individual schools. I accept that the detail should be dealt with in guidance rather than in the bill, but the principle must be stated.

The inspection of accessibility strategies should be linked to Her Majesty's Inspectorate of Education's power to inspect under section 9 of the Standards in Scotland's Schools etc Act 2000. The guidance should therefore ensure that HMIE's responsibilities include the inspection of accessibility strategies as part of its inspection of the functions of education authorities and other bodies. Implementation of the authorities' accessibility strategies at an individual school level should form part of the normal inspection of schools.

Although I welcome the very useful guidance in chapter 5 of the draft guidance, it is essential to have a commitment in the bill. That commitment will provide us with a checking mechanism that will ensure that the strategies become a reality on the ground and are perhaps more sophisticated in their application than if we did not have such a framework. Accessibility strategies are not just about physical access to premises. They also consider access to the curriculum, access to information and issues such as the training of staff, as the guidance recognises.

Capability Scotland carried out for the Executive a consultation with children and young people on the draft bill. Capability Scotland noted that the legislative proposals are largely silent on monitoring and evaluating the effectiveness of the accessibility strategies. That is in spite of the fact that a frustration that ran through a number of the responses was that the change or improvement in question did not quite do what was requested or needed; it was good, but not good enough. To enable accessibility strategies to become a reality on the ground, the minister should give serious consideration to amendment 14.

I move amendment 14.

Irene McGugan: Amendment 15 is in the same vein as amendment 14. It would ensure that the people to whom the strategies will be of most relevance know about them. It seeks to ensure that those people are issued with accessibility strategies. The committee expressed concern at stage 1 that the bill lacks any provision for proactive dissemination of that material. Without

such an amendment, although the strategies will exist, those who stand to benefit most from them might not know about them. That would go against all the principles of open and accessible government.

Proactive dissemination is encouraged under other legislation. The Children (Scotland) Act 1995 requires local authorities to publish information about their services. The Standards in Scotland's Schools etc Act 2000 requires authorities to ensure that parents receive summaries of school development plans. The provision that is proposed in amendment 15 could parallel that requirement.

The proposed obligation on responsible bodies is not unduly costly. Accessibility strategy information could be sent out as part of other information that is disseminated, such as school development plans. It is very important that there is a mechanism for ensuring that that information gets out into the public domain and is accessible by those to whom it will be most relevant and of most benefit.

Nicol Stephen: The Executive supports Jackie Baillie's intentions in lodging amendment 14 and accepts it in principle. However, it is important to emphasise that a number of changes would be necessary to make the provision that amendment 14 seeks workable in the context of the bill. I will go through the relevant areas to give an indication of the sort of amendment that the Executive would lodge at stage 3.

First, it is not the specific role of HMIE to monitor and evaluate accessibility strategies. Therefore, it is our view that HMIE should be removed from the amendment. That would ensure that strategies are sent only to Scottish ministers. HMIE is an executive agency and any strategy that is sent to a minister would be available to HMIE. That is the first piece of tidying-up that would be needed.

Secondly, to be effective, the amendment must include an indication of when and how often accessibility strategies should be sent to Scottish ministers. Otherwise, responsible bodies might wait three years before providing a copy and might not provide copies of subsequent strategies—they could regard it as a one-off responsibility.

I suggest that the amendment should state that copies of accessibility strategies should be submitted once each strategy has been finalised. That would mean that copies of the first strategies should be received by April 2003.

I do not believe that section 3(4), which requires responsible bodies to provide Scottish ministers with a copy of their accessibility strategy on request, should be removed from the bill. Strategies may be reviewed and revised regularly and Scottish ministers might request the most recent version of a strategy if someone raised a

concern about it during that three-year period. I propose that members should reject amendment 14 at this stage, given that the changes to it that I suggested are required. As I said, the Executive will lodge an amendment at stage 3 to address the points that I have covered.

My comments about amendment 15 will be brief. We suggest that the matter raised in amendment 15 should be covered by guidance. We want to ensure that the strategies are publicised and that copies of the strategies or summaries are made available to the right people, at the right time and in the right way. However, as Irene McGugan indicated, existing legislation requires proactive dissemination of other strategies and information to parents or pupils. It is important that we think about integrating the dissemination of information. For example, information about the strategy will be in the school development plan—certainly, it should be in the school development plan. Guidance is a better vehicle for reflecting that more integrated approach and would avoid an increase in the number of statutory responsibilities to publish and disseminate information separately.

I hope that dissemination of information about the strategy will be covered in the guidance that will be issued. However, I would understand Irene McGugan's position fully if she were disappointed with the coverage suggested by the guidance and wished to press the matter at stage 3. I hope that my reassurance covers her concerns. *[Interruption.]*

The Convener: I ask everyone to check that their mobile phones are switched off. It appears that a mobile phone is interfering with the speaker system.

I invite Jackie Baillie to wind up the debate on this group of amendments and to indicate whether she wishes to press or withdraw amendment 14.

Jackie Baillie: Given the minister's helpful comments, his support in principle for the intention behind amendment 14 and the fact that the Executive will lodge an amendment at stage 3, I will not press amendment 14. I am content with the evaluation of the strategy being carried out by Scottish ministers, but I would like clarification that HMIE has a role at school level, as opposed to at authority level, and that, in practice, HMIE will monitor implementation on the ground.

Nicol Stephen: I can give Jackie Baillie the commitment that HMIE will be involved through the school inspection process.

Amendment 14, by agreement, withdrawn.

The Convener: Amendment 3 is in a group on its own.

14:45

Nicol Stephen: Amendment 3 will require responsible bodies to make their accessibility strategies available on request in alternative forms. The Executive wants responsible bodies to publicise their strategies to all those who have an interest. That will not only ensure that people know about and can be involved in improvements, but will help to ensure that strategies are implemented and that progress is made. Inclusion of the requirement in the bill rather than only in guidance will make it clear to responsible bodies that they must make their strategies available and accessible to everyone and will remind them of their duties under the Disability Discrimination Act 1995 to do so. The requirement is especially relevant as many who will benefit from the strategies may be able to find out about them only if information is provided in an alternative form.

Members of the committee strongly pushed for such an amendment at stage 1. I am pleased that it has been possible to bring forward detailed wording and I hope that the committee will accept the amendment.

I move amendment 3.

Amendment 3 agreed to.

The Convener: Amendment 15 has already been debated with amendment 14.

Irene McGugan: I am pleased that the minister accepts the intention behind amendment 15 and I fully agree with him about the need for co-ordination and the avoidance of a requirement for additional reports to go out. However, the intention of the amendment and the benefit that it would bring are important, so I will press amendment 15.

Amendment 15 moved—[Irene McGugan].

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

Members: No.

The Convener: There will be a division.

FOR

McGugan, Irene (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)

The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 15 disagreed to.

Section 3, as amended, agreed to.

After Section 3

The Convener: Amendment 16 is grouped with amendment 17.

Jackie Baillie: Amendment 16 concerns the provision of a flexible means of ensuring that children, young people and their parents have an opportunity to complain about an accessibility strategy. The amendment is not an attempt to be prescriptive. The aim is that the proposed new section should be adaptable to procedures that many good authorities already have in place.

At stage 1, evidence was taken about the appropriateness of a tribunal system. I do not favour a tribunal system—such systems operate far too slowly and I fear that resorting to a tribunal would lead to relationships between parents, schools and the education authority breaking down irretrievably. On the other hand, in his oral evidence at stage 1, the minister suggested that an appeal could be made under section 70 of the Education (Scotland) Act 1980. That process can often be daunting—even for the most articulate parents—and time consuming. As time elapsed, there would be a strong possibility that relationships would deteriorate.

I have attempted to come up with a local solution that is swift and effective and that builds on independent mediation, which the Executive recognises as good practice and a key ingredient in providing solutions. Indeed, the Scottish Executive's response to "Assessing our children's educational needs: The Way Forward?" acknowledges that new provisions should be put in place for appeals and mediation. Although that is very welcome, I suspect that legislative change may be some time off, unless the minister tells me otherwise. I hope that the proposed new section will be sufficiently adaptable to any future legislation that makes a complaints procedure for accessibility strategies available right from the start of the process.

I move amendment 16.

Irene McGugan: Amendment 17 is very similar to amendment 16, except that it deletes one of its paragraphs. As the minister is aware, I fully support Jackie Baillie's comments about why we need some local, easily understandable mechanism. Parents do not really want to get into disputes with local authorities or schools, but instead want an opportunity to discuss their concerns and reach some amicable agreement. Although the complaints procedure that is proposed in amendments 16 and 17 is not as strong as an appeals procedure, which we have avoided as being more contentious and problematic, it still underlines public accountability. Parents would know that they could follow such a procedure without the need to take court action or

make a request to the Scottish Executive, which are some of the alternatives that are currently available under other legislation.

In other oral evidence and during the stage 1 debate, the minister mentioned other pieces of legislation that are currently in force or are about to come on stream that might provide another mechanism for redress. However, as Jackie Baillie has pointed out, some of that legislation will take some time to come to fruition. We want something fairly quickly.

As far as the Disability Discrimination Act 1995 is concerned, it has been very much left to the planning element of the bill to begin to provide for accessibility within schools. If we do not make provision for a complaints mechanism in the bill, we will create a loophole, because parents and children will not have access to a remedy for those issues under the 1995 act. Furthermore, the particular provisions in that act depend very much on discrimination against an individual child, whereas a complaint about accessibility strategies might have more to do with policy. For all those reasons, I ask the minister to consider accepting either amendment 16 or amendment 17.

Michael Russell (South of Scotland) (SNP):

The complaints procedure was one of the central issues that was raised in the evidence that we took. I would have thought that amendments 16 and 17, broadly similar as they are, are sufficiently robust to meet any objections. If the Executive is not proposing a clear, specific and robust complaints mechanism—indeed, it has not lodged an amendment to that effect—the committee is duty-bound to push the issue, given the evidence that it has received.

Ian Jenkins: We are dealing here with strategies, which I suspect that people will be less likely to complain about, given that they will probably contain a lot of positive material. What parents really want is some kind of redress if they think that the strategies are not being put into operation properly. As long as that option is available to parents—it is important that it should be—I am not convinced that the procedure proposed in amendments 16 and 17 is needed at this point. Nevertheless, the arguments that Jackie Baillie and Irene McGugan have raised must be incorporated into the Executive's thinking on the issue.

Mr Brian Monteith (Mid Scotland and Fife)

(Con): It is probably beneficial for the minister to be aware of the depth of feeling on this issue. I, for one, will vote for amendment 16 or amendment 17, depending on which of them is put to the vote. It is clear from the evidence that we have taken and from direct contact with the public that a complaints procedure is important. If the bill is to be credible, we must give that attention. I await the

minister's response with great interest.

Mr Frank McAveety (Glasgow Shettleston) (Lab): The evidence that we have received is compelling about the role of the amendment. There is a strong sense that such a provision should be given further consideration. Like many other committee members, I think that it would be beneficial to hear that the minister can assist us in the process.

Nicol Stephen: Our general approach is that it is surely best to develop a consistent complaints procedure that parents understand. There is a danger that we end up providing a variety of routes of complaint. If the amendments were agreed to, one such route might arise from the bill. One might come from the Disability Discrimination Act 1995 and another might result from the current review of the record of needs process—the proposal to replace the record of needs and the complaints procedure that would arise from that.

Some procedures already exist. I urge the committee to listen to the arguments for using those complaints procedures and to plan to progress by integrating the complaints process that could arise from the bill with the plans that we have for new legislation on the replacement for the record of needs. I will explain our approach in detail.

Paragraphs (b), (c) and (d) of the new section that is proposed by amendment 16 and paragraphs (b) and (c) of the new section that is proposed by amendment 17 emphasise complaints from pupils and parents. As Ian Jenkins said, the bill concerns a strategic planning duty that should be undertaken, wherever possible, through a consensual approach. As I have explained, the bill is not an appropriate vehicle for providing a means for parents or pupils to seek redress. Instead, complaints of discrimination could be made under part IV of the Disability Discrimination Act 1995—the Disability Rights Commission is establishing a mediation service for such complaints. If a child has special educational needs, appeals could be made through the SEN framework to education appeal committees and then to Scottish ministers, or, in the case of placing requests, to the sheriff court.

As members know, we are developing proposals for changes to those appeal procedures. We expect to require all local authorities to have in place mediation services for parents and pupils and to establish a tribunal system to consider all appeals that relate to children with additional support needs. Mediation is normally only relevant in individual cases, and so might not be appropriate in this context. It is unlikely that individuals would want to complain about an accessibility strategy per se. Instead, a parent might consider the accessibility strategy a means

of making certain provision available for their child.

Therefore, it seems inappropriate to have separate mediation services for individuals to discuss only accessibility strategies. However, once all authorities have mediation services—some already do—accessibility strategies may be one of several issues that are discussed in mediation, and accessibility strategies could be brought into the mediation process.

Bodies such as voluntary organisations might have wider concerns about an accessibility strategy. Such concerns should, where possible, be dealt with informally as part of the consultation process. Responsible bodies should have procedures in place to discuss concerns where compromise is not reached as part of any consultation process.

If an organisation felt that a local authority had not addressed its concerns and that the authority was failing in its duties under the bill, that organisation could lodge a complaint with Scottish ministers under section 70 of the Education (Scotland) Act 1980. However, we hope that disputes can be resolved without resorting to section 70.

Paragraph (a) of each proposed new section would require responsible bodies to have a complaints procedure, which is sensible but would be better developed in the context of the intended review of the record of needs legislation.

It might be possible for responsible bodies to have specific procedures in place for dealing with complaints about accessibility strategies. However, as drafted, amendments 16 and 17 fail to give any detail about how complaints should be dealt with. Simply being able to make complaints would not be enough without a mechanism requiring responsible bodies to consider the complaints.

15:00

In addition, all responsible bodies should already have complaints procedures in place, as do local authorities, so paragraph (a) of each proposed new section is unnecessary. As I explained, the issue needs to be considered in relation to the improvements that we are making in that area. To achieve a more consistent complaints procedure for parents, I urge the committee to hold the current position. We have the upcoming review of the record of needs, and the upcoming introduction of a full mediation service across all parts of Scotland. We will have a tribunal system in place in due course. In the meantime, there are powers under section 70 of the Education (Scotland) Act 1980. There are also local authority procedures and, as I mentioned in paragraph 154 of the guidance on the bill, there are remedies

being developed under the Disability Discrimination Act 1995. All that will improve the situation and should, in time, lead to a more integrated approach.

I close with that comment. Accessibility strategies will not be in place immediately. Responsible bodies are deliberately given time to prepare for and to start to implement the strategies. Under the approach that I have outlined, I believe that we will have a more integrated and sensible complaints procedure in Scotland within a reasonable time scale.

Jackie Baillie: There is clearly a strength of feeling from all members around the table about the principle of having access to a complaints procedure. Although I understand the need for consistency and do not disagree with you about that principle, I also understand that procedures need to be in place and operational from day one.

It is equally important that, as accessibility strategies are implemented in schools, that will be where most parents interface with them and will be the point at which most complaints arise. Although the complaints will not necessarily be on the strategic nature of the authority-wide accessibility strategy, they will be made at the point of implementation. A complaints procedure is critical in that context.

I recall reading in the draft guidance or elsewhere that it is intended to introduce accessibility strategies by April 2003.

Nicol Stephen: That is correct.

Jackie Baillie: Are you therefore saying that the integrated procedure for complaints is likely to be implemented by April 2003? If not, what length of time are we talking about? That is a critical issue for many of us. If the delay is not acceptable, we need to move to do something now. I read paragraph 154 of the guidance on the bill. If that were to be developed, it might go some way to addressing some of our concerns.

I understand that one of your arguments is that the mechanism is not included in the bill. My recollection is that the Executive does not like such mechanisms to be included in bills and prefers to leave it to guidance. However, maybe different departments do things differently.

I strongly suggest to the minister that he take another look at the issue, whether in the context of the guidance or of providing the necessary reassurance. If the minister is willing to do that, I am prepared to withdraw amendment 16. However, I emphasise that if reassurance is not forthcoming, the issue will be back at stage 3.

Nicol Stephen: Jackie Baillie is correct about the date by which accessibility strategies should be prepared. To some extent it is in the hands of

the committee how quickly legislation would progress. However, most important, it is within the remit of the Scottish Executive to determine how soon legislation arising from the review of the record of needs is introduced. I cannot pre-empt any announcement on that issue. It is a matter for the First Minister to announce to Parliament in the legislative programme. If I undermined that protocol, it would not only be the Executive that would complain; I am sure members of Parliament who would wish to hear that information in Parliament first would also complain.

From Jackie Baillie and Irene McGugan I understand what the potential problem is and that there could be a gap. Nevertheless, I believe that the best way forward is the integrated approach that I mentioned. It would be better to achieve that through the special educational needs legislation combined with the complaints process in the Disability Discrimination Act 1995 rather than to introduce a third element, which might cause duplication and confusion.

If members are with me that far, they will accept that the key issue is how we get through the gap period. I am happy to consider that issue further and to say, prior to stage 3, whether the problem of the gap can be overcome sensibly by issuing guidance or other measures. I realise that Jackie Baillie might wish to press the issue at stage 3 if we do not give a satisfactory response. The same applies to amendment 17.

The Convener: Does Jackie Baillie wish to press or withdraw amendment 16?

Jackie Baillie: On the basis of the minister's response, I will withdraw amendment 16.

The Convener: Is it agreed that amendment 16 be withdrawn?

Members indicated disagreement.

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

Members: No.

The Convener: There will be a division.

FOR

McGugan, Irene (North-East Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 16 disagreed to.

The Convener: Does Irene McGugan want to move amendment 17?

Irene McGugan: I will move it because, irrespective of the mediation services and tribunal systems that are being developed, the bill does not provide for an accessible complaints procedure. The present systems, which involve the sheriff courts or complaints to the Scottish Executive, are too daunting and are not appropriate. From day one, we need a complaints mechanism that is flexible and, most important, locally accessible.

Amendment 17 moved—[Irene McGugan].

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

Members: No.

The Convener: There will be a division.

FOR

McGugan, Irene (North-East Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Russell, Michael (South of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 17 disagreed to.

Section 4—Educational records

The Convener: Amendment 18 is grouped with amendments 19, 20, 21 and 22.

Jackie Baillie: This is my last attempt to be helpful to the Executive. There is confusion, not only in the wider world but among practitioners in the field, about the use of the term “records” in the bill’s title and peppered throughout the text. The word is being confused with the record of needs.

I know that the bill refers to general information about pupils. The reference to pupils’ records comes from the original Westminster legislation and covers pupil information. In England and Wales, there is no confusion about what is intended, because England and Wales do not have records of needs. I seek wording that is clear and unambiguous, so that we say what we mean and people understand that.

I have examined the Executive draft guidance, which is helpful, but I note that the Executive is reviewing the record of needs. We could end up constantly trying to work out which word means what. I appeal for clarity.

The guidance defines not what a pupil’s record is, but what it is not. I do not know whether that is good practice, and consideration may need to be given to it.

I move amendment 18.

The Convener: I confirm that, at stage 1, people outside the Parliament and MSPs were confused about what the bill refers to. Clarification is needed.

Nicol Stephen: If people read the bill, they will see that there is no confusion. The bill makes it clear that we are not dealing with records of needs. The draft regulations on pupil records, which have been circulated to members, clearly exclude records of needs from the definition of educational records to which the regulations apply.

As has been mentioned, we are reviewing the record of needs in Scotland. We have indicated that we intend, through legislation, to replace the record of needs with a new process. In due course, the confusion to which Jackie Baillie refers should disappear. Any provision that we make under the bill must be consistent with the Data Protection Act 1998. We used the term educational records in the bill specifically to tie in with the terminology that is used in the 1998 act and in the secondary legislation that has been made under that act. Jackie Baillie has mentioned that.

The term records is used for a range of information that schools hold in relation to pupils; it is not used only in relation to records of needs. However, I understand the concern that exists regarding the use of the term records and am happy to reconsider the issue. I have already discussed whether any further refinement might be possible. Nobody wants to cause confusion in this regard. If we were able to achieve greater clarity, that would be in everybody’s interests. I am pleased to undertake to reconsider the issue, to see whether progress can be made—particularly in relation to the short title of the bill. Any proposals that we make will be submitted in good time for stage 3 consideration of the bill.

The Convener: I invite Jackie Baillie to wind up and to indicate whether she wishes to press the amendment.

Jackie Baillie: Sorry, convener. Mike Russell was indicating that he might want to speak.

The Convener: It is too late.

Jackie Baillie: I will fill the void.

Nicol Stephen: I wanted to add one other thing. I am sorry, I know that it is too late.

The Convener: For goodness’ sake—this would not happen in the chamber. It is too late. Were you going to make a helpful suggestion?

Nicol Stephen: I was going to mention that people would generally agree that the word “information” has a wider meaning than the term “record”. For that reason, it would arguably cause

even greater confusion, albeit that—

Michael Russell: I think that you should have quit while you were ahead, minister.

The Convener: I call this meeting to order.

Nicol Stephen: We could argue that the word “information” would lead to even more confusion, or would not necessarily remove the current confusion.

The Convener: Thank you. We are all perfectly clear now.

15:15

Jackie Baillie: I think that I understood what the minister said, and I acknowledge that MSPs—as the convener pointed out—are easily confused. However, they would understand the word “information”.

Having said that, and not wanting to be churlish, I acknowledge the minister’s generous offer to take the matter away and try to shed light on it. On that basis, I will not press amendment 18 and will not move amendments 19, 20, 21, and 22.

Amendment 18, by agreement, withdrawn.

Amendments 19 and 20 not moved.

Section 4 agreed to.

Section 5 agreed to.

Section 6—Interpretation

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 4 and 7.

Nicol Stephen: The simple reason for this group of amendments is that we wanted all schools in Scotland to be covered by the bill. As the bill is currently drafted, a self-governing school would not be covered. We think that the situation should be corrected. That is the explanation for amendments 6 and 7.

Amendment 4 is a technical amendment, that reflects the change that we discussed earlier in relation to Gypsy or Traveller children who are educated outwith school, treating them as pupils for the purposes of the accessibility strategy. “Pupil” usually refers only to children educated in schools and so clarification is required.

I move amendment 6.

Mr Monteith: Will the minister give examples of which self-governing schools he is referring to?

The Convener: Perhaps the minister will do that in his summing up.

Nicol Stephen: I am happy to clarify the situation. At present, there is one self-governing school in Scotland—St Mary’s Episcopal Primary

School. I hope that Mr Monteith does not require further information on self-governing schools—as I recollect, his party established them.

Amendment 6 agreed to.

Amendments 4 and 7 moved—[Nicol Stephen]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Short title and commencement

Amendment 21 not moved.

The Convener: Amendment 5, in the name of the minister, is in a group of its own.

Nicol Stephen: The intention behind amendment 5 is to allow section 4 of the bill to come into force on royal assent. There would be no need for a commencement order and we would be able to introduce the new regulations more quickly.

I move amendment 5.

Amendment 5 agreed to.

Section 7, as amended, agreed to.

Long title

Amendment 22 not moved.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the Education (Disability Strategies and Pupils’ Records) (Scotland) Bill.

Michael Russell: On a point of order. We spent an hour and 20 minutes on that exercise. Very few amendments were lodged, and they were mostly probing amendments. It seems to me that we need to keep a record of whether probing is successful, whether the minister will respond to the points raised and whether delaying tactics are being used.

I want to put on record that, yet again, we have heard a lot of technical arguments against the way in which amendments that are lodged by committee members are drafted. The resources available to committee members for drafting are considerably fewer than the resources available to those we see arrayed before us.

What has happened is damaging to the legislative process. This is not a square dance or an elaborate mating ritual; the committee is meant to make progress with bills. Many people sitting in the public gallery today will wonder whether any progress has been made at all.

The Convener: I am not convinced that that was a point of order, but you did put some valid points on the record. We may have to consider the mechanics of the process, especially in relation to

the technical and legal arguments that we hear. We should raise such issues—and will perhaps do so under item 3, which we will move to.

Nicol Stephen: I understand the concerns that Michael Russell raises. If the Executive can play a constructive role in remedying such problems, we should discuss that. However, in relation to legislation there is, of course, an important separation between the role of committee members and the role of the Executive.

An exchange of letters might be helpful, to allow me to set out the issues on which I undertook to come back to the committee. If the committee wanted to set down any guidance to clarify the issues raised, in particular by Jackie Baillie and Irene McGugan, that would be helpful to the Executive. Similarly, we could confirm which issues we intend to follow up as a result of the amendments agreed during today's stage 2 process. That would give us some certainty. I have noticed that, at stage 3, it is easy to forget or to be unclear about which issues ministers agreed to come back to. I hope that my suggestions are helpful.

The Convener: Thank you. I will certainly be writing to you, on behalf of the committee, to outline the points on which we seek further clarification before stage 3.

Nicol Stephen: We will write back to provide further detail.

The Convener: Thank you.

Subordinate Legislation

Scottish Social Services Council (Appointments, Procedures and Access to the Register) Amendment Regulations 2002 (SSI 2002/60)

The Convener: Under agenda item 3, we will consider first the Scottish Social Services Council (Appointments, Procedures and Access to the Register) Amendment Regulations 2002 (SSI 2002/60) under the negative procedure. The purpose of the regulations is to effect minor and technical changes to allow greater flexibility regarding the timing and payment of fees and allowances to members and non-members of the Scottish Social Services Council who serve on committees and sub-committees. We have with us an Executive official, Gillian Ottley, who will be able to answer questions from members.

Michael Russell: I suggest that, at an appropriate moment, we recommend annulment of SSI 2002/60 on the grounds of defective drafting, as reported to us by the Subordinate Legislation Committee. This is not the first time that this has happened. The Executive admits that the drafting is defective, so it would be in order for the Executive to withdraw the regulations and come back with them drafted correctly. The committee should not approve regulations that are drafted defectively. The time has come for the committee to indicate its concerns formally by recommending annulment, unless the Executive withdraws the regulations and comes back with them drafted correctly.

The second instrument that we will consider is unobjectionable.

Ian Jenkins: The Subordinate Legislation Committee regularly comes across minor defects in drafting. The issues that are involved are sometimes complex, and it is a fairly regular procedure for the Subordinate Legislation Committee to point out minor defects to the Executive. The Executive, while it recognises the defects, indicates that the instrument, if it goes ahead in its unamended form, will still perform the function for which it has been drafted.

In this case, the Executive admits that there is a defect in certain terms, but has said to the Subordinate Legislation Committee that it will take steps to make the necessary amendment when the instrument is next amended. The Subordinate Legislation Committee therefore drew the defective drafting of the regulations to the attention of the lead committee—this committee—and the Parliament. The Subordinate Legislation Committee does not approve of the defective drafting, but I suspect that the legislative process would be difficult if every minor defect caused

legislation to stop. The error in question appears to be a minor drafting error, which might not be a good reason to stop an instrument that carries forward policy.

The Convener: If no other members wish to contribute, I ask Gillian Ottley to respond.

Gill Ottley (Scottish Executive Health Department): I am grateful for the previous comments.

I want to say a bit about the background. The Scottish Social Services Council is a new body, which was established by the Regulation of Care (Scotland) Act 2001. The council became operational on 1 October; its major responsibility is regulating the social care work force.

The Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001 (SSI 2001/303) were written to govern the appointments processes and access to the council register. Mr Russell is right; it is a fair cop, I am afraid. We made a mistake in drafting the Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment Regulations 2002 (SSI 2002/60). There was an oversight in amending the regulations, but we do not think that the defect will give rise to any specific difficulties in practice. Regulation 11(1)(a) has been amended—the reference to annual fees has been removed—so there is no longer anything on which regulation 11(3) can bite. Therefore, there is no difficulty in allowing regulation 11(1)(a) to lie. Nevertheless, we should have spotted the defect and we will seek to remove it at the first opportunity.

15:30

Michael Russell: This is the first opportunity that has arisen for the regulations to be withdrawn and brought back correctly drafted.

A major principle is at stake. If we make laws that are defective, we provide money for lawyers, give rise to lots of interpretation, and do not provide a good service. We are here to provide a good service. The committee is meant to be raising standards in education and elsewhere, but I am afraid that repeatedly—and I have nothing against Miss Ottley and the work that she is doing—we hear the argument, “There is a mistake, but it doesn’t really matter.” It does matter. Precise language is what laws and regulations are about.

If the regulations were huge and overarching, and if the world would stop turning if we did not make a recommendation on them today, I might not push the point. However, at some point, we have to say that this is the opportunity to get it right and that, if something comes to us wrong, it

must be taken away, corrected and brought back. If I am correct, the regulations come into force on 15 March, so there is time for the necessary work to be done. We know what the defect is and there would be virtually no difficulty in coming back with a properly drafted statutory instrument.

If we nod the instrument through, we are simply aiding and abetting the mistakes that have happened in the past and that will go on happening. It is right for the committee to take a stand.

With the greatest respect to Ian Jenkins, I find it extraordinary that a member of the Subordinate Legislation Committee, when he is confronted with his own report, is not prepared to make a stand for good drafting and correct procedure.

Ian Jenkins: I am saying simply that I know the difficulties—

Michael Russell: We all know the difficulties.

Jackie Baillie: I have no problem with the principle of Mike Russell’s argument. In my short period on this committee, we have witnessed drafting errors of varying degrees. Given our previous discussions, in which we debated words with the minister and drafting was criticised, I have much sympathy with Mike Russell’s argument. However, I want to be reasonable, so I do not think that we should send back this statutory instrument.

The wider issue that needs to be raised, either by this committee or by the Subordinate Legislation Committee, is how we stop defective drafting when there is the time and space to correct it.

The Convener: I met Margo MacDonald, the convener of the Subordinate Legislation Committee, after I wrote her a letter following the last but one piece of subordinate legislation—the last one was withdrawn because it was defective. We will make a joint approach to the Procedures Committee to raise the issue and to examine the possibility of bringing into line the timetables to which the Executive and the committees of the Parliament operate. The fact that they operate to different dates and times causes some of the problems that we have experienced.

Mr Monteith: I echo what Mike Russell said. It is important that we make a stand on this issue. This is not the first time—it must be the sixth or seventh time—that we have received a statutory instrument that contains defective drafting. Had it been the first time, I would have been content to let it go, but it is not. There comes a point when it is worth sending out a message. Given that we have the opportunity to do that on this occasion, we should do so.

The Convener: We would lodge a motion and the regulations would come back to the committee

on 26 March for a further debate of up to 90 minutes with the minister, prior to Parliament and the Parliamentary Bureau taking a decision before 15 April. We would therefore be required, if necessary, to produce a report overnight on 26 March.

Do members wish to proceed with that course of action? Is there a mood to move that way? I know two members' views; I am not sure that I know the views of the majority of the committee.

Ian Jenkins: That would be a waste of parliamentary time and effort. If the *Official Report* of our discussion were to be sent with a firm note to those in the Executive who are responsible for drafting, it might be considered as a yellow card and they might realise that, the next time that this happened, they would get a red card.

We have discussed such matters before; I accept that this is not the first time. However, the course of action that has been described would be harsh and would cause us timetabling difficulties later on. We have other, more important things to do. We could send out the same message without going through that procedure.

The Convener: If we lodge a motion for debate on 26 March with the intention of annulling the regulations, would that give the Executive the necessary time to draft competent regulations?

Gill Ottley: Our view is that the regulations that are before the committee are competent. The defect that has been noted does not give rise to any difficulties in practice. It is for the committee to take a view on the matter. I believe that we could probably draft new regulations, but we would have to go through a process of consultation again. That would probably take us beyond 26 March.

The Convener: I am not sure how the majority of the committee wants to proceed.

Jackie Baillie: The matter is part of a wider set of issues that we should refer back to the Subordinate Legislation Committee in the strongest possible terms. This is not the only committee that has experienced the problem. That would be the most sensible way to proceed.

Michael Russell: After hearing Jackie Baillie's contribution about five minutes ago, I was minded not to press the matter to a vote, because I thought that she was talking sense. Ian Jenkins has goaded me a little. His ability to sit back and do nothing may be liberalism, but it is certainly not parliamentary democracy.

Having said that, I accept that the warning that we send will be the final warning. If we were to receive another such document, no matter what it was, I hope that the committee would push the matter further. I see nods of assent from committee members. I also hope that the

Executive might, even at this stage, take the regulations away and do something about them.

To say that the regulations are perfectly competent and will do their job is a wrong argument. That may be true of the regulations that we are considering, but the same thing has happened with other instruments on which we have discovered that the job has not been done. Failure to draft accurately, for whatever reason, is bedevilling the committee and the Parliament.

I will not press the matter to a vote. However, as far as I am concerned, we are now in the 59th minute of the 11th hour on the issue, which is another part of the issue that I raised at the end of the stage 2 debate.

The Convener: I think that all members share your concerns about the drafting of legislation. With the convener of the Subordinate Legislation Committee, I will continue to press for effective measures to be put in place to ensure good drafting. Thank you for not pressing the matter to a vote.

I assume that we will make no recommendation on the regulations and will allow them to proceed.

Members indicated agreement.

The Convener: I will ensure that members' comments are passed on to the relevant ministers for their information.

Mr Monteith: I hope that you will pass on those comments with an appropriate explanation of how close the regulations came to being sent back.

The Convener: Indeed, Mr Monteith. I will also send a copy of the *Official Report*, which will express the committee's concern.

Children's Hearings (Legal Representation) (Scotland) Rules 2002 (SSI 2002/63)

The Convener: We will now consider the Children's Hearings (Legal Representation) (Scotland) Rules 2002 (SSI 2002/63) under the negative procedure. The purpose of the rules is to permit publicly funded legal representatives to be appointed for children who appear at children's hearings, as defined in section 39(3) of the Children (Scotland) Act 1995, in certain circumstances.

I welcome back to the committee Boyd McAdam from branch 2 of the Scottish Executive's young people and looked-after children division, which is responsible for children's hearings.

Do members have any comments? I think that the Executive may have got the instrument right this time.

Boyd McAdam (Scottish Executive Education Department): I hope so.

Mr McAveety: I put on record our appreciation of the work that Boyd McAdam has done.

The Convener: It is certainly a more fruitful meeting this time. The instrument is before us under the negative procedure, so, unless there are strong objections, the committee will agree that it does not wish to make any recommendation in its report to Parliament. I assume that that is the case.

Members *indicated agreement.*

Mr Monteith: I suggest that we take a short comfort break.

The Convener: We will reconvene at 15:45.

15:41

Meeting suspended.

15:47

On resuming—

Budget Process 2003-04

The Convener: Item 4 on the agenda is the budget process for 2003-04. The committee has a report from Frank McAveety, which provides further information on areas of spending that the committee identified at its meeting on 26 February. The report is essentially for the information of members. It will assist the committee when it considers the Executive's annual expenditure review in April. Are there questions or comments on the report?

Mr Monteith: I thank Frank McAveety and the clerks for their excellent work in producing the report so quickly and in such detail. I draw the committee's attention to paragraph 2.2 on page 7 of the report. On the ring fencing or earmarking of funds, it states:

"It is worth noting that COSLA estimated, in evidence to the Local Government committee of the Parliament, that 'almost 30% of local authority funding from the Scottish Executive is either ring-fenced or centrally directed'. It may therefore be worthwhile for the committee to explore further the issue of ring-fencing during the process of evidence-gathering into the budget process."

I did not need to read out that entire paragraph, but I thought that if I did everyone could catch up. I would certainly like the committee to take up that suggestion and look further into ring fencing when we take evidence.

Michael Russell: That is a good point. I commend the report, which addresses the major issues. The reporter has done a good job—I am sure that it is all his own work. The issue of ring fencing is important, as is the matter of the excellence fund allocations. A related matter is the difficulty that schools regularly report that they face arising from the fact that various pots of money come to them in various ways at various times. The situation is such that there is almost no such thing as a school budget but instead lots of little budgets that must be juggled. I have been told again and again that schools' ability to plan is diminished considerably because they do not know what resources will be available to them at any given time and because they have to make special arrangements in special budgets. Under the excellence fund, the division of some of the grants into categories such as salaries and travel means that the money is not used effectively. In the long term, ring fencing affects schools' ability to plan ahead, particularly given the substantial level of devolved management in schools. We should think about that as we gather evidence and talk to head teachers about the difficulties that they face in that regard.

Paragraph 3.2 points out the difficulties that are faced in relation to Gaelic and the fact that, in real terms, the funding for the language is not increasing. Many people will be surprised by that and will want to discuss it. We should inquire into the matter more closely, particularly as it affects Gaelic-medium education.

A number of issues arise in relation to the allocation of money to the arts. The fact that Scottish Opera accounts for more than half the total allocation of grant and the issues surrounding the allocation of money to Scottish Ballet and the other national companies will require some examination and should be part of our discussions, as should the allocation of money to the national institutions. In real terms, the allocation of money to the National Library of Scotland has declined at a time when demands on its services are increasing in many ways.

Mr Monteith: The document shows how the national institutions are performing and there is useful information on the funds that are coming from the Executive and elsewhere.

I am pretty certain—because I am sure that I have contributed—that the National Gallery of Scotland raises money by private subscription to support purchases. However, that does not appear to be clearly marked in the budget document. Shadow organisations, charitable organisations or trust organisations that are part of the fundraising process for the purchase of paintings, sculptures, archives and artefacts are an important factor in the institutions' financial operation, but they do not seem to show up in the budget figures. The same might be the case with the national companies. Although the budget is about the Executive's spending, it would be useful for us to have a fuller picture of the money that is available to the national institutions and companies. We need to know whether we should take account of any money that does not show up in the budget document.

Mr McAveety: I thank committee members for those questions. Following the good work that was done by Arthur Midwinter and Stephen Herbert, the clerks and I tried to organise the information under the key points in the executive summary. Any elegance that the report might have been added at that point.

Two or three areas have been thrown up for discussion. One issue is the sustainability of arts organisations and whether their continual grant requests match up with wider marketing strategies. That subject has come up in submissions and in other reports. A second issue, which Mike Russell mentioned, is the commitment and support for Gaelic education. That might be worth exploring in further detail. The report may be a bit lengthy, but it could help us to get a clearer

picture.

Ian Jenkins: I thank Frank McAveety and his partners for the report, which provides details about the global sums for special educational needs that are provided through specific grants and through local authority grant-aided expenditure. Questions need to be asked about how the money is distributed. Does the money follow the youngster to the responsible local authority or does the extra money come only through a formula that does not reflect the needs of individual pupils and authorities? How is SEN provision assessed? How much money is spent? Who decides how much is spent? On what basis are the allocations made? We need to probe those questions a wee bit further.

Jackie Baillie: I agree with Mike Russell that we need to seek clarification on ring fencing. My local education authority has also told me that it has difficulties juggling pots of money that cannot be connected. It would be useful to examine the flexibility of different funding streams.

In the past, comment has been made about the Executive not providing information on outputs, but we seem to be focusing on budgets and on how much is spent. However, I am interested in teasing out how effective sure start Scotland is in generating outputs. There are rumours that local authorities differ in their use of that funding and that the money may not be used for the purpose intended. I am keen to look at that.

Those comments are equally applicable across the board. For example, I would like clarification on whether the real-terms decline in funding for pre-five provision will have an impact on the expected outputs. I am conscious that next year's funding for pre-five provision has been transferred to GAE. Will the consequences of that decline be passed on to local government?

The Convener: I would like to tease out how extra money for rural areas is allocated and spent, which is an issue that came out of our report on our inquiry into Scottish Borders Council. It appeared that money that was allocated to the council for extra nursery teachers might have been used for other purposes. We also need to try to grasp how the rural dimension is factored into the funding of education budgets. Over the past year, that aspect of our work has been a source of concern both to local people and to the committee.

Ian Jenkins: Another factor that needs to be taken into consideration is the impact of school transport on rural education budgets.

The Convener: Yes, but my point is that there are large rural areas that receive no additional funding. In my constituency, for example, 80 per cent of the local authority's landmass is considered to be rural. However, even though the

local authority faces all the additional problems of a rural area, it receives none of the additional funding. That issue continues to raise its head at every opportunity.

16:00

Mr Monteith: The whole issue of how GAE relates to rural areas is worthy of examination. There is a school of thought that problems that local authorities in rural areas encounter are due to the large number of schools with small rolls. GAE is apparently calculated on the basis of the number of pupils and does not take into account the number of teachers. For that reason, those local authorities are disadvantaged. Another school of thought, which emanates from the Scottish Executive, says that that issue is taken into account when GAE is calculated and that the problem has its origins in the Convention of Scottish Local Authorities. The committee would do a useful public service if it pressed that issue when taking evidence and sought further explanation from COSLA and ministers on exactly what formula is in operation. Are there a number of formulae of which we need to be aware in order to give clear answers to the public, who are concerned about the issue?

Jackie Baillie: That would help our understanding of the Executive's priorities, not just in the various areas and levels of funding, but in how it funds services in rural and urban areas where there are significant levels of disadvantage, to which budgets are effectively skewed. That dimension adds to the wider question of how we target both rurality and disadvantage.

Irene McGugan: I might usefully have mentioned this issue before Frank McAveety made his excellent report, although it is still worth taking into account. Expenditure on social work training is forecast to rise by 20.5 per cent in real terms. That is a considerable increase and it would be useful to have some detail about it. It comes under the budget heading "Education and Children", so the money is presumably going into children's services. Does it relate to social work input into new community schools, to the development of sure start Scotland or to the new Scottish Commission for the Regulation of Care? There will be an additional requirement for the registration and inspection of child care facilities under the Regulation of Care (Scotland) Act 2001.

The recruitment and retention of social workers is a big problem. Is the increase in expenditure on social work training a means by which to address some aspects of that problem? It would be useful to find out the purpose for which that considerable—and welcome—amount of money is earmarked.

The Convener: I am sure that Frank McAveety, Stephen Herbert, Susan Duffy, Ian Cowan and everyone else will be able get the relevant information for us in advance of the discussions on the budget in April.

Ian Jenkins: I have one further point to raise. On page 7 of the report, under the heading "School rolls and School Buildings", the

"impact of declining schools rolls on budgets"

is mentioned. The report indicates that a declining school roll does not automatically mean a reduction in the education budget for that school. In some areas, the population is rising fast and the problem is the other way round: the required budget does not come through when the kids are there and the accommodation is required. There should be some investigation into the responsiveness of the budget-setting process to changing demands.

The Convener: That concludes discussion on the issue and we move now into private session.

16:03

Meeting continued in private until 16:07.

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